Vellore Citizen's Welfare Forum v. Union of Indian & Others: A critique of Precautionary and Polluter Pays Principle

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Introduction

India is one of the first jurisdictions to embrace a citizen's right to pollution free environment and have fostered an 'extensive and innovative jurisprudence' on it.[1] The Indian Supreme Court in its several decisions has held that the principles of 'Precaution' and 'Polluter Pays' being essential features of Sustainable development form an integral part of Indian Environment Law jurisprudence. There are however, several pitfalls in the way the Apex Court of India have embraced these principles of International law into the corpus of Indian law. This paper is an attempt to highlight some of these pitfalls in detail with the help of the landmark case *Vellore Citizen's Welfare Forum v. Union of India*[2] (*Vellore* case) This paper while critically analyzing the *Vellore* case argues that, the Supreme Court in this case adopts the principles of 'Precaution' and 'Polluter Pays' without evaluation of their definition, practical enforceability and their capability to achieve the objective intended. The principles in reality are not only contested as being part of customary international law but are also ambiguous in terms of their content, obligations and ways of implementation. Hence, this paper illustrates that embracing such principles might not only open floodgates for arbitrariness but would also render the enforcement of environmental right difficult. Secondly, by using the illustration of *Vellore* case this paper will also illustrate that Public Interest Litigation and judicial activism in India has led to judicial excessivism.[3] Lastly, the paper argues that considering the nascent stage of Indian environment jurisprudence, adoption of such indefinite and imprecise principles in the Indian corpus of law is concerning and will proliferate the existing environmental problems instead of solving them. While this paper criticizes the approach of Supreme Court in *Vellore* case it also concludes, by recognizing the significant contribution made by Indian Judiciary in its service of environmental protection with the help of such innovative concepts. The Paper is divided into four parts. The first part of the paper summarizes the case of *Vellore Citizens Welfare Forum v. Union of India* for its readers. The second part lays down relevant excerpts of the judgment. The third part of the paper presents a critical analysis of the Supreme Court's Judgment in the *Vellore* case and the fourth part serves as a conclusion of the paper.

Part I: Case Summary

The Vellore Citizens Welfare Forum filed a public interest petition under Article 32 of the Constitution of India against large-scale pollution of the soil and water caused by the discharge of untreated effluent by tanneries and other leather industries in the state of Tamil Nadu. According to the petitioner, the entire surface and sub soil waiter of the river Palar has been polluted resulting in non-availability of potable water to the residents of the area. The petitioner illustrated the evils of these tanneries on the strength of reports from Tamil Nadu Agricultural University Research Centre, an independent survey conducted by the non-government organizations, and a study by two lawyers deputed by the legal Aid and Advise Board of Tamil Nadu. Considering the vital importance of the leather industry to generate revenue for the state and employing thousands of workers, the tanneries and other industries were persuaded for many years to control the pollution generated by them. They were given option to either construct common effluent treatment plants (CETP) for a cluster of industries or to set up individual pollution control devices. The Tamil Nadu Pollution Control Board (TNPCB) had also prescribed certain standards for the discharge of effluents and the Central Government had offered substantial subsidy for the construction of CETPs. Despite this, the progress was slow, which forced the Court to adopt stringent measures including closure of certain industries. [4] The Supreme Court noted that[5] although the leather industry in the state of Tamil Nadu is a major foreign exchange earner and contribute approximately eighty percent to India's export, it has no right to degrade the environment or create health hazards. The Court emphasizes on the fact that the traditional notion that development and ecology are opposed to each other could not be accepted in the contemporary times. Hence it resorts to the concept of 'Sustainable Development', which has been recognized as a viable approach in the international sphere to eradicate poverty and improve the quality of human life while living within the carrying

[1] Rajamani, Lavanya. "The Right to Environmental Protection in India: Many a Slip between the Cup and the Lip?" *Review of European Community & International Environmental Law*, vol. 16, no. 3, 2008, pp. 274–286.

