

PRECAUTIONARY PRINCIPLE: AN INTEGRAL PART OF ENVIRONMENTAL LAW

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Abstract

The Precautionary Principle states that if there is a risk of severe damage to the environment, absence of any scientific or conclusive proof is not to be given as a reason for the inaction. The Precautionary Principle shifts the burden of proof on the shoulders of the person who is arguing that the activity he is carrying out is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in the case when scientific investigation points towards a risk. These protections can be relaxed in the case when the person taking action can prove with sound evidence that no harm will result. In such a scenario risk assessment should be done and harmony should be maintained between the protection of the environment and unnecessary extensive restrictions. In such cases, Precautionary Principle is used. While applying this principle, it is very crucial to understand the consequences of applying it. The concept of the Precautionary Principle is based on the Earth Summit of the UN Conference on Environment and Development. Which is further developed by the Rio Declaration and Wingspread Statement. The precautionary principle is a fundamental element of sustainable development and has been discussed much in the legal context, but improvements are still needed in the implementation.

Keywords: Precautionary Principle, Environmental Protection, Sustainable Development, Environmental Management

Introduction to Precautionary Principle

The Precautionary Principle has been adopted in many environmental statutes all around the world. The precautionary principle says that if any action or project has some possible risk which can cause harm to the public and environment and the person who is taking that action knows those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in the case when scientific investigation point towards a risk. These protections can be relaxed in the case when the person taking action can prove with sound evidence that no harm will result. The principle follows the approach of being safe than being sorry. This principle is based upon the wait-and-watch approach which is generally followed in environmental issues. The Precautionary Principle encourages “action taking” to follow-up and prevent damage to the environment. The Precautionary Principle is one of the most important legal approaches in the department of environmental law today. Whereas traditional approaches are reactive, this approach encourages “action taking” to follow-up and prevent damage to the environment¹.

Several times the scientific reports do not give any conclusive information. In such a scenario risk assessment should be done and harmony should be maintained between the protection of the environment and unnecessary extensive restrictions. In such cases, Precautionary Principle is used. While applying this principle, it is very crucial to understand the consequences of applying it².

Antiquity of Precautionary Principle

To understand the concept of the Precautionary Principle, it is very important to know the history of how the Precautionary Principle originated. In the Parliamentary Earth Summit of the UN Conference on Environment and Development, the Dalai Lama stated that Tibet may be the first country to introduce the concept of the Precautionary Principle. Since the seventeenth century itself, Tibet started to take proactive measures to save the environment³.

¹ Lumes http://www.lumes.lu.se/database/alumni/04.05/theses/rabbi_deloso.pdf (visited on Apr 08, 01:27 PM).

² <http://coe.mse.ac.in/dp/Precaution-Kavi.pdf> (Visited on Apr 08, 03:33 PM).

³ Address of His Holiness the XIV Dalai Lama on 7 June 1992 to the Parliamentary Earth Summit (Global Forum) of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil (Environment and Development Desk, 2004: 26).

From there onwards, the struggle between the protection of the environment and the safeguard of human health gave rise to the concept.

The “Safe Minimum Standards of Conservation, 1950-60” under the contemporary public policy, for instance, the dichloro-diphenyl-trichloroethane (DDT). It was developed as the first of the modern synthetic insecticides. It was initially used with great effect to combat malaria, typhus, and other insect-borne human diseases among both military and civilian populations. This case paved the way for the principle based on the idea of assimilative capacity. This idea stated that the environment and humans can tolerate disturbances only to a certain extent, and this amount can be calculated and governed. Then in the 1970s, Germany probably became the first country to provide for a precautionary approach in its legislations and policies towards the protection and the conservation of the environment⁴.

Definition of Precautionary Principle

The main definitions of the Precautionary Principle which are widely accepted are as follows-

1. Rio Declaration 1992. This definition states that to protect the environment every state should apply the principle to the best of its abilities. When there are chances of irreversible and serious damage, lack of full scientific research should not be the reason for the postponement of preventive measures⁵.

2. Wingspread Statement 1998. This definition states that when there is a threat to the environment and human health, precautionary measures should be taken even when full scientific data is not available. The principle should examine the alternative options available (even the option of taking no action).

Both the definitions are acceptably different. The definition given in the Rio Declaration of 1992 talks about “irreversible and serious damage”, but the definition given in Wingspread Statement of 1998 talks about “harm” to the environment and human health in general. Thus, the scope of the second definition is much wider than the first one.

International Standards of Precautionary Principle

1. Vienna Convention

This Precautionary Principle appeared on the global stage in the late 1980s. It was acknowledged and accepted in the Preamble to the Vienna Convention for the Protection of

⁴ http://www.leg.lawlink.nsw.gov.au/agdbasev7wr/_assets/lec/m4203011721754/speech_10jan06_preston.pdf
(Visited on Apr 09, 04:12 PM)

⁵ Rio Declaration, Principle 15.

the Ozone Layer. The parties who were signatory to the Convention acknowledged the precautionary measures which have already been taken at the international and the national levels to protect the ozone layer⁶.

2. Montreal protocol

This Protocol was introduced in 1987 where the signatories agreed to undertake precautionary measures to control the emission of substances that depleted the ozone layer. In this Protocol, measures were taken earlier to reduce the emission of chlorofluorocarbons were recognized⁷.

3. North Sea Conference Ministerial Declaration (the London Declaration)

The need to adopt which were precautionary was also recognized in the Second North Sea Conference in 1987⁸.

