



Environmental legislation and precautionary principle

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Abstract: The implied Precautionary approach also can be found with regard to restrictions imposed on new outlet and new discharges of trade effluentsⁱ and the legislation also deals with the regulation of existing outlet and control of trade effluents.ⁱⁱ The Air (Prevention and Control of Pollution) Act, 1981 is another legislation where there is no statutory provision dealing with Precautionary approach. Precautionary approach has been indirectly visualised in many of the Provisions of this Act.

The analysis

The Wild life (Protection) Act, 1972, is the first comprehensive legislation in terms of protecting various components of environment, in particular to protect wild animalsⁱⁱⁱ and few important but rare medicinal plants^{iv}. Precautionary approach/Principle is not mentioned in the Wildlife law, however, there are few provisions which impliedly indicated that State should adopt Precautionary approach for the protection and conservation of Wild animals in India. Various species of wild animals can be protected while declaring certain portion of forest as sanctuary^v declaring prohibited activities or regulated activities within the sanctuary^{vi}, national parks^{vii}. Under this Act, the wild animals had been considered as government properties^{viii}. Persons interested to deal with the animal trophy, must have proper licence^{ix} to be provided under this Act. Therefore, these all the above-mentioned provisions are the example of implied Precautionary approach. The Water (Prevention and Control of Pollution) Act, 1974 does not specify any provisions on Precautionary approach and the legislation conveys implied meaning of Precautionary approach. The enforcement agencies, that is,

Central pollution control board^x and State pollution control board^{xi} shall be established under this and the Pollution control board is empowered under this legislation to make entry within the industrial premises and inspect^{xii} the documents and other industrial activities to ensure that there should be control of water pollution. There is a specific provision under this Act, which prohibits any activity to deposit pollution in the water bodies, for example, water of the wells and streams^{xiii}. The implied Precautionary approach also can be found with regard to restrictions imposed on new outlet and new discharges of trade effluents^{xiv} and the legislation also deals with the regulation of existing outlet and control of trade effluents.^{xv} The Air (Prevention and Control of Pollution) Act, 1981 is another legislation where there is no statutory provision dealing with Precautionary approach. Precautionary approach has been indirectly visualised in many of the Provisions of this Act. For example, the enforcement agencies, such as, state pollution control board^{xvi} and central pollution control board^{xvii} shall be established to ensure that there should be proper controlling of atmospheric pollution. Similarly, the Precautionary approach can also be evidenced,



impliedly, with regard to specific functions for the central^{xviii} and state^{xix} pollution control board as specified under this legislation. State governments can declare a specific area of the city as air pollution control area^{xx}. Regarding, controlling the emission standards from of the vehicles^{xxi}, the state government is empowered under this legislation to take appropriate steps and measures. Under this law, no person or industry shall be entitled to go beyond the prescribed standard of emissions^{xxii}. Therefore, these provisions are the example of implied Precautionary approach as mentioned under this legislation. Most of the Rules framed for controlling Environmental pollution and its different components, are under the provisions of the legislation of the Environment (Protection) Act, 1986 and it is considered to be the Umbrella Legislation in India. The Central Government is empowered^{xxiii} under this law to take all the preventive measures for the protection and promotion of environment. Under this law, there is a provision to frame the rules to regulate various kinds of environmental pollution. Moreover, the Central Government enjoys the power under this law to make various Rules^{xxiv} to mitigate most of the environmental crisis that might occur in future. This implies the Precautionary approach under this law.

The National Green Tribunal Act, 2010 provides an express provision about Precautionary Principle^{xxv}, that the Tribunal can consider while delivering award/order to any Environmental case. The Honourable Supreme Court in India brought this

idea of Precautionary Principle to mitigate future Environmental crisis.

ANALYSIS OF PRECAUTIONARY PRINCIPLE BY SUPREME COURT IN INDIA

The Bhopal gas tragedy of 1984 and the oleum gas leak incident of 1985 at New Delhi, which considering the drastic incidents, the Supreme Court in India, faced a difficult situation to find out the appropriate principle or theory based on which without waiting for scientific evidences and if there are apprehensions of irreversible damage to the environment, the Government machinery must take preventive measures for mitigating the environmental issue. Almost a decade with a long struggle, the Supreme Court in *Vellore Citizens Case*^{xxvi} finally analysed the Precautionary Principle and stated that this principle is part of the Law of the Land. Precautionary Principle, whose content, according to the Court in *Vellore Citizens' case*^{xxvii}, consists of:

- (i) Environment measures – by the State Government and the statutory authorities – must anticipate, prevent and attack the cause of environment degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The “onus of proof” is on the actor or the developer/industrialist to shown that his action is environmentally benign.