[2] *Vellore Citizens' Welfare Forum v. Union of India* (1996), 5 SCC 647.
[3] SP Sathe, 'Judicial activism: the Indian experience', (2001) 29W UJLP 40.
[4] Supra note 2.
[5] Supra note 2.

capacity of the supporting ecosystems. The Court also embraces the principles of 'Precaution' and 'Polluter pays' as being essential features of Sustainable Development and observes that their incorporation into Indian Corpus of law was justified via constitutional mandate and statutory provisions. It also stated that since both the principles were part of Customary International Law, there should not be any difficulty in adopting them as part of Domestic Environment Law. Further, the application of both the international principles in India was seen to stem out from the fact that constitution and statutory provisions of India protected a person's right to fresh air, clean water and pollution –free environment. Lastly, the Court also highlighted that the uncovered gaps in the existing environmental laws and their inability to deal with the prevalent environmental degradation problems of India required incorporation of these principles into the corpus of domestic law[6]. The Court realizing the urgency of matter imposed a total ban on establishment of any industry within one kilometer from the embankment of the water sources. Secondly, it directed the Central Government to take immediate action under Section 3(3) of the Environment (Protection) Act, 1986 to control pollution in the environment. The Court also ordered the Central Government to establish an authority vested with all the necessary powers to deal with the pollution generated by the tanneries. The authority was also required to implement Precautionary and Polluter pays principle for identifying the loss and compensation to be paid by the pollutant. The Compensation cost was to be computed under two heads namely cost of reversing to the ecology and payment to the victims Thirdly, it ordered all the existing tanneries to comply with the standard setup by NEERI[7]. It strictly called for the closure of those industries that refuse to pay compensation for past pollution or has failed to setup appropriate pollution control devices. Lastly, the Court also requested Madras High Court to constitute the Special Bench- 'Green Bench' to further monitor the implementation of its judgment.

Part II: Relevant Excerpts

A. The Court in the *Vellore* case while attempting to strike a balance between development and ecology observes: *"The traditional concept that development and ecology are opposed to each of her, is no longer acceptable. Sustainable Development is the answer"....* [8]

"We have no hesitation in holding that "Sustainable Development' as a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient feature have yet to be finalized by the International Law Jurists." [9]

B. The Court while embracing the principles of precaution and polluter pays notes that *"The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development".* [10]

C. *The 'Precautionary* Principle' in the context of the municipal law means:

(i) *Environment measures - by the State Government and the statutory Authorities must anticipate, prevent' and attack the causes of environmental degradation.*

(ii) *(ii) Where there are threats of serious and irreversible damage lack of scientific certainly should not be used as the reason for postponing, measures to prevent environmental depredation.*

(iii) *(iii) The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign.*[11]

D. On the principle of 'Polluter Pays' the Court observes that *'it has been held to be sound principle by this Court in Indian Council for Enviro- Legal Action vs. Union of India J.T. 1996 (2) 196'*[12]

In the same paragraph it also notes that *'The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.'*[13]

E. 'The precautionary principle and the polluter pays principle have been accepted as part of the law of the land'. Article 21, 47, 48 A and 51 A (g) of the constitution mandates the protection of environment.

'Apart from the constitutional mandate to protect and improve the environment there are plenty of post independence legislations on the subject but more relevant enactments for our purpose are: The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act, 1986.'[14] *'Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficultly in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law.'* [15]

[6] Ibid.
[7] National Environment Engineering Institute Nagpur.
[8] Supra note 2, para 10.
[9] Ibid.
[10] Supra note 2, para 11
[11] Ibid.
[12] Supra note 2, para 12.
[13] Ibid.
[14] Supra note 2, para 13.
[15] Supra note 2, para 15.

F. On a citizen's right to pollution free environment the Court holds: *'The Constitutional and statutory provision protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment.'*[16]

G. The Court acknowledges the inadequate government inaction in the present case and states that: *'It is high time that the Central Government realizes its responsibility and statutory duty to protect the degrading environment in the country.'*[17]

'It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act'. [18]

H. On calculating the compensation, the Court orders: *'The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle.* [19]

'The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals.'[20]

