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Fundamental Principles Governing International Environmental Law

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ABSTRACT

International Environmental law is governed by many universal principles and concepts. These principles are globally accepted and have been used time and again in various Jurisprudence across the world at different level. This paper basically aims to cover all the fundamental principles governing international environmental law. Fundamental principles discussed in the paper are sovereignty, precautionary principle, principle of good neighborliness and international cooperation, principle of preventive action, duty to compensate for harm, principle of common but differentiated responsibility, principles of sustainable development, polluter pay principle and public trust doctrine. All these are fundamental doctrines in evolution of environmental law.

Keywords: *Environment, States, Fundamental Principles, United Nation, Sustainable Development.*

I. INTRODUCTION

International practices, international treaties, court rulings, universal concepts of law accepted by civilized nations, and teachings of highly qualified legal scholars are all foundations of Public International Law. In contrast to the above-mentioned sources, new international environmental law is emerging from less conventional and obligatory sources. There is no global international instrument that specifies countries' rights and responsibilities in environmental matters; however, agreements and declarations of international bodies in charge of environmental controls, such as the Atomic Energy Agency, state the policies and decisions of international tribunals that have played an important role. All the fundamental principles are ground pillar for the evolution of environmental jurisprudence.

II. SOVEREIGNTY OF STATES AND THEIR RESPONSIBILITY

International Environmental Law has emerged from two seemingly conflicting principles: first, states have sovereign rights over their natural resources, and second, the state must not affect the environment. As stated in the "1992 Rio Declaration", *"States have, in accordance with the*

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Charter of the United Nations and the principles of the international law, the sovereign right to exploit their own resources pursuant to their own environmental and development policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction."[2]

Hence, the sovereignty is not absolute, it is subjected to a universal duty which is not to cause environmental damage to the environment of the other states or areas which are beyond a state's national jurisdiction. This stems from the basic concept that the ownership of rights entails the enforcement of corresponding obligations.

The *Trail Smelter* case[3] specified that, *"under principles of international law . . . no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein when the case is of serious consequence and the injury is established by clear and convincing evidence."*

In 1961, the principle got more advanced when the United Nations General Assembly stated that, *"The fundamental principles of international law impose a responsibility on all states concerning actions which might have harmful biological consequences for the existing and future generations of peoples of other states, by increasing the levels of radioactive fallout."*

The obligation to prevent environmental degradation has been recognized by international treaty and other international activities. Furthermore, in the situation of shared resources, states have a primary responsibility to use the resources in a harmonious and fair manner; this is primarily on the cooperation based on a scheme of knowledge, prior consultation, and notification in order to achieve optimum use of natural resources without jeopardizing other states' legitimate interests.

III. PRECAUTIONARY PRINCIPLE

The first global codification of the precautionary approach was "Principle 15 of the Rio Declaration", which specifies, *"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."*[4]

"The Convention on Biological Diversity" articulated in the year 1992, states that, *". . where*

[2] "Rio Declaration 1992, available at- A/CONF.151/26/Vol.I: Rio Declaration on Environment and Development (un.org)"
[3] " Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)"
[4] "*id* at 1"

there is a threat of significant reduction or loss of biological diversity, lack of full scientific uncertainty should not be used as a reason for postponing measures to avoid or minimize such a threat."[5] The "1985 Vienna Convention" for the Defense of the Ozone Layer was the primary treaty to reflect this idea, and the precautionary approach to the atmosphere has been widely debated. Regrettably, the principle's specifications are not exact, and its implementations differ. Many countries have used the precautionary principle to devise environmental policies in the sense of public health at the state level.

"Precautionary principle" is critical in deciding whether or not a construction process is sustainable. Sustainable development is based on the precautionary principle, which states that if a development project causes severe and permanent environmental harm, it must be stopped and avoided. The transition from the assimilative capacity principle to the precautionary principle marked a revolving point in international environmental jurisprudence.