4. Convention on the Protection of the Marine Environment of the North-East Atlantic

At the Third Sea Conference, the parties came to an understanding that they would continue applying specific measures to prevent damage, even if there are no scientific parameters. This precautionary principle was introduced in the year 1992 but still not come into existence⁹.

5. Bergen Ministerial Declaration

The declaration on Sustainable Development in the Economic Commission for Europe Region, 1990 stated that the precautionary principle has a very crucial link with the principle of sustainable development¹⁰.

6. Bamako Convention

The Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, 1991. This convention

⁶ Vienna Convention for the Protection of the Ozone Layer, Preamble

⁷ Montreal Protocol on Substances that Deplete the Ozone Layer, Paras 6 and 8

⁸ Second North Sea Conference Ministerial Declaration, 1987, Articles VII, XV(i) and XVI, http://www.lec.lawlink.nsw.gov.au/agdbasev7wr/assets/lec/m4203011721754/speech_10jan06_preston.pdf (Visited on Apr 10, 01:22 PM).

⁹ Convention on the Protection of the Marine Environment of the North-East Atlantic, Article 2(2) (a)

¹⁰ Bergen Ministerial Declaration on Sustainable Development in the Economic Commission for Europe Region, para 7

stated that the signatories should adopt and implement precautionary and protective measures to prevent the release of such substances in the environment which harms the environment, even when there are scientific shreds of evidence available that such substances are causing the harm¹¹.

7. Helsinki Convention

In the year 1992, the signatories of this Convention on the Protection and Use of Transboundary Watercourses and International Lakes were introduced. The signatories to this Convention decided to be guided by the Precautionary Principle¹². The year 1992 was very important in this regard. There was a convergence of the precautionary principle and the climate change issue in International Law. The Precautionary Principle was acknowledged on an international level when the United Nation Framework Convention on Climate Change was adopted.

Indian Standards of Precautionary Principle

1. Vellore Citizens Welfare Forum vs. Union of India¹³

The Indian Judiciary actively supports the Precautionary Principle in this case. In the judicial pronouncement of this case, the Court stated that sustainable development is the need of the hour. The court emphasized the fact that there should be a balance between economic growth and the protection of the environment. The Court rejected the traditional concept that ecology and development are opposed to each other. The Court also reviewed the development of the concept of sustainable development based on international standards. The Court referred to the Stockholm Declaration of 1972, Caring for Earth, 1991, the Earth Summit, and the Rio Declaration of 1992 and stated that the Precautionary Principle and the Polluter Pay Principle are key features of Sustainable Development.

2. MC Mehta vs. Kamal Nath¹⁴

In this case, the Supreme Court reiterated the decision given in the Vellore Citizens Welfare Forum case stating that the Precautionary Principle is an integral part of the environment law in India.

¹¹ Bamako Convention, Article 4(3) (f)

¹² Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Article 2(5) (a)

¹³ Vellore Citizens Welfare Forum vs. Union of India AIR 1996 SC 2715. (India)

¹⁴ MC Mehta vs. Kamal Nath (1997) 1 SCC 388 (India)

3. AP Control Pollution Board vs. Prof M V Nayadu¹⁵

The Precautionary Principle was very comprehensively reviewed by the Supreme Court in this case. The Court stated that it is better to go wrong in taking caution and prevent environmental harm rather than waiting for the issue to materialize into an irreversible problem. The Court stated that the Precautionary Principle was evolved because of lack of scientific parameters only, and the principle involves anticipating the harm that the environment may suffer and act based on that.

4. Narmada Bachao Andolan vs. Union of India¹⁶

In this case, the Supreme Court very clearly laid down the proposition of law, and specifically of the Precautionary Principle. The Court stated that when an issue pertains to environmental damage, the burden of proof is on the person who is contending that the activities carried on by him are not harmful to the environment. The party who is giving such contention also has to satisfy the Court of the same, that there will be no environmental degradation due to his activities.

5. Vijayanagar Education Trust vs. Karnataka State Pollution Control Board¹⁷

In this case, the Karnataka High Court accepted that the precautionary principle is now an integral part and parcel of the Constitutional mandate for the protection and improvement of the environment. It also laid down that the burden to prove the nature of the project is on the developer if it is found that there are uncertain and non-negligible risks.

Conclusion

Apart from being a part of the environmental protection standards, Precautionary Principle has also become an integral part of Public International Law. With the law gaining significant momentum in the field of sustainable development, it is only inevitable that concept such as these is accepted by all the nations. The precautionary Principle, a fundamental element of sustainable development has been discussed much in the legal context, but improvements are still needed in implementation. Many countries still do not follow such principles because they believe that it'll add to unnecessary expenditures and cost, to react proactively, without any evident data. They believe in relying upon conclusive data to formulate plans and

¹⁵ AP Control Pollution Board vs. Prof M V Nayadu AIR 1999 SC 812. (India)

¹⁶ Narmada Bachao Andolan vs. Union of India AIR 2000 SC 3751 (India)

¹⁷ Vijayanagar Education Trust vs. Karnataka State Pollution Control Board AIR 2002 Kant 123 (India)

policies. This is done with the view that when plans and policies are made based on evident data, they are at their optimal level.

Judiciary plays an important role in linking the law with the concept of sustainable development. So, it is vital that the judiciary also supports this kind of approaches. The support of the judiciary is required so that the protection of the environment gets a legal structure. As an integral part of legal recognition, the Precautionary Principle was also adopted by the National Environmental Policy as a guiding principle. However, there is still a long way to go for the Precautionary Principle to gain its rightful place in the field of environmental law. And till it does not get its rightful place, it will be very difficult to implement it.



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