Part III: Case Analysis

The Judgment given by *Vellore* case by the Supreme Court in India is significant since it attempts to realize the right to pollution free environment by embracing international principles of Precaution and Polluter Pays. These principles have been called by the court in several cases as "*essential features of sustainable development*" [21] "*imperative for preserving ecology*"[22] and "*part of environment law of India*"[23]. The Court in the *Vellore case* therefore ordered for the implementation of principle of Sustainable development along with its two essential features i.e. Precautionary and Polluter Pays principle with immediate effect to protect the ecology in the state of Tamil Nadu. However, there are certain pitfalls in the way these principles are adopted and enforced in the *Vellore* case. The subsequent paragraphs of this part attempts to highlight the same. The Supreme Court in the *Vellore* case opined that traditional concept - that development and ecology are opposed to each other is not acceptable[24]. Hence, it attempts to strike a balance and urges a harmonious construction between the imperatives of development and ecology. It does so by embracing the principle of 'Sustainable Development' as a viable approach. However, the Court while invoking this principle does not provide with a list of clear indicators to determine as to how it seeks to achieve this balance or how these two goals might be harmonized[25]; instead it takes it upon itself to strike the balance between the two. Thus, without a list of clear indicators it clearly leaves the future application of this principle case-by-case basis. The Court also holds that the principles of Precaution and Polluter Pays form part of environment law of the Country.[26] It is pertinent to note that the justification provided by court while adopting both the principles in domestic environment law is not only erroneous but also based on contested grounds. This is because *firstly*, The Court justifies the adoption of principles via Article 21[27], 47,[28] 48A[29] and 51-A (g)[30] of the Constitution and a series of statutory Environmental laws. After a basic reading of these constitution provisions one can conclude that these provisions only seek to make it mandatory for the state to raise the level of nutrition and standard of living; improve public health and natural environment; protect and safeguard forest and wildlife. None of these provisions explicitly mentions the principle of precaution or a power to import such international principles in domestic law. This is also the case with the statutory environmental laws referred[31] by the Court. Thus, it is unclear as to how the Court is concluding that adoption both the principle derive is validated by the constitutional and statutory provisions. *Secondly*, the Court justifies the adoption of both the principle in the domestic law on the premise that " *even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of domestic law*".[32] It is undisputed that both the principles were first incorporated in Stockholm Declaration, 1973[33] and Rio Declaration[34], which recognized urgent need to safeguard natural resources. They are also mentioned in various other binding and non- binding international instruments.[35] But, is this enough to state that both the principles form a part of Customary International Law?

[16] Supra note 2, para 16.
[17] Supra note 2, para 20.
[18] Ibid.
[19] Supra note 2, para 25.
[20] Ibid.
[21] Supra note 2, para 11.
[22] *Karnataka Industrial Areas Development Board v. C. Kenchappa and Others* (2006), 6 SCC 371, para. 32.
[23] Supra note 13.
[24] Supra note, 7.
[25] Supra note 1.
[26] Supra note 13.
[27] *Protection of Life and Personal Liberty*, The Constitution of India, 1950
[28] *Duty of the State to raise the level of nutrition of and the standard of living and to improve public health*, The Constitution of India, 1950.
[29] *Protection and improvement of environment and safeguarding forest and wildlife*, The Constitution of India, 1950
[30] Article 51 (A) –(g) reads: *to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures*, The Constitution of India, 1950.
[31] Supra note 13.
[32] Supra note 14.
[33] 11 ILM 1416, 1972
[34] Principle 15 and Principle 16 of The Rio Declaration on Environment and Development *c.f.* 31 ILM 876 (1992).
[35] Precautionary Principle has been mentioned in: Vienna Convention for the Protection of the Ozone Layer, 1985; Montreal Protocol on Substances that deplete the Ozone Layer, 1987; United Nations Framework Convention for Climate Change 1992. Polluter Pays Principle has been mentioned in: Single European Act, 1987; Maastricht Treaty, 1992, *Recommendations on the Implementation of Polluter Pays principle*, O.E.C.D. Doc. C (74) 223 (1974).

