

Principals of Environment Law

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Abstract: The most important thing about global warming is this. Whether humans are responsible for the bulk of climate change is going to be left to the scientists, but it's all of our responsibility to leave this planet in better shape for the future generations than we found it.

Keywords: Environment Law, Principals, Impacts

I. INTRODUCTION

The protection of environment is an essential part of sustainable development. Without adequate environment protection, development is undermined; without development, resources will be inadequate for needed investments and environmental protection will fail. The strong environment policies complement and reinforce sustainable development. But the best creature of the earth is slightly different from the other creature because he is the only one who firstly neglects the law to earth and codified it according to his own wishes. It is the tendency of humans that they only preserve what they earn and not what they get freely. He has nothing to develop rather him only has an obligation to protect. But being greedy of material things he started destroying his own roots and badly wounded his surroundings and polluted the precious elements of his existence i.e., Water, Air, Fire, Sky and the Earth. he rushes to preserve them all by entering into social contract through multilateral agreements and treaties and thus he codified and propounded number of environmental protection theories along with set of rules and regulations, such as fundamental duty to protect environment, natural resources and wildlife only when it become difficult for him to breathe and consume. It is often the poorest who suffer the most from the consequences of pollution and environmental degradation. For example unlike rich, the poor cannot afford to protect themselves from contaminated water. They also draw large part of their livelihood through unmarked environmental resources such as forest the unscrupulous exploitation of forest may be detrimental to both environment and development.

II. ENVIRONMENTAL PROTECTION AND THE LAW

The Preamble of the Indian Constitution provides that our country is based on "socialist" pattern, where the state pays more attention to the social problems that on any individual problems. The basic aim of the socialism is to provide "decent standard of life to all which can only be possible in conformity with nature and a pollution free environment. Article 51 – A of the constitution provides that where there are certain rights available to the citizens to enjoy there are also certain duties for them to execute therefore it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have

compassion for living creatures. Under the directive principles of state policy all states on India are under an obligation to protect and improve the environment and to safeguard the forest and wildlife of the country. Also India is the member of almost all major Multilateral Environmental Agreements namely Nature conservation, Hazardous material, Atmospheric emissions; and D. Marine environment and is signatory to human rights declaration. There are more than five hundred active agreements and memorandum of understanding to which India obliged himself to adhere the same.ⁱ According to the Courts, the right to life includes the right to a living environment congenial to human existence. The Supreme Court in *Subhas Kumar v. State of Bihar*,ⁱⁱ held that right to environment is a fundamental right of every citizen of India and is included in the "right to life" guaranteed under Article 21 of the Constitution of India. The case of *Maneka Gandhi v. Union of India*,ⁱⁱⁱ has added new dimensions to the concept of personal liberty of an individual. It laid down that a law affecting life and liberty of a person has to stand the scrutiny of Articles 14 and 19 of the Constitution. Thus a number of national and international legislative frameworks have been introduced to protect the environment. In the line the legislature in India had enacted:-

1. Wildlife Protection Act, 1972
2. Water (Prevention & Control) Act, 1974
3. The Forest (Conservation) Act, 1980
4. Air (Prevention and Control of Pollution) Act, 1981
5. Environmental (Protection) Act, 1986
6. Ozone depleting substances (Regulation and Control) Rules, 2000
7. The Biological Diversity Act, 2002
8. Hazardous Wastes (Management and Handling) Amendment Rules, 2003

III. POLLUTER PAYS AND PRECAUTIONARY PRINCIPLE

The simple and general meaning of Polluters Pay is that – "He who Pollutes, shall restore it and have to pay for the same." It includes environmental costs as well as direct cost to people or property. In 1972 the member countries of organization for economic Co-Operation and Development Agreed to base

