



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: LL.B.**

**Semester: IV**

**SUBJECT: Environmental Laws**

**SUBJECT CODE: LLB404**

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# Lecture-6



## LECTURE 6: Precautionary Principle

### PRECAUTIONARY PRINCIPLE

Prevention is better than cure; protection of the environment can effectively be done by taking adequate precautions against the Environmental damage. Precautionary principle mandates about beware of what you do Principle 15 of Rio Declaration, mandates about the protection of the Environment.

In order to protect the Environment polluter principle shall be widely applied Assimilative Capacity, Environment absorb the shock itself but beyond certain limit pollution may cause damage to the environment; rule of law is in to picture when there is a disturbance of the environment.

### RIO-DECLARATION

It proclaims that “in order to protect the environment the precautionary approach shall be widely applied by states according to their capabilities. Where there is threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.

### Vellore Citizens Welfare Forum v Union of India

The Supreme Court declared that the precautionary principle is an essential feature of sustainable development. Supreme Court has also supplied meaning to the precautionary principle in the context of the Municipal law.

According to which it means,

i) Environmental measures by the state government and the statutory authorities – must anticipate, prevent and attack the causes of environmental 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.

The ‘onus of proof’ is on the actor or the developer / industrialist to show that his action is environmentally benign.

The supreme court stated that “the precautionary principle suggest that where there is an identifiable risk of serious and irreversible harm, including, for example extinction of species, wide

spread toxic pollution, major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

### **A P Pollution Control Board v M V Nayudu, AIR 1999**

- Case was decided by Justice S B Majumdar and Justice M Jagantha, Municipal administration and urban development of Government of AP, prohibited various types of development within 10KM of two lakes, Himayat sagar & Osman Sagar these were the reservoirs to supply the water in Hyderabad and Secunderabad.

- Industry sought to establish in prohibited area within 10 KM, court ordered state of AP within radius of any lake, must take an action In-consultation with board to prevent pollution to drinking of water

- Court ordered that there should not be any said industries within the radius and should not pollute the water bodies.

### **M.C.Mehta v Union Of India (Air 1996 Sc 2715) or Taj Mahal Case**

- In this case the Supreme Court for protecting the Taj Mahal from air pollution, directly applied precautionary principle. In 1984, M.C.Metha, a conscientious advocate, place a case before the court the material he had gathered and warned of damage to the Taj Mahal from air pollutants.

- According to the petitioner, the foundries, chemical/hazardous industries and the refinery at Mathura were the major sources of damage to the Taj. Sulphur dioxide emitted by the Mathura Refinery and the industries when combined with oxygen- with the aid of moisture- in the atmosphere forms sulphuric acid called "ACID RAIN", which has a corroding effect on the gleaming white marble.

- Industrial /refinery emissions, bricks kilns, vehicular traffic and generator-sets are primarily responsible for polluting the ambient air around Taj Trapezium Zone (TTZ). The petition states that the white marble has yellowed and blackened in places. It is inside the Taj that the decay is more apparent.

- Yellow pallor pervades the entire monument. The court stated that the 'Taj, apart from being a cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country.

- This court has monitored this petition for over three years. Experts studies proved that

emissions from coke/coal based industries in the Taj trapezium zone had damaging effect on the Taj Mahal. The court observed that “the atmospheric pollution in TTZ has to be eliminated at any cost. Not even 1% chance can be taken when-human live apart-the preservation of a prestigious monument like the Taj is involved.

- The court held that the industries, identified by the pollution control board as potential polluters, had to change over to natural gas as an industrial fuel and those who were not in a position to obtain gas connection should stop functioning in TTZ.