According to International Court of Justice state practice and *opinio juris* can enable a treaty or a provision of it to acquire the status of Customary International Law.[36] Both of these factors are contested when it comes to Precautionary and Polluter Pays principles. With respect to the Precautionary Principle, there remain deeply divergent views among the international Courts in accepting it being a part of Customary International Law.[37] In certain cases like *Gabcikovo-Nagymaros* case[38] and *Nuclear Tests II*[39] case the ICJ has indeed relied on the principle while pronouncing judgments. On the other hand, in certain cases like *Southern Bluefin Tuna*[40] even though both New Zealand and Australia framed their arguments on the basis of precautionary principle; Judge Laing did not recognize it as the principle forming part of Customary International Law. Similarly, in the case the World trade Organization (WTO)[41] the appellate body did not decide on the status of the principle rather stated that it has been incorporated into treaty text. This depicts that status quo of the principle is not clear. Further, the fact that 153 states were signatories of Rio Declaration wherein both the principles were mentioned does not make the principles part of International Law. What is required is a demonstrable willingness to adhere to the norm and practice of nations must alter according to prescriptions of new norm for it to attain the status of International Customary Law. In the absence of any clear intent among nations, incorporating the above two requirements of Customary International Law one wonders as to how both these principles have been incorporated into municipal law. Thus, to characterize the principles as custom without any evaluation of it in the *Vellore* case is not only erroneous but is an example of judiciary's sloppiness.

Moving further, while adopting the principle of Precaution the Court did not seem to foresee the divergent views and ambiguity, which exists in international sphere with respect to it. There is vagueness in terms of its precise definition, content, obligations and whether in its strongest version it lends actualization or not.[42] Bodansky argues that that the principle is too vague to serve as a regulatory standard because it does not specify as to how much precaution should be taken. [43]The subsequent three paragraphs analyze such inherent problems in the principle of Precaution, which the Court seems to overlook while adopting it. *Firstly*, as per the Court's definition the Precautionary Principle comes into picture when there is a threat of serious and irreversible harm – but again, how should the existence of threat be determined and what is the required threshold for invoking the principle? The Court does not answer this. Also, while adopting a principle with inherent vagueness the court does not find it needful to set a list of criteria for the implementation and actualization of the principle. This will not only proliferate ambiguity around the principle in the future cases but would also open the floodgates for its arbitrary application and violation of individual rights. *Secondly*, some of the other criticisms which are raised against strong formulations of Precautionary Principle is that it adopts an absolutist approach which is cost oblivious; implying that once risk thresholds are crossed concerned activities needs to be stopped no matter the costs. The danger in applying the principle to such absolutist terms may result in the opportunity cost being much higher than the cost of inaction.[44] This would also in a way limit the scope of cost-benefit analysis. *Thirdly*, as the definition suggests the principle shifts the burden of proof on the polluter to prove that emissions are harmless before the activity is allowed. This might be problematic since in many cases of uncertainty, it might not be possible to meet the burden of proof despite many potential benefits to be expected. Such interpretation will also stifle the innovation and creativity; hamper all the scientific and technological advancements and arguably result in regulatory paralysis.[45] The Court in the present case even though adopts the stronger version of the principle[46], does not find it crucial to address or evaluate the principle on these parameters.

Fourthly, the most challenging task while adopting an abstract international principle lies in its implementation to the case at hand. It is evident that application of Precautionary Principle involves weighing and balancing different ecological, cultural, political and economical interest before any decision has to be taken.[47] While doing so cost-benefit analysis might not prove to be best available approach since certain changes in the ecosystem are beyond scientific understanding and it is impossible to give them economic values necessary for an accurate cost-benefit assessment.[48] Also, the implementation of precautionary principle requires nurturing of science and policy, which can be difficult since many times legislators have failed to use science appropriately because of the uncertainties

