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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# CLIMATE CHANGE AND ARTICLE 21: THE JURIPRUDENTIAL TRAJECTORY OF ENVIRONMENT RIGHTS IN INDIA

AUTHORED BY - SANIGHDHA

## ***Abstract:***

*“If all mankind were to disappear, the world would regenerate back to the rich state of equilibrium that existed ten thousand years ago. If insects were to vanish, the environment would collapse into chaos. Both are important for the protection of environment and for each other’s preservation.<sup>1</sup>”*

– E.O. Wilson

*Mother Earth is a benevolent blessing of the Almighty to the humans, consisting of flora, fauna, and other biome milieu, which aids in the efficient, uncomplicated, and effortless survival of all the species, and not just the homo sapiens. In recent times, the drastic climate change features have captivated everyone’s attention. The anthropogenic and naturalistic reasons behind the climate change are out in the open, now. Even the European Courts and the Honourable Supreme Court of India have pinpointed this, that the citizens of respective nations and the governments of these respective States, must put their foot forward to counter any kind of adverse effect of climate change on the people of that respective nation. The present research paper strives to put into the limelight the issue of climate change, the adverse impacts of the same and the jurisprudential trajectory of precedential analysis, regarding the same issue. There have been issues whereby the Honourable Apex Court of India, has widened, and relaxed the concept of locus standi to invite and entertain the aggrieved persons of environmental disaster, natural calamities, and negative impact of degradation of the environment. The present research manuscript will not only study the importance and inevitability of maintaining the systematic apparatus of environmental milieu, but also various convention (both national and international) that deal with the precautionary measures, along with the various international and national case laws, up till the recent judgment of the Supreme Court of India, which stated and granted as a penumbral fundamental right under Article 21- of the rights of*

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<sup>1</sup> Where Have All the Insects Gone, available at: <https://www.newyorker.com/magazine/2021/11/01/where-have-all-the-insects-gone-e-o-wilson-silent-earth> (last visited on September 4, 2024).



*the persons against the adverse impacts of climate change. This indeed, opens the heavenly gates towards again, rehabilitating and celebrating the gift of nature.*

**Keywords:** *Constitution; Environment; Climate Change; Jurisprudence; Fundamental Rights.*

## **I. INTRODUCTION: THE HISTORICAL AND SOCIO-SPIRITUAL CONTEXT OF ENVIRONMENT PROTECTION**

*“Earth provides enough to satisfy every man’s needs, but not every man’s greed.”<sup>2</sup>*

*- Mahatma Gandhi*

The soul of a nation lies in its values and the history of independence that helps it to proudly hold its head high and work very hard for its future. Similarly, the soul of the whole earth and the entire universe lies in the way the inhabitants of the same treat it. It is often stated by the scriptures, the rishis, the age-old teachings, and learnings of the religions of the world, that what we give comes back to us. What one manifests and believes in, will certainly find its way back. Similarly, a crying mother when her son or daughter leaves for another country, say, for employment opportunities or for any other specific reason, always states that your body may be travelling to an unknown destination, but your soul will find its way back home, to the actual place where your heart resides. Modern spiritualists also state that whatever you send out in the universe, will somehow by the laws of physics or the universal physical law, will come back to you. All these examples, state that the very foundational law of the real world, is that the same is based upon the law of give and take. Likewise, if we try to adjust these principles in the context of human-environment relationship, we will understand the way our