Assimilative Capacity Principle: The principle of assimilative capacity underpins previous environmental legislation. The Stockholm Declaration, which includes 26 principles, was adopted at the "United Nations Conference on Human Environment in Stockholm in 1972". The principle of assimilative capacity was originated in Principle 6 of the Stockholm Declaration, which assumes that science can provide policymakers with the essential information and means to evade encroaching on the environment's capacity to adapt impacts. It also assumes that appropriate technical expertise will be available when environmental injury is predicted and that there will be adequate time to mitigate the injury. The assimilative capacity is built on the credence that scientific theories are reliable and sufficient in providing solutions for environmental restoration whenever pollution occurs. The principle is based on scientific certainty and inadequacy. Owing to scientific shortages and doubts visible in the context of the environment, the principle of assimilative capacity suffers a setback.

A Shift from Assimilative Capacity to the "Precautionary Principle" – Between the "Stockholm Conference of 1972" and the "Rio Conference of 1992", the uncertainty of scientific proof and its shifting frontiers resulted in significant changes in environmental concepts. Between 1972 and 1982, there was a fundamental shift in the approach to environmental protection. Previously, the notion was founded on the principle of assimilative capacity, as stated in "Principle 6 of the Stockholm Declaration". The emphasis moved to the 'precautionary principle' in Principle 11 of the "World Charter for Nature", which was adopted by the 'United Nations General Assembly' on October 28, 1982, with a majority of 111 votes, 18 abstentions,

[5] "Convention on Biological Diversity, available at- Convention on Biological Diversity (cbd.int)"

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and one negative vote cast by the United States. The Charter was overpoweringly endorsed by developing countries. The Charter was established by the former Soviet bloc prior to 1989 as a cheap and simple way to express unity with the United States' isolation in the Green Assembly. Activities that are likely to inflict permanent harm to the atmosphere must be prevented, according to the World Charter for Nature.

As a consequence, the precautionary principle guarantees that a product or behaviour that poses a danger to the environment is prevented from having a detrimental effect on it, even though there is no definitive empirical evidence linking the matter or activity to environmental harm. The terms "substance" and "action" refer to substances or actions that have been implemented as a result of human interference.

Around 900 tanneries, in 5 districts of Tamil Nadu were discharging massive quantities of crude effluent containing around 170 different types of chemicals into agricultural fields, roadside, rivers, and open ground, according to "Vellore Citizens Welfare Forum v. Union of India (Tamil Nadu Tanneries Case)"[6]. Over-all 35,000 hectares of land have become unfit for agriculture, either partially or entirely. The water in these areas had become unfit for drinking and irrigation.

The water in the region had become unfit for drinking and irrigation. "Even otherwise, if these principles are recognised as part of Customary International Law, there will be no difficulty in adopting them as part of domestic law," Justice Kuldip Singh (also recognized as a Green Judge) wrote in his opinion. It is almost universally recognised in municipal law that principles of customary foreign law that are not in conflict with public law are considered to have been adopted into domestic law and must be enforced by the country's courts."

The most relevant guidelines provided by the Supreme Court in this case was an order released in 1995 requiring some of the industries to build waste treatment plants. The Supreme Court provided notices to several tanneries in 1996, asking them to show reason why they should not be allowed to pay a pollution fine. The Precautionary Principle, which is one of the principles of sustainable development, was also accepted by the Supreme Court.

The Precautionary Principle is established as follows in the sense of municipal law:

(1) Environmental initiatives – To foresee, avoid, and combat the grounds of environmental dilapidation.

(2) Absence of scientific inquiry could not be used to delay environmental mitigation steps.

[6] "AIR 1996 SC 2715: (1996) 5 SCC 647"

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(3) The actor, producer, or industrialist bears the burden of proof in proving that his act is environmentally friendly.

In this above case, concept of 'onus of evidence' was developed for the first time as a factor applicable to environmental protection. Precautionary obligations must be caused not only by the suspicion of a particular threat, but also by a reasonable concern or potential risk.

