INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 4 AND ISSUE 1 OF 2024

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Free and Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 4 and Issue 1 of 2024 (Access Full Issue on - https://ijlr.iledu.in/volume-4-and-issue-1-of-2024/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 4 AND ISSUE 1 OF 2024

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

THE PRECAUTIONARY PRINCIPLE AS A DECISION-MAKING PRINCIPLE

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BEST CITATION - JAHNAVI KHATTAR, THE PRECAUTIONARY PRINCIPLE AS A DECISION-MAKING PRINCIPLE, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF 2024, PG. 1436-1441, APIS – 3920 – 0001 & ISSN - 2583-2344.

ABSTRACT

The precautionary principle, encapsulated by the adage "better safe than sorry," is poised to profoundly influence global policy, especially within the European Union, which champions its application across trade, environmental, and other decision-making realms. This principle advocates for preemptive action in the face of potential risks to human health or the environment, even without definitive scientific proof. This paper examines the precautionary principle's implications on innovation, public health, and environmental sustainability. It delves into ethical dilemmas and conflicts arising from its application and scrutinizes real-world case studies to assess its efficacy.

The literature review explores various perspectives on the precautionary principle, highlighting its ethical foundation linked to public goods and intergenerational fairness, as well as its potential to inadvertently introduce new risks or stifle benefits. A detailed analysis of India's environmental governance illustrates the judicial application of the principle in cases like A P Pollution Control Board v. Prof. M V Nayudu and Democratic Youth Federation v. Union of India. These cases underscore the challenges posed by scientific uncertainty and the necessity for a robust framework to guide precautionary measures.

Findings reveal significant concerns regarding the principle's interpretative flexibility and the resultant variability in judicial and regulatory decisions. The study suggests that India, by incorporating global best practices and emphasizing transparency, accountability, and stakeholder engagement, can enhance the principle's application, supporting sustainable development and environmental protection. The research underscores the need for a standardized approach to integrating scientific uncertainty into legal and policy decisions, fostering more consistent and effective environmental governance.

INTRODUCTION

The "Precautionary Principle" is expected to significantly impact world policy in the upcoming decades as it becomes more widely accepted. The precautionary principle may be summarized as "It is wiser to err on the side of caution." The notion may possess varying degrees of potency. There were nineteen, according per one expert. Environmentalists established the renowned Wingspread Declaration in 1998. The text asserts that precautionary measures should be used when an activity poses potential risks to human health or the environment, even if all causal linkages are not scientifically proven. This is an instance of a robust form. The European Union has taken the lead in advocating for the Precautionary Principle as a tool in trade, environmental policy, and other decision-making processes. The specific version of the idea that the EU intends to utilise has not been specified in terms of parameters. It does support the notion that regulations should be implemented even when damage is assumed or unproven. The precautionary principle suggests that this notion might result in various conclusions from different persons. Information

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on GMO food, nuclear power, pesticides, cell phones, homeland security, innovative medical treatments, and conflict might be inaccurately given under the cautious principle. Prior to using this theory for critical decision-making, it is essential to thoroughly evaluate its advantages and disadvantages. The Precautionary Principle may be summarized as "it is better to be safe than sorry," notwithstanding its complex nature. Legislators face a significant challenge in determining how individuals might get a sense of "safety." How is it considered safe? Those desiring to enforce regulations will find it more challenging to comprehend. Both acting and not acting include hazards. One example is the conflict in Iraq. Reducing risks in one policy area, such as the environment, might potentially increase risks in another area, such as security, particularly when resources are limited. Robust interpretations of the precautionary principle face several issues, mostly due to their lack of logical consistency. Due to the inherent risk in most policies, they usually eliminate all choices, including maintaining the current state.

RESEARCH OBJECTIVES

- ➔ Evaluate the effectiveness of the PP in addressing emerging risks and uncertainties, considering its impact on innovation, public health, and environmental sustainability.
- ➔ Examine the moral ramifications and the conflicts that come with using the PP.
- ➔ Examine case studies where the PP has been used, evaluating the results and takeaways to provide insights into the efficacy and influence of the method in the actual world.