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<sup>2</sup> Environment Awareness- Maharashtra Pollution Control Board, *available at:* <https://mpcb.gov.in/awareness/environmental-quotes> (last visited on September 4, 2024); Mahatma Gandhi on Nature and Environment, *available at:* <https://egyankosh.ac.in/bitstream/123456789/33724/1/Unit-16.pdf> (last visited on September 4, 2024); Gandhi as an Environmentalist, *available at:* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6515736/> (last visited on September 4, 2024); Mahatma Gandhi’s Views on Environment and Sustainable Development, *available at:* [https://www.researchgate.net/publication/375892421\\_Mahatma\\_Gandhi's\\_View\\_on\\_Environment\\_and\\_Sustainable\\_Development](https://www.researchgate.net/publication/375892421_Mahatma_Gandhi's_View_on_Environment_and_Sustainable_Development) (last visited September 4, 2024); Environmental Thoughts of Mahatma Gandhi for a Greener Future, *available at:* [https://www.mkgandhi.org/articles/green\\_future.php](https://www.mkgandhi.org/articles/green_future.php) (last visited September 4, 2024); Relevance of Gandhian Environmentalism, *available at:* <https://www.downtoearth.org.in/environment/relevance-of-gandhian-environmentalism-56906> (last visited on September 4, 2024); Gandhi and Environment, *available at:* <https://magazines.odisha.gov.in/Orissareview/2021/Sept-Oct/engpdf/9-11.pdf> (last visited September 4, 2024); Gandhi’s views on Environment and its Protection, *available at:* <https://infinitylearn.com/surge/study-materials/english/mahatma-gandhi/gandhis-views-on-environment-and-its-protection/> (last visited September 4, 2024); Mahatma Gandhi on Environment and Sustainable Development, *available at:* <https://ncds.nic.in/sites/default/files/UpEvents/Satya%20Narayana%20Sahu.pdf> (last visited September 4, 2024); Mahatma Gandhi: An Environmentalist By Nature, *available at:* <https://www.thehindu.com/news/national/mahatma-gandhi-an-environmentalist-by-nature/article29566196.ece> (last visited September 4, 2024).

environment, its degrading or upgrading quality works.

Our ancient scriptural texts, such as the Srimad Bhagavada Gita, Srimad Bhagavatam, Srimad Bhagavad Purana, the eighteen Puranas, the 108 Upanishads, the Brahamanas and the Aranyakas; and first and foremost, the four Vedas-namely, the Rig Veda, the Sama Veda, the Yajur Veda, and the Atharva Veda<sup>3</sup>- emphasize on the importance of human actions, while stating that in this world humans are the most conscious being created by the Almighty. The Supreme Creator of the world, the Almighty (or according to different belief systems, such as Sankhaya, Gautama and Nyaya Philosophy- the universe or the laws of nature) who has infused the breath in the living creature has given the power of mind and mindfulness to humans only. Take any species of life, be it the animal life, the bird life, or the Dvija-as it is commonly known in spiritual circles- none has the power to think and act with the conscience. Consciousness is present even in them, even they know how to mate, how to eat, how to sleep, how to kill to survive, how to actually wake up and seek protection in fear and submissiveness. But what is lacking and what extra is inhibited in the humans that is not there in these species? It is the level of thought process that one can achieve. The highest level of success that a human can summit is his/her power to think consciously<sup>4</sup>. But why is this consciousness needed? And is the synchronization of conscious, subconscious, unconscious or id, ego, and superego<sup>5</sup>; really the summit of human intellectualism? The answer to this question is, yes. One can ask this question in any form and try to answer the same in any of the different ways- either spiritually, or ritually, or physiologically, or psychologically, or economically, or traditionally, or socially, or culturally, or politically, or diplomatically, or by any philosophical or jurisprudential basis- the answer will always be the same.

Understanding the above-mentioned situation and the level of blessings, abilities, and capabilities that humans have been bestowed with is primary, before which one cannot venture

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<sup>3</sup>*Srimad Bhagavada Gita; Srimad Bhagavatam; Srimad Bhagavda Purana; The Puranas; The Upanishads; The Brahamanas; The Aranyakas; The Rig Veda; The Sama Veda; The Yajur Veda; The Atharv Veda; Sri Guru Granth Sahib Ji; The Holy Qoran; the Holy Bible; The Torah.*

<sup>4</sup> *Srimad Bhagavada Gita; Srimad Bhagavatam; Spiritual Consciousness or Spiritual Intelligence, available at: [https://www.tandfonline.com/doi/pdf/10.1207/S15327582IJPR1001\\_5#:~:text=spiritual%20consciousness%20stems%20from%20the,to%20one%20of%20consciousness%20and](https://www.tandfonline.com/doi/pdf/10.1207/S15327582IJPR1001_5#:~:text=spiritual%20consciousness%20stems%20from%20the,to%20one%20of%20consciousness%20and) (last visited on September 4, 2024).*