[36] *North Sea Continental Shelf Cases*, 1968] ICJ Rep 9.
[37] Supra note 1.
[38] The *Gabčíkovo-Nagymaros Project*, [Hungary v. Slovakia], [1997] ICJ Rep 7.
[39] *Nuclear Tests*, [New Zealand v. France], Order 22 IX 95, ICJ Reports 1995 288.
[40] *Southern Bluefin Tuna Cases*, [New Zealand, Australia v. Japan], [1999] 38 ILM 1624.
[41] *EC Measures concerning Meat and Meat Products*, 16th January 1998, AB-1997-4;WT/DS26/AB/R;WT/DS48/AB/R.
[42] C. Sunstein, *Beyond the Precautionary Principle*, University of Chicago Legal Theory and Public Law Working Paper No 38 (2003).
[43] Gullett, W, *Environmental protection and the precautionary principle: a response to scientific* uncertainty in environmental management, Environmental and Planning Law Journal, 14(1), 1997, 52-69.
[44] Fitzmaurice M."Part III: Substantive Principles." *Research Handbook on International Environmental Law*, Edward Elgar, 2010, pp. 203–243.
[45] Supra note 42, see also: L. Bergkamp, '*Understanding the Precautionary Principle (Part II)*', 10:2 Environmental Liability (2002), 67.
[46] Supra note 1, Page 282.
[47] Supra note 43, Page 217.
[48] Ervin,D.E. et al. (2001), '*Transgenic Crops and Environment: The Economic of Precaution*'. Western Agricultural Economic association, 10th July, Logan Utah.

in risk assessment.[49] The Supreme Court in the present case fails to acknowledge such inherent glitches, which would arise while implementing such an abstract principle. It does not foresee that this will also indirectly impact the redressal mechanism by making it slow and inadequate in responding to urgent concerns of environment degradation.

The most surprising part of the judgment is that even after embracing and defining the principle of Precaution the Court does not apply it, in the facts of the *Vellore* case. The facts of the case depict that 900 tanneries operating in the state of Tamil Nadu have created a serious problem of pollution and environment degradation. Thus on the face of it, there existed a threat of serious and irreversible damage. However there was no scientific uncertainty at play nor was there any requirement for postponing measures for environment degradation because the issue was already conceived. Thus, one can argue that the measures adopted by the Court seem to line more with the approach of prevention rather than precaution. This conclusion raises question as to how the Court has actualized the precautionary principle in the case at hand. Mere defining and assertion of an international principle forming part of domestic environment law does not really seem to solve the problem at hand. Due to lack of engagement of the principle with the facts it can be argued that the reference to the precautionary principle is mere *obiter*, if not for the fact that the Court, *inter alia* directed the relevant authority to implement the 'Precautionary Principle'[50] and the 'Polluter Pays principle'. This is still open for contestation today, however subsequent judgments have asserted and adopted the same.

Another aspect for consideration in the judgment is embracement of Polluter Pays principle by the Court. The principle was first invoked in the *Enviro-Legal Action*[51] case in 1996. In this case the Court affirmed the principle of absolute liability as stated in *Oleum Gas leak* [52]case and extended it to include the liability of polluter to the costs of repairing the damage to the environment. The Court in *Vellore case* reaffirms this principle and clarifies that the polluters (900 tanneries causing pollution in the state of Tamil Nadu) were not only liable to pay the cost to the individual sufferers but also the cost of '*reversing the damaged ecology*'[53] However, while reaffirming this principle the Court not only fails to recognize that the principle is contested as being part of Customary International Law, but also does not deal with the fact that in certain situations it becomes difficult to estimate the level of charges and costs owed by each polluter[54]. This problem is peculiar to the present case wherein there are almost 900 tanneries, liable for discharging untreated effluents in the affected areas. Estimating the cost owed by each of these tanneries might prove to be a difficult task for the administrative authorities in the absence of guidance. Further, the efficacy of this principle is contingent upon how successfully it is implemented by the administrative authorities. An interview[55] with Vellore Environmental Committee in the year 2009, depict that the Authority constituted as per directions of the Court has addressed none of the three issues – providing compensation, reversing the damage to the ecology and preventing further damage to the ecology. It has used its discretionary power in deciding the list of affected farmers and chose to solely rely on the data obtained by the TNPCB and revenue department for assessing compensation cost. Further, as far as distribution and collection of compensation amount is concerned; there have not been any serious attempts to follow the orders of the Court. The compensation amount is distributed fully in only few talukas like Arcot, Tirputtur of Vellore district and not in all affected areas. Strikingly, even after 10 years of the judgment, only 347 out of 547 industries have been able to pay the compensation amount, which is also not as per Court orders. Thus, the decision- making process on assessing the damage to ecology and loss of livelihood has been questioned by many affected farmers as being non democratic and transparent.[56]