In "M.V. Pollution Control Board v. A.P. Pollution Control Board"[7], the Supreme Court referred to the 'Stockholm Declaration' and the United Nations in its decision on Nayudu. A case involving the import of harmful waste, the concept was recently expanded, and very significantly, to include not only the cost of preventing contamination, but also the cost of fixing the damage. "The type and degree of expense, as well as the circumstances in which the principle may apply, can vary from case to case," according Rio Declaration's Principles 15 and 16.

IV. PRINCIPLES OF GOOD NEIGHBOURLINESS AND INTERNATIONAL COOPERATION

The obligation to recognise, corporate in spending, and preventing environmental harm are all part of the concept of good neighbourliness. Many international environmental treaties contain clauses demanding cooperation in the generation and exchange of science, technological, commercial, and socioeconomic knowledge. It is not an absolute requirement, but it is restricted by municipal circumstances, such as patent rights. The theory of international cooperation imposes a duty on states to limit the activities of other states within their borders.

The principle is based on the maxim "*sic utere tuo, et alienum non laedas"*. Principle 7 of the "1992 Rio Declaration" declares that, *"States shall cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the financial resources they command."*[8]

V. PRINCIPLE OF PREVENTIVE ACTION

This concept differs from the obligation to avoid environmental damage in that it allows the state to restrict harm within its borders. The primary preventive action entails lowering waste, lowering liability, and enhancing performance. States will allow such policies and plans to be

[7] "1994 (3) SCC 1"
[8] "*id* at 1"

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introduced in order to raise public awareness and encourage people to use pollution reduction techniques. In terms of both ecological and economic purposes, the 'Golden Rule' for the world is avoidance. Governmental instruments regulating the introduction of chemicals, as well as agreements, have upheld the concept in the arena of International Environmental Law.

If the damage can be fixed, the suitable steps should be taken to reduce the risk to "as minimal as practically possible." Deterrence, fines, and civil liability are all part of pollution control, which necessitates taking action to change conduct and avoid rising costs. The "Basel Convention on the Regulation of Transboundary Movements of Hazardous Wastes and their Disposal", which was established in 1989 with the objective of reducing harmful waste production and combating illegal dumping, was based on this theory.

VI. THE DUTY TO COMPENSATE FOR HARM

It is the duty of states to safeguard that activities carried out within their authority or control do not affect the environment of other states or areas outside of their state jurisdiction. Any state that is responsible for a breach of international law must stop the wrongful conduct and restore the situation to what it was prior to the wrongful conduct; if this is not possible, the state must compensate the victims.

The 'Permanent Court of Justice' professed, *"The essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or if it is not possible, payment of a sum corresponding to the values which restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."*

VII. PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITY

Some countries may be required to bear more of the conservation burden owing to divergent expansion paths and the need to share the burden of ecological deprivation. The idea is that nations should abide by international environmental commitments on the basis of justice and in compliance with their common yet separate duties and respective capacities.

The 'Rio Declaration's principles[9] 4 and 7 accept this principle, and it comprises two constituent

[9] *"id* at 1"

components, as follows:

1. States should engage in the global conservation movement because they share a shared duty to protect the environment.

2. Explanation of various state conditions, such as how developed countries have donated more to global warming than developing countries.

While all states are expected to engage in the environmental solution, the implementation of national standards and international commitments will differ from state to state, for example, the time span for which national preventive measures are enforced.

The theory of shared but distinct responsibilities ('CBDR') aims to spread the effort needed to handle global environmental problems such as ozone layer protection, climate change mitigation, and biodiversity conservation and use among States. This theory, which sits at the crossroads of growth and environmental conservation, seeks to balance potentially competing demands. On the one hand, developing countries see it as a way to be recognised for their development needs, as well as their limited capacity to contribute to the management of environmental issues and their lower contribution to their creation. On the other hand, developed countries see it as a mechanism to ensure that developing countries engage in the management of environmental issues and that growth happens under such environmental constraints.