<sup>5</sup> *The Psychology of the Mind, available at: <https://ijip.in/wp-content/uploads/2020/05/The-Psychology-of-the-Mind-by-Shyam-Mehta-1-Copy-min.pdf> (last visited September 4, 2024); Understanding the Mind, available at: <https://psychology.cornell.edu/news/understanding-mind> (last visited on September 4, 2024); Daniel Kahneman, *Thinking Fast and Slow* (2011); Mihaly Csikzentmihalyi, *Flow: The Psychology of Optimal Experience* (1990); Dan Ariely, *Predictably Irrational* (2008).*

into understanding the very nature and origin of environment laws. Our ancestors, elders and the indigenous communities and a handful of persons living across the world, are the ones who know how to engage and live in harmony with the environment. It is from them that one needs to learn to live in the environment. The different forms of nature and spirit worship, along with the varied directions, teachings and learnings that are stated in the esteemed scriptures<sup>6</sup> of our world, direct towards harmless occupation of the environment and the insightful accountability, if any harm is caused. The following verse testifies to the same:

पृथ्वी संतरणात् संतु नः पुन्या पुन्येन वातः<sup>7</sup>

(Let the Mother Earth be protected by our good deeds, and our good deeds by the Pure Water)

माता भूमिः पुत्रोऽहं पृथिव्याः<sup>8</sup>

(Earth is my mother and I am her Child)

प्रकृतिरेव शरणम्<sup>9</sup>

(Mother Nature is Our Only Refuge)

Apart from this, the Sri Guru Granth Sahib Ji and the Holy Qoran have a number of verses and instances whereby directions have been given to preserve nature, as it is the highest and the choicest blessing of the Almighty to the humans. The Holy Bible also has a number of instances whereby environment is stated to be highest law and the need for preservation is highlighted. The following verses are reproduced:

Genesis 2:15 - 'The Lord God took the man and put him in the garden of Eden to till it and keep it.'<sup>10</sup>

Psalms 24:1 - 'The earth is the Lord's and all that is in it, the world, and those who live in it.'<sup>11</sup>

However, the incessant greed for growth and human-less as well as environment-less development has led the world, on the path of destruction today. Development and growth are the need of the hour, without a doubt. Without them, no country, no nation, and no political

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<sup>6</sup> Ibid.

<sup>7</sup> Environment and Sanskrit, available at: [https://resanskrit.com/blogs/blog-post/world-environment-day-in-sanskrit?srltid=AfmBOoo-C\\_JfibLI37Q\\_0zHXDQDgNjQZIE\\_9MjX2YddYa7qTDbfi4E3Q](https://resanskrit.com/blogs/blog-post/world-environment-day-in-sanskrit?srltid=AfmBOoo-C_JfibLI37Q_0zHXDQDgNjQZIE_9MjX2YddYa7qTDbfi4E3Q) (last visited on September 4, 2024).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> The Holy Bible; The Bible on Environment and Nature, available at: <https://www.christianaid.org.uk/news/7-bible-verses-about-nature-and-environment#:~:text=Psalm%2024%3A1%20%2D%20The,So%20they%20are%20without%20excuse.> (last visited September 4, 2024).

<sup>11</sup> Ibid.

state can ever exist, truly and stand tall in front of its adversaries. The need for enhanced means of communication, efficacious laws, and effective implementation of upliftment programmes, along with the requirement for better connectivity in remote areas and areas left out of the clout of development, earlier on, is the most important function of the government and the hallmark of governance today. But what is different today? Developments also took place in the ancient kingdoms and the medieval rules of the Indian subcontinent and the rest of the world? The difference lies in understanding of importance of environment and its lifelong necessity for the humans and the other species, equally.