The above definition has been taken to be an authoritative one and has been reiterated in a catena of decisions.xxviii

The Supreme Court emphasises that the plain reading of the provisions of Articles 21, 47, 48 A and 51 A (g) of the Indian Constitution, give an indication that, the Precautionary Principle is part of the law of the land. The apex court also mentioned that there is a difficulty to understand the Constitutional mandates and linkage with Precautionary Principle. As the Precautionary Principle is part of the International customary law, therefore, the principle is to be incorporated in the domestic law for the protection and preservation of natural environment, but also in the domestic Judicial organ can apply this Principle for Environmental protection purposes. From this finding, the Honourable Supreme Court did not look back to explain further the position of applicability of Precautionary Principle in India to decide environmental matters and started nurturing this principle in number of subsequent cases for successful attempt to protect and preserve natural environment.

The Honourable Supreme Court, from the year 1996 continuously applied the Precautionary Principle for protection and preservation of environment. The Principle of Precautionary approach has been successfully applied for delivering Environmental Justice in India and few of the important Environmental cases have been depicted below:

In the *Research Foundationxxxix* case, the Honourable Supreme Court stated

that ship breaking cannot be allowed unless the company adheres to the Precautionary Principle. In the Court *on It's Own Motionxxx* case, the apex court clearly stated that Precautionary Principle belongs to the core value of Article 21 of Indian Constitution. In *Orissa Miningxxxicase*, it was stated by the forest advisory committee before the apex court that Precautionary Principle is the only principle available to check the irreversible damage to the environment. In *G. Sundararajanxxxii* case, the Supreme Court stated that Precautionary Principle is applicable to prevent the future environmental degradation. The Precautionary Principle along with other International Environmental principles can be of very much help for implementation of National policy to develop, control and use of atomic energy for the mankind and for financial development of the country.

In *State of Tamil Naduxxxiii* case, it was stated by the apex court that the application of Precautionary Principle means there must be scientific uncertainty regarding irreversible damage to the environment, therefore, competent public authority must anticipate and prevent such damage by attacking the cause for such environmental damage.

Therefore, in most of these cases the Honourable Supreme Court has further analysed the concept of Precautionary Principle and applied in different circumstances for preventing the environmental harm.



References

- ⁱ Section 25, The Water (Prevention and Control of Pollution) Act, 1974
- ⁱⁱ Section 26, The Water (Prevention and Control of Pollution) Act, 1974
- ⁱⁱⁱ For details, see-schedule I, the Wild life (Protection) Act, 1972, where one can find mammals, amphibians, reptiles, fishes, et cetera.
- ^{iv} For details, see-schedule VI, the Wild life (Protection) Act, 1972
- ^v Sections 18 and 26 A, the Wild life (Protection) Act, 1972
- ^{vi} Sections 27, the Wild life (Protection) Act, 1972
- ^{vii} 5 Sections 35, the Wild life (Protection) Act, 1972
- ^{viii} Sections 39, the Wild life (Protection) Act, 1972
- ^{ix} Sections 44, the Wild life (Protection) Act, 1972
- ^x Section 3, The Water (Prevention and Control of Pollution) Act, 1974
- ^{xi} Section 3, The Water (Prevention and Control of Pollution) Act, 1974
- ^{xii} Section 23, The Water (Prevention and Control of Pollution) Act, 1974
- ^{xiii} Section 24, The Water (Prevention and Control of Pollution) Act, 1974
- ^{xiv} Section 25, The Water (Prevention and Control of Pollution) Act, 1974
- ^{xv} Section 26, The Water (Prevention and Control of Pollution) Act, 1974
- ^{xvi} Section 4, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xvii} Section 3, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xviii} Section 16, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xix} Section 17, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xx} Section 19, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xxi} Section 4, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xxii} Section 22, the Air (Prevention and Control of Pollution) Act, 1981
- ^{xxiii} Section 3, The Environment (Protection) Act, 1986
- ^{xxiv} Section 25, The Environment (Protection) Act, 1986
- ^{xxv} Section 20, the National Green Tribunal Act, 2010
- ^{xxvi} Vellore Citizens Welfare Forum v. Union of India, AIR1996 SC 2715
- ^{xxvii} Vellore Citizen Welfare Forum v. Union of India and Othrs., AIR 1996 SC 2715 (hereinafter vellore citizens)
- ^{xxviii} See A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC 718 (hereinafter Nayudu) Kamal Industrial Areas Development Board v. Sri C. Kenchappa andOthrs. AIR 2006 SC 2038; Bombay Dyn and Mfg. Co. Ltd. V. Bombay Environmental Action Group and Othrs., AIR 2006 SC 1489; S. Jaganadh Union of India and others (1997) 2 SCC 87.
- ^{xxix} Research Foundation for Science, Technology and Natural Resource Policy Vs. Union of India AIR 2012 SC 2627
- ^{xxx} Court on Its Own Motion Vs. Union of India (2012) 12 SCC 497
- ^{xxxi} Orissa Mining Corporation Ltd. Vs. Ministry of Environment and Forest (2013) 6 SCC 476
- ^{xxxii} G. Sundararajan Vs. Union of India (2013) 6 SCC 620
- ^{xxxiii} State of Tamil Nadu Vs. State of Kerala AIR 2014 SC 2407