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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

The logo for the Indian Journal of Legal Affairs and Research (IJLAR) is centered on the page. It features a circular emblem with a shield in the center, surrounded by a laurel wreath. Below the emblem, the acronym "IJLAR" is written in a large, bold, sans-serif font. The entire logo is rendered in a light gray color, serving as a watermark.

IJAR

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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ENVIRONMENT AND DEVELOPMENT: THE DIFFICULT CHOICE AND THE BALANCING PRINCIPLE

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INTRODUCTION

There is always an ongoing tussle between environment and development as they need to go hand in hand for a better and more sustained future. Often more than ever in the 21st century development is spreading its roots at the cost of environmental degradation the result is clearly visible with ill effects such as climate change, temperature rising in many countries, melting of glaciers, natural disasters etc. It is quite obvious that out of the choice of two development and environment one can't be chosen as both are important for human progress and existence. In India too this environment vs development friction is evident from a number of supreme court rulings, but nevertheless judiciary has always supported development but not at the cost of environment to balance these two Indian judiciary has always been pro-active and introduced a number of principles one of the major one is –

1. Precautionary principle

If any activity is anticipated to cause a serious environmental harm then even if there is a lack or dearth of scientific proof of it preventive measure should be taken and awaiting of scientific proof or actual harm isn't necessary for taking preventive measures. This cuts down the risk of damage that can be caused due to insufficient or dearth of scientific evidence that damage might be caused and saves time which is crucial for damage to be curbed while awaiting the scientific results.

Hence, this precautionary principle is very effective for a sustainable and holistic development.

ORIGIN

The precautionary principle originated through the international instruments of environmental law under the strict standards of United nations- Stockholm declaration, 1972 - Focused on the assimilativ capacity of the environment.

World charter for nature, 1982 - Introduced stringent preventive environmental measure.

Rio declaration, 1995 (Principle 15) - Established the precautionary principle and shifted the Burden of proof on the industry. It states that where there is a serious threat or threat of irreversible damage dearth of scientific evidence won't be used as a reason for postponing preventive measures to curb the harm.¹

This definition represents a weak version of the principle. The principle of uncertainty is central to This principle which permits preventive measures in case of irreversible damage but not in case of a restorable one.

Further lack of scientific certainty doesn't act as a justification for inaction.

But this principle doesn't precisely state what is the magnitude of threat to environment at which the principle is to apply here the strong indian version of principle comes to play where the burden of proving shifts to the developer.

So hence the SC in the Vellore Citizen welfare forum vs Union of India regarded this principle as the law of the land where article 21, 47, 48A and 51 A (g were at play. The Sc brought three main elements of precautionary principle-

¹ Manupatra Academy, Incorporation of the precautionary principle in environmental legislation in India Manupatra Academy, https://www.manupatracademy.com/law_notes/third_year_precautionary_principle_in_india_environmental_law (last visited May 14, 2026).

1. The statutory authorities and the government should anticipate, attack and prevent the reasons due to which environmental degrades.
2. The real definition considers cost effective but stronger version omits it as cost isn't important in preventive measures.
3. Reversing of BOP²

Case wise evolution/ development

In the case of Vellore citizens welfare forum vs Uol³- Here the tanneries were discharging untreated water into Palar river thereby polluting the water resources and making the land infertile. Here SC held two principles as the part of the law of the land" the precautionary principle and polluter pays principle. The court order the closure of the tanneries those which failed to establish treatment plants in their tanneries and imposed penalties for the environmental degradation. This is the landmark case for right to clean water under art. 21.

Taz trapezium case-⁴The case involved the adverse effects on the white marble of Taz due to coal burning in the nearby factories which used coke or coal as the fuel and these industries within 10,400 sq km (TTZ) were asked either to stop their operations or change to environment friendly fuels as the sulphur mixing with oxygen caused acid rain damaging the structure. Here the SC held that the damage to environment was scientifically certain inspite of it yet precautionary principle was applied.

A.P pollution control board vs prof MV Naydu & ors⁵- The SC ruled that a hazardous industry within the vicinity of a water resource used for drinking water chance of an accident can't be nullified. So here too precautionary principle was applied as no scientific certainty existed that this would damage the environment and the human habitation but the damage was likely.

² Admin Admin, The Indian Supreme Court's inconsistent application of the Precautionary Principle NLUJ LAW REVIEW (2023), https://nlujlawreview.in/constitutional-law/the-indian-supreme-cou_rts-inconsistent-application-of-the-precautionary-principle/ (last visited May 14, 2026).

³ AIR 1996 SC 2175

⁴ AIR 1997 SC 734, (1997) 2 sec 353

⁵ AIR 1999 SC 718

Narmada bachao andolan vs UoI⁶- Here the inconsistency is very visible. SC refused to apply the precautionary principle as according to the SC the principle doesn't have any application where the damage is known to occur to environment or ecology by reason of an activity. So instead of applying precautionary principle the sustainable development principle was applied. It carried out a balancing approach to the environmental interests, social interests and economic development with no damage to environment so construction of dam and other construction work on river Narmada was allowed. Here precautionary principle was applied as the serious threat due to the activity was known as held by SC

The dissent of one of the judges in this case is notable - Justice Bharucha

He said the construction of dam should have been stopped as EIA was pending.

Later in 2020 sec Online SC 347 in Raja parajapati Court held that granting an ex post facto clearance is against the principle and held that EC can only be given after all decisions making is done in case of EIA like public hearing, screening etc are conducted.⁷

CONCLUSION-

This the courts have integrated the two concepts of precaution and prevention. The principle of prevention is implemented to reduce known or certain risks, i.e., where there is a mathematical probability that a hazard will occur. On the other hand, the principle of precaution is applied to anticipate and reduce 'uncertain' risks, which has to be backed by a 'risk assessment'.

In the NBA case narrower interpretation of Precautionary principle was applied to include only nuclear industries and polluting industries. The SC excluded dams from that category as totally a different category. It balanced social costs with economic interests Without considering the extent of damage whether certain or uncertain likely to be inflict. This was used in TTZ case. As taz was a historically important monument.

⁶ AIR 2000 SC 3751

⁷ 2020 SCC Online SC 347

So here the principle in its application has inconsistencies -

1. Applied in ongoing as well as anticipated damage.
2. Prevention vs Precaution.
3. Economic interests.
4. Historically important or religious/national sentiment.
5. Vague definition of irreversible damage and extent how to calculate?
6. Threshold for application of principle
7. Precautionary principle precise conten.