Today, we are in an age that requires both development and environment protection. The successive governments of India, after independence, have striven very hard to upend the numerous damages done by the former British Raj,<sup>12</sup> resulting in skewed development, uneven distribution of resources, disadvantaged societies, and the uprooted indigenous communities. But the same is still not enough to manage and curb the uneven effects of degenerative models of development. However, slowly steadily, India is reaching a stage whereby, her efforts are now lauded at the world stage for achieving her Convention-based targets before time and doing more than what is required to curb her part of miniscule damage done<sup>13</sup>. The various initiative such as the LiFE initiative, the Solar Alliance Initiative, the Swachh Bharat Abhiyan, the Swachhta Sarvekshan, the Clean Cities and Smart Cities Challenge, the upgradation in environment laws, the initiation of a different Ministry for water conservation, the Jal Shakti Initiative<sup>14</sup>, et al. have resulted in efforts that have spoken volumes. The Supreme Court and

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<sup>12</sup>Kautilya, *Arthshastra*; Manu, *Manusmriti*; Environment Justice, available at: <https://www.environmentandsociety.org/exhibitions/famines-india/environmental-justice> (last visited on September 4, 2024); How British Colonialism killed 100 million people in 40 years in India, available at: <https://www.aljazeera.com/opinions/2022/12/2/how-british-colonial-policy-killed-100-million-indians> (last visited on September 4, 2024); Impact of British Rule on India, available at: <https://nios.ac.in/media/documents/secsocscicour/english/lesson-05.pdf> (last visited on September 4, 2024); The British Impact on Indian Geography, available at: <https://blog.geographydirections.com/2010/07/30/the-british-impact-on-indian-geography/> (last visited on September 4, 2024).

<sup>13</sup> India achieves two targets of Nationally Determined Contributions well before times, available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1987752#:~:text=India%20achieves%20two%20targets%20of%20Nationally%20Determined%20Contribution%20well%20ahead%20of%20the%20time&text=As%20a%20party%20to%20the,based%20energy%20resources%20by%202030.> (last visited on September 4, 2024); India's Updated First Nationally Determined Contribution under the Paris Agreement, available at: <https://unfccc.int/sites/default/files/NDC/2022-08/India%20Updated%20First%20Nationally%20Determined%20Contrib.pdf> (last visited on September 4, 2024).

<sup>14</sup> Protection of India: Government of India, available at: <https://powermin.gov.in/en/content/protection-environment> (last visited on September 4, 2024); Protection and Conservation of Ecosystem, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1982307> (last visited on September 4, 2024); Digital Sansad: Ministry of Environment, Forests and Climate Change, available at: <https://sansad.in/getFile/annex/253/AU1466.pdf?source=pqars> (last visited on September 4, 2024); Major

the legal jurisprudential basis of India have also resulted in various developments in the Indian environment protection journey. The present manuscript strives to cater to this legal journey up unto today whereby the honorable Apex Court of the nation has recognised the importance of persons having rights against the adverse impact of climate change under Article 21 as the penumbral fundamental right, along with landmark case laws that have aided in in-depth analysis of situations and circumstances, persisting in this particular sphere.

## **II. THE JURISPRUDENTIAL ORIGIN, NATURE, AND SCOPE OF ENVIRONMENT PROTECTION IN INDIA: DEFINITION AND MEANING**

Before understanding the jurisprudential origin, growth, nature, and scope of environment protection in India, one needs to know the basic meanings of environment, environment laws and environment rights. Environment is defined as, “environment is derived from the French word *Environner*, which means to encircle or surround. Environment is defined as the sum total of water, air, land, and the interrelationships that exist among them and with the human beings, other living organisms, and materials.<sup>15</sup>” Environment law is defined as, “a legal framework comprising principles, directives, policies, and regulations founded by different local, national, or international units. Its purpose is to safeguard and maintain the environment, verifying its appropriateness for both present and future generations. According to Black’s Law Dictionary, environmental law is defined as, a collective body of rules and regulations, orders and statutes, constraints and allowances that are all concerned with the maintenance and protection of the natural environment of a country. Based on the definition of the Free Legal Dictionary, Environmental Law is, an amalgam of state and federal statutes, regulations, and common-law principles covering Air Pollution, Water Pollution, hazardous waste, the wilderness, and

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Environment Policies, Laws and Legislations: Comptroller and Auditor General of India, *available at*: [https://iced.cag.gov.in/?page\\_id=256](https://iced.cag.gov.in/?page_id=256) (last visited September 4, 2024); India Science: Technology and Innovation, *available at*: <https://www.indiascienceandtechnology.gov.in/listingpage/missions-policies-and-protocols> (last visited on September 4, 2024).