RESEARCH QUESTIONS

- ➔ In what ways does the application of the Precautionary Principle impact innovation, public health, and environmental sustainability?
- ➔ What are the ethical implications and potential conflicts associated with the application of the Precautionary Principle?
- ➔ What are the outcomes and lessons learned from case studies where the Precautionary Principle has been applied in decision-making processes?

LITERATURE REVIEW

1. **Stelle, Katie, *The precautionary principle: a new approach to public decision-making?***[2275]

The current review of literature highlights the inherent correlation between sustainable development and the Precautionary Principle (PP), given that both adhere to an ethical structure centred on public goods, intergenerational fairness, and environmental health. When applying the "no harm" principle, it is crucial, in accordance with the PP, to consider potential harm to future generations and public benefits. However, it may be challenging to implement these moral principles when balancing individual and collective well-being, short-term and long-term objectives, and divergent perspectives on what future generations owe sustainable development. The ongoing dispute over these matters serves as evidence of their crucial nature in relation to the execution of the PP.

2. **Sunstein, R. Cass, *The Precautionary Principle as a Basis for Decision Making***[2276]

The complexities that emerge from the implementation of the precautionary principle within regulatory frameworks are explored in this article. It posits that legislation that is intended to alleviate risks might unintentionally introduce further dangers or impede potential

[2275] Stelle. (2006, August 8). *The precautionary principle: a new approach to public decision-making?* Academic.oup. Retrieved March 5, 2024, from https://shorturl.at/mpsQX.

[2276] Sunstein & Harvard Library. (2005). *The Precautionary Principle as a Basis for Decision Making*. The Economists 'Voice. Retrieved March 5, 2024, from http://nrs.harvard.edu/urn-3:HUL.InstRepos:29998410.

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benefits. By emulating the pharmaceutical approval process, one can recognise the complexity that surrounds determining the scope of pre-market testing. The study emphasises the lack of feasibility in prioritising imminent threats over current ones and criticises the principle's ineffectiveness in directing regulatory actions through selectively addressing public concerns. It concludes by contending that the precautionary principle is ineffectual in real-world situations unless these concerns are resolved.

3. **Peterson, Martin, *The precautionary principle should not be used as a basis for decision-making. Talking Point on the precautionary principle*[2277]**
This literature review analyses the consequences of the ill-fated TGN1412 clinical trial, focusing specifically on the MHRA's findings regarding the medication's unique adverse effects and the recommendations of independent researchers regarding preventative measures. The argument against the application of the precautionary principle is that it is normatively vacuous or an irrational qualitative choice rule by virtue of its ambiguity and potential conflict with more fundamental principles of rational decision-making. The author underscores the critical nature of furnishing an exact definition of the precautionary principle in order to promote logical discussion in the field of decision theory.

4. **Gill, Nain Gitanjali, *Precautionary principle, its interpretation and application by the Indian judiciary: 'When I use a word it means just what I choose it to mean-neither more nor less' Humpty Dumpty*[2278]**
This literature review examines the application of the precautionary principle in Indian environmental governance, emphasising its significance in addressing scientific uncertainty. This paper delves into the complexities of environmental issues, highlighting the challenges that regulatory decision-makers encounter when dealing with conflicting data and limited information. The study, utilising exclusive Indian data, delves into how environmental players understand and apply the precautionary principle. Proposing the establishment of a set of guidelines to enhance decision-making within the Indian context. The paper underscores the potential long-term impact of legislative measures in the absence of conclusive scientific data.

ANALYSIS

Integrating the precautionary principle into India's environmental governance system involves a complex interplay of judicial interpretation, scientific uncertainty, and legislative interpretation. Referencing cases such as A P Pollution Control Board v. Prof. M V Nayudu[2279] and Democratic Youth Federation v. Union of India[2280], this study delves into the topics of sustainable development, environmental governance, strategies, key findings, and potential resolutions.