In light of the arguments made above on the imprecise adoption of principles of precaution and polluter pays by the Supreme Court in *Vellore case* one can conclude that the Public Interest Litigation and over activist approach of judiciary has raised concerns that: judges and their preferences play far too significant role in shaping the policies and litigation.[57] Embracing international principles as part of Indian Environment Law without any deliberations can have far-reaching repercussions (which judges cannot foresee) and can affect even those who are not party before the court.[58] Therefore, policy - environmental and social, must emerge from a socio political process and must be considered in a legislative forum not a judicial one[59].

[49] Supra note 43, Page 214.
[50] Supra note 18.
[51] *Indian Council for Enviro-Legal Action v. Union of India*, (1996), 3 SCC 212 at 215.
[52] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.
[53] Supra note 11.
[54] Razzaque, Jona. "Chapter 7: Application of IEL in the National Legal Systems of India, Pakistan and Bangladesh." *Public Interest Environmental Litigation in India, Pakistan and Bangladesh*, vol. 7, Wolters Kluwer (India) Pvt. Ltd., 2009, Page 364, Comparative Environmental Law & Policy.
[55] Interview with members of Vellore Environmental Monitoring Committee in January 2009. Refer: Sahu, Geetanjoy. '*Implementation of Environment Judgments in Context: A Comparative Analysis of Danahu thermal Power Plant Pollution case in Maharashtra and Vellore Leather Industrial Pollution Case in Tamil Nadu*' 6 Law Env't & Dev. J. 335 (2010)
[56] Interview with Mr. Gajapathy, Member of the Vellore Environment Monitoring Committee on 19th June 2010. Refer: Supra note 54.
[57] J. Chandrachud's Opinion in *State of Rajasthan v. Union of India* (1977), 3 SCC 592, at 548.
[58] *Steadman v Steadman* [1976] A.C. 536, 542 (Lord Reid arguing that 'Judges ought not to develop the law because 'it would be impracticable to foresee all the consequences of tampering with it').
[59]Rajamani, Lavanya. '*Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability.*' Journal of Environmental Law, (2007) Vol. 19 No.3 on Page 319.

Secondly, the Court in the *Vellore* case not only transgresses into the power of legislature but also tries to substitute judicial governance for executive governance[60]. The Court does so by assuming the role of protector of environment and in that role it directs the Central Government with the course of action to be taken instead of making them invoke their statutory powers for curbing the environment problem. This clearly depicts 'judicial excessivism'. According to S.P. Sathe '*Judicial activism…is excessivism when the Court undertakes responsibilities normally discharged by other co-ordinate organs of the government*'. [61] The *Vellore* case is a good example to depict this point.

Lastly, *Vellore* case also presents us with an example of how over arching power of judiciary can lead to adoption of imprecise principles without evaluation of their definition, practically enforceability and their capability to achieve the objective intended. This not only opens room for ambiguity for future cases to resolve but also obfuscates some hard questions. This paper also illustrates that the *Vellore* case should serve as a caution that the public interest litigation must be utilized and invoked with a great deal of circumspection and caution in future.

Part IV: Conclusion

To conclude, this paper critically analyses the *Vellore* case and illustrates that the Supreme Court's activist approach in adopting the principle of 'precaution' and 'polluter pays' does little to solve the prevalent problems of environment degradation and instead proliferates the existing environment problems. The paper also highlights that these principles are not only contested as being part of customary international law but are also ambiguous in terms of their content, obligations and ways of implementation. Further, the paper explains how judicial discretion and over activist approach leads to judicial excessivism. It also leads to adoption of imprecise principles without evaluation of their definition, practically enforceability and their capability to achieve the objective intended. This can be dangerous considering the nascent stage of Indian Environment Jurisprudence. However, none of the criticism can undermine the fact that Supreme Court has made remarkable contributions to the domestic Environmental Law and have showed willingness to adopt such creative and innovative tools in its role as protector of environment.

[60] Supra note 59, Page 318.
[61] SP Sathe, 'Judicial activism: the Indian experience', (2001) 29W UJLP 40.