<sup>15</sup> Environment and Environmental Science, *available at*: [https://www.anits.edu.in/online\\_tutorials/es/Unit%201.pdf](https://www.anits.edu.in/online_tutorials/es/Unit%201.pdf) (last visited on September 4, 2024); Rachel Carson, *The Silent Spring* (1962); Robbin Wall Kimmerer, *Braiding Sweetgrass* (2013); Edward Abbey, *The Desert Solitaire* (1968); David Wallace Wells, *The Unthinkable Earth* (2019); Michael E. Mann, *The New Climate War* (2021); Naomi Klein, *On Fire* (2019); Naomi Klein, *All we Can Save* (2020); Nathaniel Rich, *Losing Earth* (2019); Kim Stanely Robinson, *The Ministry for the Future* (2020); Joel Wainwright, *Climate Leviathan* (2018); E.O. Wilson, *Half Earth* (2019); Gufu Oba, *Climate Change Adaptation* (2014); Gail Herman, *What is Climate Change* (2018); Greta Thunberg, *The Climate Book* (2022); David Wallace Wells, *The Unthinkable Earth* (2019); Naomi Klein, *This Changes Everything: Capitalism V. Climate Change* (2014); Bill Gates, *How To Avoid A Climate Disaster: The Solutions we Have and the Breakthrough we Need* (2021).

endangered wildlife.<sup>16</sup>” Environment Pollution, however, should also be understood for the context. It is defined as, “the term pollution emerges from the Latin word *Polluere*, denoting the act of polluting any aspect of the environment. Environmental pollution takes place when any component is unveiled into the environment, humiliating its property to a point where it becomes inappropriate for human habitation. Various forms of environmental pollution involve air pollution, water pollution, noise pollution, and more. As per Section 2(c) of the Environment (Protection) Act, 1986, environmental pollution means the presence in the environment of any environmental harmful agent.<sup>17</sup>” Environmental rights on the other hand, can be said to be an offshoot of human rights and fundamental rights in India. A safe living and existential environment always ensure holistic development of an individual. According to the United Nations Environment Programme, “environmental rights mean any proclamation of a human right to environmental conditions of a specified quality. Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean, and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights. This relationship is increasingly recognized, as the right to a healthy environment is enshrined in over 100 constitutions.<sup>18</sup>” Environment Rights can also be defined as, “environmental rights means the protection of natural resources; the access to and use of natural resources; and how the access to and use of these resources affects surrounding populations, as well as the resources themselves<sup>19</sup>.” The origin, growth, nature, development, and scope of environment law in India can be traced back to the famous Stockholm Conference of 1972 that also had, India as its founding member. India, being a signatory and attendee to the same, has made immense strides in reclaiming itself as the champion of human and environment rights post that conference. The seminar paper will now intend to trace the timeline of environment law growth in after the Stockholm Conference.

According to a report, International Environment Law: History and Milestones, “a product of

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<sup>16</sup> Environment Law and Environment, available at: <https://www.lloydlawcollege.edu.in/blog/environmental-law.html> (last visited on September 4, 2024).

<sup>17</sup> *Ibid*; Shyam Divan and Armin Rosencranz, *Environment Law and Policy: India Cases and Materials* (2023); Gurdip Singh and Amrita Bahri, *Environment Law* (2016); Kanchi Kohli and Manju Menon, *Development of Environment laws in India* (2022); H.N. Tiwari, *Environment Law* (2016); P. Leela Krishnan, *Environment law in India* (2021); Simon Sendion, *Environment Law*; Ramchandra Gadgil and Madhav Guha, *Ecology and Equity* (2000); R.K. Saran and Hareena Tuteja, *Environmental Laws and Legislations in India*; Dr. S.C. Tripathi, *Environmental Law in India* (2024).

<sup>18</sup> What are Environment Rights, available at: <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what> (last visited on September 4, 2024).