their environmental Polices on Polluter Pays Principle,¹ it promoted the principle when there was great public interest involved in environmental issues. There has been considerable discussion on the nature of the polluters pay principle, but precise scope of the principle and its implication have never been satisfactory agreed. There has frequent dispute over its exact scope. The “Polluters Pays Principle” as interpreted by the Supreme Court of India Means that the absolute liability for harm to the environment extends not only to compensate the victim of the pollution but also the cost of restoring the environment degradation. The rule of Absolute liability was laid down by the Hon’ble Supreme Court of India in the case of *M.C. Mehta v UOI*,² though the rule of absolute liability is similar to the rule of strict liability, but there was no exception to it as in case of Strict liability. Under the rule, an individual completely liable for any fault; Applying the principle laid down in case of M.C Mehta v UOI, in *Indian Council For Environment Legal Action v. Union of India*,³ the Hon’ble Supreme Court held that Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity is by far the more appropriate and binding. Further in *Charan Lal Sahu v Union of India*,⁴ the Supreme Court also explained the basis of this rule as if an enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident (including indemnification of all those who suffer harm in the accident) arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. the enterprise alone has the resource to discover and guard against hazards or dangers and to provide a warning against potential hazards. In *Union Carbide Corporation v. Union Of India*,⁵ damages were sought on behalf of the victims of a mass disaster, and having regard to the complexities and the legal question involved, any person with an unbiased vision would not miss the time consuming prospect for the course of the litigation in its sojourn through the various courts, both in India and later in United States. This Court considered it a compelling duty. Both judicial and humane, to secure immediate relief to the victims; in doing so, the Court did not enter upon any forbidden ground. Having regard to all the circumstances including the prospect of delays inherent in the judicial process in India and thereafter in the matter of domestication of the decree in the United States for the purpose of execution, the

Court directed that 470 million U.S. Dollars which upon immediate payment and with interest over a reasonable period, pending actual distribution amongst the claimants, would aggregate very nearly to 500 million U.S. Dollars or its rupee equivalent of approximately Rs.750 crores

The main purpose of “Precautionary Principle” is to ensure that a substance or activity posing threat to the environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage. However, the environmental laws in India do not explicitly mention the Precautionary Principle. In contemporary International legal developments it is one of the most contentious principles. Both internationally and nationally it continues to be applied widely across different sectors. The nature and scope and its application has varied widely according to the context and sector within which it has to be applied. The core concept of precaution can be viewed as a mechanism to counter a widespread regulatory presumption in favor of allowing development/economic activity to proceed when there is a lack of clear evidence about its impacts. The precautionary principle can be viewed as related to an evolving from the principle of ‘prevention’ and also the well - established principle of ‘polluter-pays principle’ for environmental management.⁶ The precautionary principle has been viewed as an important element of environmental policy since the Rio Declaration of 1992 and is widely believed to be favorable to the conservation of existing natural environments and the current stock of biodiversity including measures to avoid deterioration in these. Previously Precautionary Principle is being used only on the matter of the Environmental pollution but today this is being used to deal with the wild life protection, Biodiversity Conservation, matters related to climate change, protection of shrimps etc. The achievement of ecologically sustainable development depends on the commitment and involvement of all arms of government, the legislature, executive and judiciary as well as other relevant stakeholders. The judiciary is also a crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between environmental, social and developmental consideration through its judgments and declarations. The environmental decisions of the national / state courts and international environmental law have influenced each other.⁷ The state courts have often developed national environmental jurisprudence by taking inspirations and helps from the international environmental laws. The resultant is the National Green Tribunal Act, 2010 is an Act of

¹ The World commission on Environment and Development, “ Our Common Future” , 221 (1987)

² 1987 SCR (1) 819

³ AIR 1996 SC 1446

⁴ AIR 1990 SC 1480

⁵ 1989 SCC (2) 540

⁶ K.S. Kavi Kumar, ‘Precautionary Principle’, 6 (Centre of Excellence in Environmental Economics, Madras School of Economics, Chennai)

⁷ Bodansky, Daniel and Brunnee, Jutta, ‘The Role of National Courts in the Field of International Environmental Law’, 11-20 (Review of European Community & International Environmental Law, Vol. 7(1), 1998).

the Parliament of India which enables creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues. It was enacted under India's constitutional provision of Article 21, which assures the citizens of India the right to a healthy environment. The object of the, Act was that the Tribunal's is to have a dedicated jurisdiction in environmental matters which shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal was not bound by the procedure laid down under the Code of Civil Procedure, 1908, but should be guided by principles of natural justice. Time limit of six months was inserted to ensure speedy justice. The 'Precautionary Principle' allows for five key elements that can prevent irreversible damage to people and nature.⁸

1. *Anticipatory Action*: There is a duty to take anticipatory action to prevent harm. Government, business, and community groups, as well as the general public, share this responsibility.
2. *Right to Know*: The community has a right to know complete and accurate information on potential human health and environmental impacts associated with the selection of products, services, operations, or plans. The burden to supply this information lies with the proponent, not with the general public.
3. *Alternatives Assessment*: An obligation exists to examine a full range of alternatives and select the alternative with the least potential impact on human health and the environment, including the alternative of doing nothing.
4. *Full Cost Accounting*: When evaluating potential alternatives, there is a duty to consider all the reasonably foreseeable costs, including raw materials, manufacturing, transportation, use, cleanup, eventual disposal, and health costs even if such costs are not reflected in the initial price. Short and long-term benefits and time thresholds should be considered when making decisions.
5. *Participatory Decision Process*: Decisions applying the Precautionary Principle must be transparent, participatory, and informed by the best available science and other relevant information