These concerns are expressed in the text of 'Rio Declaration Principle 7', which states, States shall work together in a spirit of global cooperation to preserve, protect, and restore the health and dignity of the Earth's ecosystem. States have similar but distinct obligations in light of their numerous contributions to global environmental degradation. In light of the stresses their societies impose on the global environment, as well as the technology and financial capital they manage, developed countries recognise their role in the international chase of sustainable development. This formulation illustrates both the 'common' component of the CBDR concept, which is expressed as an obligation to collaborate 'in the spirit of global cooperation' to protect the environment, and the 'differential' dimension, which is expressed as developed countries' acceptance of their primary duty for environmental degradation and increased willingness to deal with its consequences.

VIII. THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT

Theory of sustainable development was described in the "Brundtland Report"[10] of 1987 as

[10] "Brundtland Report, available at- The Brundtland Report | Sustainable Environment Online (sustainable-

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progress that meets current needs without jeopardising future generations' ability to encounter their own needs. This theory is said to place limits on the environment's ability to meet current and potential needs. There are three components to sustainable development:

1. Intergenerational Equity
2. Use of Natural Resources in a Sustainable Way
3. Development and the environment are inextricably related.

Intragenerational wealth is an essential component of the theory of sustainable growth. It necessitates developed countries providing infrastructure and funds for environmental development to developing countries.

The problem before the Hon'ble Supreme Court of India in "M.C. Mehta v. Union of India"[11] was vehicle pollution, and there was negligence on the part of the Union of India and various other government authorities in phasing out non-CNG buses and also ensuring a sufficient supply of CNG. The theory of sustainability, according to the Hon'ble Supreme Court of India, is one of the most essential elements of environmental law.

The principle of sustainable development has been used and exploited more than any other concept in international environmental law. The idea of sustainable development was first proposed in 1980 in a joint study by UNEP, the "World Wildlife Fund ('WWF')", and the "International Union for the Conservation of Nature ('IUCN')" and gained widespread attention in 1987 with the publication of the Brundtland Commission's report "Our Collective Future." It was then widely referenced in a variety of texts, especially after the 1992 Rio Conference.

However, for the time being, the political implementation of this term is less significant than its legal application. As a result, we'll concentrate on its legal basis and position in international environmental law. In other words, we look at the form of legal programme (as opposed to the operational programme conveyed by the principle of sustainable development as expressed in Agenda 21. Principle 4 of the Rio Declaration captures the essence of this concept, "in order to achieve sustainable development, environmental conservation must be regarded as an integral part of the development process and cannot be considered in isolation from it."

At the Johannesburg Summit on Sustainable Development ten years later, this concept was further established. A 'Political Declaration' was adopted at the conference, the terms of which were instrumental in clarifying the components of the principle of sustainable development.

environment.org.uk)"

[11] "1991 SCR (1) 866, 1991 SCC (2) 35"

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Economic growth, social development, and environmental conservation, according to paragraph 5 of this instrument, are the "interdependent and mutually reinforcing foundations of sustainable development."

IX. POLLUTERS PAY PRINCIPLE

In recent years, the Polluter Pays Theory became a common catchphrase. This slogan's core idea is that if you make a mess, it is your responsibility to clean it up. It's worth noting that the "polluter pays concept" in environmental law does not apply to "fault." Rather, it supports a curative approach that focuses on repairing environmental harm. It is a concept of international environmental law that states that the polluting party is responsible for the harm caused to the environment. Because of the strong support it has acknowledged in most OECD and European Community, it is regarded as a regional tradition. The concept is barely stated in international environmental law.

The polluter pays theory has recently gained traction as a method of internalising pollution-related costs within the framework of an enterprise's economic rationality. The environmental policy of a country and its overall socioeconomic policy are inextricably connected. Moreover, under this theory, the government is not liable for paying the costs of either avoiding environmental harm or carrying out remedial measures, since this would transfer the financial burden of the pollution incident to the taxpayer. However, state practise does not support the view that the polluter should bear all de-pollution costs, especially when there is a transnational dispute.

The Polluter Pays Principle (PPP) was first stated in the “OECD Guiding Principles Concerning International Economic Aspects of Environmental Policies in 1972”. (henceforth called OECD Guiding Principles). Since some countries faced concerns from national firms about increasing costs and a loss of international competitiveness as a result of a national implementation of the PPP within their borders, the PPP as a guiding principle became necessary. The PPP is described by the OECD Guiding Principles as a method for "... allocating costs of pollution prevention and control measures."