<sup>19</sup> What are Environment Rights, available at: <https://pachamama.org/environmental-rights> (last visited on September 4, 2024).

the first UN Conference on the Human Environment, the Stockholm Declaration (1972) was the first international document to recognize *the right to a healthy environment* through 26 principles, many of which have played an important role in the subsequent development of international environment law. Principle 21, for example, confirmed one of the cornerstones of international environment law: the responsibility of States to ensure that activities under their jurisdiction do not cause damage to the environment of other States. The Declaration also established the Principle of Cooperation, which is crucial in the further development of international environment law, by recognizing that countries should unite their efforts to meet the global challenges of our shared environment. Also in Stockholm, the UN General Assembly created the United Nations Environment Programme (UNEP), the central body in charge of environmental affairs today.<sup>20</sup> Further, it states that, “after Stockholm, changes began to be seen in national governments: the first green political parties were formed, some Ministries of Environment were created, and a significant amount of local environmental legislation began to be developed. In 1983, the UN created the World Commission on Environment and Development, known as the Brundtland Commission. Its work, which focused on the difficult relationship between environment and development, resulted in the report Our Common Future (1987). That document coined the concept of sustainable development - defined as "meeting the needs of the present generation without compromising the ability of future generations to meet their own needs" - which is the basis for the evolution of international environment law. At this time, some of the global environmental problems that still afflict us today began to manifest themselves--including the depletion of the ozone layer, risks to biological diversity, and the threat of climate change. International cooperation was absolutely

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<sup>20</sup> International Environment Law: History and Milestones, *available at*: <https://aida-americas.org/en/blog/international-environmental-law-history-and-milestones#:~:text=A%20product%20of%20the%20first,the%20subsequent> (last visited on September 4, 2024); Environment Law, *available at*: <https://www.britannica.com/topic/environmental-law> (last visited September 4, 2024); International Environment Law, *available at*: [https://www.americanbar.org/groups/public\\_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/international-environmental-law/](https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/international-environmental-law/) (last visited on September 4, 2024); IUCN World Commission on Environment Report 2021-2025, *available at*: <https://iucn.org/our-union/commissions/iucn-world-commission-environmental-law-2021-2025> (last visited on September 4, 2024); Introduction to International Environment Law, *available at*: [https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/law/06.\\_environmental\\_law/01.\\_introduction\\_to\\_international\\_environmental\\_law/et/5721\\_et\\_01\\_et.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/06._environmental_law/01._introduction_to_international_environmental_law/et/5721_et_01_et.pdf) (last visited September 4, 2024); Development of Environment Law, *available at*: <https://academic.oup.com/yielaw/article/30/1/54/6154437> (last visited September 4, 2024); United Nations Environment programme, *available at*: <https://www.unep.org/news-and-stories/press-release/new-era-environmental-rule-law-takes-shape-un-recommends-good> (last visited September 4, 2024); Environment Law: definition, Laws and Principles, *available at*: <https://www.lloydlawcollege.edu.in/blog/environmental-law.html> (last visited September 4, 2024); Environment Justice, *available at*: <https://www.environmentandsociety.org/exhibitions/famines-india/environmental-justice> (last visited on September 4, 2024)..

necessary and developed countries would have to help poorer countries if humanity was to be able to meet such challenges. In 1987, the Montreal Protocol was signed to combat the depletion of the ozone layer. This international agreement has been an example of successful international cooperation. Because of it, it is believed that the ozone layer could recover by 2050.<sup>21</sup>” One must note that as the world nations were progressing towards the growth and development of international environment laws, India has also developed and made its mark in being one of the very few nations to have built upon the capacities and capabilities available, to protect the environment that we have been blessed with. India has, on her part, signed each and every Convention and ratified each of those, which have been introduced and passed by the United Nations, to upgrade her efforts in upgrading the standards and status of the environment.

