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# **ENVIRONMENT AND DEVELOPMENT: THE DIFFICULT CHOICE AND THE BALANCING PRINCIPLE**

Judicial Inconsistency in the Application of the Precautionary Principle in India: A Critical  
Analysis in the Era of Climate Change

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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 assimilative 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.<sup>1</sup>

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. 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 BOP<sup>2</sup>

### Case Wise Evolution/ Development

In the case of Vellore citizens welfare forum vs UoI<sup>3</sup>- 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.

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<sup>1</sup> 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\\_la\\_w](https://www.manupatracademy.com/law_notes/third_year_precautionary_principle_in_india_environmental_la_w) (last visited May 14, 2026).

<sup>2</sup> 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-courts-inconsistent-application-of-the-precautionary-principle/> (last visited May 14, 2026).

<sup>3</sup> AIR 1996 SC 2175

Taz trapezium case-<sup>4</sup> The 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 & ors<sup>5</sup>- 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.

Narmada bachao andolan vs UoI<sup>6</sup>- 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 SCC 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.<sup>7</sup>

In the case of Ranjitsinh vs UoI<sup>8</sup> in 2024 the court balanced the precautionary principle with urgent need for mitigation of climate change i.e renewable energy. The case is as follows overhead power transmission lines were laid in Gujarat and Rajasthan which proved fatal to Great indian bustard an endangered species due to fatal collision with the transmission lines so

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<sup>4</sup> AIR 1997 SC 734, (1997) 2 SCC 353

<sup>5</sup> AIR 1999 SC 718

<sup>6</sup> AIR 2000 SC 3751

<sup>7</sup> 2020 SCC OnLine SC 347

<sup>8</sup> 2024 INSC 280

petitioners sought to remove them.

Initially court imposed a blanket ban on the setting transmission lines in vast areas stating that these be laid underground. In March 2024 the energy developers and the union Government requested modifications stating that laying underground lines in desert is non feasible and would lead to low power supply.

The court recognised the right to be protected from adverse effects of climate change it stated both protection of GIB and promoting renewable energy to mitigate climate change both are essential so instead of having a blanket ban the court appointed specialized expert committee to critically examine which areas are required to have underground cables and which don't case to case basis and to have diverters in high risk areas.

This, the balancing act was both of sustainable development and of environmental protection.<sup>9</sup> In one of the recent evolution in 2025 a NGO named Vanshakti filed a PIL challenging the 2017 notification and 2021 office memorandum issued by MoEF and CC these allowed retrospective EIA clearances to industries and developers who had expanded or constructed without prior approval.

The 2 judge bench strongly favoured the environment and said that retrospective environmental clearances are not known to the Indian environmental law. They also noted that environmental law is rooted in article 21 of our constitution which is the precautionary principle it is basically meant to advert the damage not to fix it later after it has happened. Also polluter pays principle can't be twisted in this manner as no amount of compensation can reverse the damage caused to the environment.<sup>10</sup>

Noticing that enormous financial losses are evident a review petition was filed against the May judgement a 3 judge bench recalled and turned the decision.

The majority view was that strict adherence to the previous judgement would lead to huge demolition of many public and private infrastructure and financial losses also that is now they are to be demolished the debris would cause further environmental damage this was the stance taken by the gov.

The court also said that there have been numerous instances where the co ordinate benches have allowed the ex post facto clearances which the previous bench has failed to consider as they weren't aware of this legal position.

Yet again Justice Bhuyan dissented saying that such a decision hits at the very crux on which the precautionary principle lies and also that such retrospective environmental clearances

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<sup>9</sup> 2025 INSC 1472

<sup>10</sup> 2025 INSC 443

allows the developers to first build the project legally by bypass of the environmental screenings and helps in promoting economic interests over environmental law<sup>11</sup>.

## CONCLUSION-

Thus the courts have created a selective environmental constitutionalism theory-

They 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'.

Further, 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. Also This was not used in TTZ case. As taz was a historically important monument.

Most controversial is the ex post facto clearance as they are given legal recognition in the vanshakti case which is detrimental to the Precautionary principle. Actually it is not polluter pays principle and not vice versa. Basically India applies the principle in the basis of economic interests of the state.

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 content.

Thus, the strict application of principle is needed for effective environment protection and not vague protection. Hence, the precautionary principle needs to be addressed with its application.

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<sup>11</sup> 2025 INSC 1326