These costs must be borne by the polluter in order to achieve and sustain a "...acceptable state of climate" as defined by the government. The PPP should also "not be accompanied by subsidies that would generate major distortions in foreign trade and investment," according to the OECD Guiding Principles. Polluters are not expected to bear the costs of unintended losses or to compensate for residual emissions under this weak or normal definition of the PPP.

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X. PUBLIC TRUST DOCTRINE

The public trust doctrine for the conservation of natural resources is another major concept defined by the Supreme Court. In the case of "M.C. Mehta v. Kamal Nath", this doctrine was debate. In this scenario, an unusual circumstance had occurred.[12] River Beas was purposely diverted because it used to flood the Span Motels in the Kulu Manali valley, which were owned by a prominent politician's family. The state government had also allocated protected forestland to the motel, which had encroached on it, but the encroachment was later regularised.

In this case, the Supreme Court applied the public trust doctrine to return the world to its original state. In a nutshell, this theory asserts that the public has the right to expect such lands and natural areas to maintain their natural characteristics. Span Motels' forestland lease was revoked by the Supreme Court under the public trust doctrine, and the State Government was forced to take over the area and return it to its original condition. The motel was ordered to compensate the victims (damages for reimbursement of the environment and ecology of the area). It was also asked to provide justification for not imposing a pollution fine.

The Supreme Court held that the fine could not be levied without a trial and a finding that the motel was guilty of an offence under the "Water (Prevention and Control of Pollution) Act, 1974", when determining the show cause notice about imposition of a pollution fine. As a result, Span Motels was not fined for emissions, but it was asked to show reason why it should not be allowed to pay exemplary damages. Following consideration of Span Motels' response, exemplary reparations of Rs.10 lakhs were levied.

The public trust doctrine was accepted by Roman law, which declared that common resources such as rivers, seashores, woods, and the air were kept in trust by the government for the public's free and unlimited use. These resources belonged to no one (res nulla) or to anyone in general (res communis) (res communious).

The public trust doctrine is more or less the same in English law, but it places a greater focus on such public interests such as navigation, commerce, and fishing. However, there is some uncertainty in this regard as to whether the public has an enforceable right to avoid violations of common property rights such as the seashore, roads, and flowing water.

The public trust doctrine is based on the premise that some resources, such as air, seawater, and forests, are so valuable to the general public that making them a matter of private ownership would be totally unjustified. Since the aforementioned tools are a gift from nature, they should

[12] "(1997)1 SCC 388"

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be made freely accessible to all, regardless of social status. The doctrine allows the government to preserve resources for the general public's enjoyment rather than allowing them to be used for private gain or commercial gain.

Despite the fact that the Supreme Court and the High Court of India did not explicitly denotes to the Doctrine of Public Confidence, it has been applied indirectly in many cases. Though the Doctrine of Public Trust was once only used to preserve access to the commons for the good of the public, it is now being used to avoid over-exploitation of the environment. This doctrine is now being used as a legal and planning instrument to help the sovereign fulfil his or her position as steward of the environment for upcoming generations.

XI. CONCLUSION

Globally, it is generally recognized that the world faces various problems that can only be resolved by international cooperation. Global problems such as ozone depletion, biodiversity destruction, and the transmission of hazardous wastes, among others, are being discussed.

Environmental regulatory regimes are strongly informed by these concepts. These concepts have originated from numerous sources of national and international law; however, determining the criteria of these emerging principles can be challenging.

The legal implications and ramifications of the above concepts are still unclear. Certain concepts have grown over a short period of time and in a number of contexts; even state policies are shifting. It is difficult to convince the international community to safeguard the environment because some of the guidelines are ambiguous and there is no legal consensus about the legal ramifications of these laws. The effect of international litigation, on the other hand, should not be undervalued; rulings taken by international tribunals, such as the European Court of Justice and the International Court of Justice on environmental issues, would help to advance the cause.

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