To achieve sustainable development goals, the preamble highlights the importance of scientific knowledge, environmental governance, and evidence-based policy. Using the precautionary principle can be a topic of debate, particularly in cases where scientific certainty is lacking. India often relies on this approach to guide decision-making in addressing complex

[2277] Peterson & National Centre for Biotechnology Information. (2007, April). *The precautionary principle should not be used as a basis for decision-making. Talking Point on the precautionary principle*. National Library of Medicine. Retrieved March 5, 2024, from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1852769/.

[2278] Gill, Gitanjali Nain. "Precautionary Principle, Its Interpretation and Application by the Indian Judiciary: 'When I Use a Word It Means Just What I Choose It to Mean-neither More nor Less 'Humpty Dumpty." *Sage Journal*, 12 Dec. 2019, journals.sagepub.com/doi/10.1177/1461452919890283#fn81-1461452919890283.

[2279] (2001) 6 SCC 212.

[2280] (2011) 6 SCC 480.

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environmental issues such as pollution in the absence of conclusive scientific evidence.

The National Green Tribunal (NGT)[2281] and the Supreme Court of India play a crucial role in interpreting and enforcing the precautionary principle in environmental policy. Important cases like Vellore Citizen Welfare Forum v. Union of India[2282] have laid down the foundations of the precautionary approach, emphasising the importance of taking proactive measures to prevent environmental harm despite scientific uncertainties. Multiple court rulings, like those issued by the NGT, have emphasised the importance of this concept in environmental decision-making.

In the A P Pollution Control Board v. Prof. M V Nayudu[2283] case, the Supreme Court applied Level 6 of the standard of "substantial and credible evidence." The court was informed that the Himayat and Osman Sagar lakes could potentially be contaminated by chemicals due to the expanding chemical industry. After reviewing extensive scientific data, the court determined that the industry could potentially affect the sensitive catchment area of the lakes. The court ruled that industries causing pollution are prohibited from operating within a 10-mile radius of the lakes, citing the precautionary principle.

In a similar manner, the court examined the factors related to the detrimental impacts of endosulfan on individuals and the ecosystem in the Democratic Youth Federation v. Union of India case. When faced with conflicting information regarding the use of endosulfan and its effects, the court applied the "reasonable, articulable grounds for suspicion" test at level 2. The court issued a temporary ban on the production, distribution, and use of endosulfan, along with an order for a comprehensive scientific investigation into the substance.

The study employs a range of case studies and hybrid methods to gather the perspectives of key environmental stakeholders within the NGT. The findings indicate significant concerns regarding scientific uncertainty, insufficient data, and varying stakeholder interpretations of the precautionary principle. Insufficient details and contradictory information can hinder the decision-making process, leading to inconsistent court rulings and regulatory goals.

An effective framework is necessary to tackle these issues and enhance the application of the precautionary principle in environmental decision-making. India has the ability to establish regulations that outline its usage, considering input from stakeholders, cost-benefit analysis, and risk assessment. Emphasising transparency, accountability, and adaptability would promote a more effective environmental governance approach aligned with international standards.

The many case examples presented emphasise how judges interpret the precautionary principle and underscore the need to establish a common language to bridge the gap between the legal system and science. Charles Weiss's theoretical framework offers a possible solution by defining the required level of evidence to start preventive intervention. Weiss' paradigm emphasises fostering communication and understanding among stakeholders to facilitate informed decision-making in the presence of scientific ambiguity, despite notable limitations like subjective interpretations of uncertainty.

The research emphasises the importance of enhancing the application of the precautionary principle in India's environmental governance system and addressing scientific uncertainty. India can effectively handle environmental decision-making, furthering its sustainable development objective and protecting the environment and public health through engaging stakeholders and implementing global best practices.