Before *Vellore Citizens Welfare Forum vs. Union of India*,⁹ Precautionary Principle does not find any place in judicial decisions in India in the said case where Supreme Court has referred the Brundtland Report and other international documents in addition to Articles 21, 48A and 51A(g) of the Constitution of India. And also taken into account the legislative mandate "to protect and improve the environment" as found in enactments like the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of

Pollution) Act, 1981, and the Environment (Protection) Act, 1986. In, *Mc Mehta (Taj Trapezium Matter) vs. Union of India*,¹⁰ the Supreme Court was dealing with the problem of protecting the 'Taj Mahal' from the pollution of nearby industries. The Court applied the 'Precautionary Principle' as explained by it in Vellore case and observed – The environmental measures must anticipate, prevent and attack the causes of environmental degradation. The 'onus of proof' is on an industry to show that its operation with the aid of coke/coal is environmentally benign. It is rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in Taj Trapezium are the main polluters of the ambient air. The court ordered the industries to change over to the natural gas as an industrial-fuel or stop functioning with the aid of coke/coal in the Taj trapezium and relocate themselves as per the directions of the Court. In another case of *M.C. Mehta vs. Union of India and Ors*,¹¹ (Calcutta Tanneries Case) applying the Precautionary Principle Court ordered the polluting tanneries operating in the city of Calcutta (about 550 in numbers) to relocate themselves from their present location and shift to the new leather complex set-up by the West Bengal Government. Again in *M.C. Mehta v. Union of India & Ors*,¹² (Badkhal & Surajkund Lakes Case), the Supreme Court held that the 'Precautionary Principle' made it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. The Court has no hesitation in holding that in order to protect the two lakes from environmental degradation it was necessary to limit the construction activity in the close vicinity of the lakes. In *Narmada Bachao Andolan vs. Union of India*,¹³ precautionary principle came to be considered by the majority of judges. The Court also took the view that the doctrine is to be employed only in cases of pollution when its impact is uncertain and non-negligible. In *S. Jagannath vs. Union of India*,¹⁴ the Supreme Court held that sea beaches and sea coasts are gifts of nature and any activity polluting the same cannot be permitted. The intensified shrimp (prawn) farming culture industry by modern method in coastal areas was causing degradation of mangrove ecosystem, depletion of plantation discharge of highly polluting effluents and pollution of potable as well as ground water. In *KM Chinnappa, TN Godavarman Thirumalpad vs. Union of India*,¹⁵ the Court recognized the importance of India's treaty obligations, placing the precautionary principle in this case in the context of the Convention on Biological Diversity. Despite India's dualist legal tendencies and a lack of implementing legislation at the time, the government was held responsible for adhering to its treaty responsibilities that did not conflict with domestic statutes. In this case, mining in the Kudremukh National Park

⁸ Precautionary Principle, (the University of Wisconsin Oshkosh) Available at: <http://www.uwosh.edu/about-uw-oshkosh/>.

⁹ AIR 1996 SC 2715

¹⁰ AIR 2002 SC 3696

¹¹ (1997) 2 SCC 411

¹² 1996 AIR 1977

¹³ 2005(4) SCC 32

¹⁴ (1997) 2 SCC 87

¹⁵ 2002 (10) SCC 606

was deemed to be inconsistent with the precautionary nature of India's treaty requirements.

IV. CONCLUSION

In India the judicial attitude in protecting and improving the environment provides a testimony of the fact that the directive principles are not mere guiding principle of policy. Thus Indian constitution is one of the rare constitution of the world that provides specific provisions putting obligations on the state as well as citizens to protect and improve environment. This is a positive development of Indian Law. The polluters pay principle and the precautionary principle are the essential

features of sustainable development and they have been accepted as a part of law of land through courts. Both the principle are the part of environmental law. In present techno age the cases of environmental pollution and ecological destruction and conflict over natural resources are on increases day by day there is a need of setting up of special environment courts on regional basis with speedy trials, so that public move with their grievances relating to environment protection against any one without any fear.

ⁱ India and Multilateral Environmental Agreements (MEAs): A Summary, (Ministry of Environment and Forest, Government of India, New Delhi)

ⁱⁱ AIR 1991 SC 420

ⁱⁱⁱ AIR 1978 SC 597