The Magna Carta of the British Empire, the Bill of the Rights of the American citizens, and the Declaration of Rights of Men in France, along with the Universal declaration of Human Rights, 1948, and other important legal instruments have contributed to the jurisprudence of environment laws under Article 21. The first and foremost step was the Stockholm Conference that was attended by India and the various conventions that have been signed until now. The second, but the most important domestic step that was taken was the introduction of the 42<sup>nd</sup> Constitutional Amendment Act. This particular amendment was the harbinger of justice and clarity in the legal sphere of the Indian jurisprudential sphere. This was known as *mini-constitution*. The sphere of constitutional interpretation, the concept of living constitutionalism and the various principles of cross-section and interdisciplinary interpretation of constitution, have resulted in the widening of scope of the environmental laws and rights in India. Article 48 A of the Constitution of India states that, “48A. *Protection and improvement of environment and safeguarding of forests and wild life* [After article 48 of the Constitution, the following article shall be inserted Constitution (Forty-Second Amendment) Act, 1976] *The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.*<sup>22</sup>” Apart from this, Article 51-A(g) states, “ *It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.*<sup>23</sup>” Further, Article 253 of the Constitution of India prescribes the international laws must be incorporated into the Indian milieu for better

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<sup>21</sup> *Ibid.*

<sup>22</sup> The Constitution of India, art. 48A.

<sup>23</sup> The Constitution of India, art.51-A(g)



recognition and organisation of laws, legislations and policies. It states, in a generalized sense, that, “Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.”<sup>24</sup> In brief, Articles 48-A, 51-A(g), Article 21, Article 253, and Article 14, all incorporate the essence of environmental sensitivity and jurisprudential constitutionalism in India. There were major legislations which were enacted following the same, like the Environment (Protection) Act 1972, Water (Prevention) and Control of Pollution Act 1974, Forest (Conservation) Act 1980, Air (Prevention) and Control of Pollution Act 1981, Environment Protection Act 1986, Biological Diversity act 2002, National Green Tribunal Act 2010, et al. It must be noted that there have been numerous amendments in majority of these Acts, so as to cater to novel methods of pollution creation, the rising challenges of varied kinds of environment pollution and the various challenges that have now arisen in front of the humankind.

The jurisprudential trajectory of environment laws is intensively interesting to note. It is inevitable, indispensable, and important to study the case laws that have been decided and the various rights that the honorable Apex Court has recognised with regard to environment law. In the *Vellore Citizens Welfare Forum v Union of India*<sup>25</sup>, the Supreme Court recognised the relationship between development and environment. Different and a number of directions were passed to contain the industrial pollution that was rampant in the area. Certain directions like maintaining the standards of environment, limiting the concentration of chemicals in the water bodies to conserve and preserve them, et al. were passed. A landmark case in its own right, this precedent established the standards of industrial effluents allowed in the water bodies and the methods to curb them further. In the historical case of *M.C. Mehta v Kamal Nath*<sup>26</sup>, the Court provided for a Public Trust Doctrine. The Supreme Court observed that the Public Trust Doctrine is part of the law of land. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be

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<sup>24</sup> The Constitution of India, art. 253; Indian Bar Association, *available at*: <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf> (last visited September 4, 2024).

<sup>25</sup> *Vellore Citizens Welfare Forum v Union of India* AIR 1996 SC 2715.

<sup>26</sup> *M.C. Mehta v Kamal Nath*, ONLINE AIR 1996 SC 711.

achieved in the long term for future development.<sup>27</sup> The Court observed that, “we are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent on open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. 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. The esthetic use and the pristine glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public goods and in public interest to encroach upon the said resources. The Court also noted down the source of the Public Trust Doctrine and thus stated, “It is no doubt correct that the public trust doctrine under the English Common Law extended only to certain traditional uses such as navigation, commerce, and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands for example fresh water, wetlands, or riparian forests. The observation of the Court in Mono Lake case to the effect that the protection of ecological values is among the purpose of public trust, may give rise to an argument that the ecology and the environment-protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum co. vs. Mississippi* 108 S.Ct. 791 (1988)<sup>28</sup>, the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide

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<sup>27</sup> Live Law, available at: <https://www.livelaw.in/top-stories/supreme-court-public-trust-doctrine-natural-resources-tn-godavarman-thirumalpad-versus-union-of-india-2022-livelaw-sc-540-200891> (last visited on September 4, 2024).

<sup>28</sup> *Phillips Petroleum Co. v Mississippi* 108 S.Ct. 791 (1988).

lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources. Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests, and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.<sup>29</sup>

The Roman Empire has developed this legal theory. The public trust doctrine primarily rests on the principle that certain resources like air, sea, water, and the forest have such great importance to the people as a whole and it is unjustified to make these resources subject to private ownership. Thus, it is quite clear that the Supreme Court of India has time and again, established the various principles of environment protection like, precautionary principle, principle of public trust doctrine, continuing mandamus in cases of environment protection, et al. The expansion of locus standi principle specifically for victims of anthropogenic disasters, environment degradation and the new emerging concept of climate refugees- as well as the recognition of these all, by the Apex Court and the honorable courts of the world, has put the environment protection under great significance and importance. There have been many precedents<sup>30</sup> which have upheld these principles and tenets of environment justice, of being at the core of fundamental rights jurisprudence and the environmental constitutionalism that we strive to uphold. Since the introduction of public interest litigations and other renowned principles of natural justice, the Supreme Court, and other honorable courts of India, have time and again emphasised upon the importance of preserving, protecting, and conserving the environment milieu of not just the humans, but also of the other interconnected, independent

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<sup>29</sup> M.C. Mehta v Kamal Nath (AIR ONLINE 1996 SC 711); Phillips Petroleum co. vs. Mississippi 108 S.Ct. 791 (1988).

<sup>30</sup> *Bombay Dyeing and Manufacturing Corporation Limited v Bombay Environment Action Group* (2006 (3) SCC 434) (India); E.P Royappa v State of Tamil Nadu, AIR (1974) 555 (India); *Karnataka Industrial Areas Development Board v C. Kenchappa* (2006 (6) SCC 311) (India).; M.C. Mehta v Kamal Nath (AIR ONLINE 1996 SC 711); Maneka Gandhi v Union of India, AIR (1978) SC 597 (India); Milieudefensie et al. V Royal Dutch Shell plc. (ECLI:NL: RBDHA: 2021:5337; Phillips Petroleum co. vs. Mississippi 108 S.Ct. 791 (1988); R. v John Wilkes, 98 E.R. 327; Ranjitsinh v Union of India, (WP Civil No. 838/2019) (India); S.G. Jaisinghani v Union of India &Ors. (1967) AIR 1427 (India).; Sacchi et al. v. Argentina (dec.), 22 September 2021, CRC/C/88/D/104/2019; Teitiota v The Chief Executive of Ministry of Business, Innovation and Employment, [2015] NZSC 107; United States v Wunderlich, 342 U.S. 98 (1951); Urgenda Foundation v The Netherlands (ECLI:NL:HR: 2019:2006); Virendra Gaur v State of Haryana, (WP Civil 2019) (India).

as well as dependent species of our Mother Earth. Today, the world is facing impending dangers because of reckless usage of environment natural and anthropogenic resources and this has actually led to the Supreme Court of India declaring that the governments must be proactive in preserving the right to life of the persons within the territory of India under Article 21, and their right to live with dignity which is so dependent and so intricately linked to the principles of environment law as well as the rights against the adverse impacts of climate change. The rights against adverse impacts of climate change was recently declared as a penumbral right of Article 21, in the landmark case of *Ranjitsinh v Union of India*, (WP Civil No. 838/2019) (India). Jurisprudential inferences were taken from other countries, legal precedents, and scriptural texts available. There have been active calls from all quarters of the society, especially the honorable Supreme Court judges to take care of preventing the adverse impacts of climate change.

### **III. CONCLUSION AND WAY FORWARD**

Conclusively, it must be noted that the environmental jurisprudence in India is much older than thought about. This is in juxtaposition to the tough and legally justifiable stand taken by the Supreme Court of India and the governance principles that have been established for better environment protection and preservation. One must, still note that without the collaboration and aid of the citizens of the nation, this is certainly not possible to implement. Till, the time the realised truth of our scriptures, the learnings of our elders, the teachings of our guides and gurus, and the application of these all in the practical world where we live in- it is not all possible to have a positive impact. The principle of *Vasudhaiva Kutumbakam* and the various other legal precedents must be applied in the truest sense- in letter and in spirit to have a positive change in the environmental status. India is already on the right path, only this steady yet faster holistic developmental process is required to sustain the momentum and truly become a *Vishwa guru*, even in terms of standards of environment conservation and environmental constitutionalism.