The introduction sets the stage by emphasising the importance of evidence-based policy,

[2281] NGT Act, 2010.
[2282] (1996) 5 SCC 647.
[2283] Ibid. 5.

environmental governance, and scientific knowledge in achieving sustainable development goals. While the precautionary principle is widely acknowledged as crucial, its application can be contentious, especially in cases where scientific certainty is lacking. This paradox emphasises the challenge that countries such as India face when dealing with intricate environmental issues such as pollution. In these situations, the precautionary principle is prioritised over other factors in decision-making due to the absence of conclusive scientific evidence.

The National Green Tribunal (NGT) and the Supreme Court of India's judiciary are crucial in interpreting and upholding the precautionary principle in environmental policy. Important cases like Vellore Citizen Welfare Forum v. Union of India have set the foundation for the precautionary approach, emphasising the importance of taking proactive measures to prevent environmental harm despite scientific uncertainties. Multiple court decisions, including those made by the NGT, have emphasised the significance of this approach in environmental decision-making.

In the case of A P Pollution Control Board v. Prof. M V Nayudu, the Supreme Court applied the standard of "substantial and credible evidence" at level 6. The court discussed the potential for chemical contamination in the Himayat and Osman Sagar lakes due to industrial activity. According to thorough scientific evidence, the court found that the enterprise posed a substantial risk of harming the fragile watershed surrounding the lakes. The court ruled that companies emitting pollutants are prohibited from operating within a 10-mile radius of the lakes as a precautionary step.

Just like this, the court examined the negative impacts of endosulfan on the environment and human health in the Democratic Youth Federation v. Union of India case. When faced with conflicting information regarding endosulfan and its impacts, the court applied a test to determine the level of suspicion. A temporary ban was imposed by the court on the manufacture, distribution, and use of endosulfan, along with an order for a comprehensive scientific examination of the substance.

The analysis employs a range of methods, including multiple case studies and mixed techniques, to understand the perspectives of key environmental stakeholders involved in the NGT. The results emphasise significant concerns regarding scientific confidence, insufficient data, and differing stakeholder views on the precautionary principle. Insufficient details and contradictory information can impede the decision-making process, resulting in inconsistent court rulings and regulatory goals.

In order to effectively tackle these concerns and enhance the relevance of the precautionary principle in environmental decision-making, a structured framework is essential. India has the ability to establish regulations that consider stakeholder input, cost-benefit analysis, and risk assessment to guide its usage. Emphasising transparency, accountability, and adaptability would promote a more effective environmental governance approach in line with international standards.

The abundance of case examples demonstrates how judges interpret the precautionary principle, highlighting the importance of a common language to bridge the gap between the legal system and science. Charles Weiss's [2284]theoretical framework offers a possible solution by detailing the required level of evidence to start preventive intervention. Despite some limitations, Weiss' framework promotes communication and mutual understanding among stakeholders, facilitating well-informed decision-making in the face of scientific uncertainty.

The research emphasises the importance of addressing scientific uncertainty and enhancing the application of the precautionary principle in India's environmental governance

[2284] Weiss, Charles. 2000. "The Precautionary Principle in International Environmental Law." International Journal of Legal Studies 29 (2): 37–67.

system. India can effectively handle environmental decision-making, furthering its sustainable development objective and protecting the environment and public health through engaging stakeholders and implementing global best practices. This extended examination sheds light on the challenges of incorporating the precautionary principle into India's environmental jurisprudence and offers insights into potential future directions for the field's development.

CONCLUSION

The research concludes by highlighting the growing role of scientific and technological knowledge in Indian court environmental decisions. It stresses the potential subjectivity caused by different applications of the precautionary principle, unofficial scientific certainty, and evidence requirements in legal settings. The study highlights the need for a framework that tackles normative concerns and legal evidence criteria for scientific uncertainty, as well as the presence of opposing opinions among critical environmental actors[2285]. The proposed framework seeks to ensure a uniform, accountable, and transparent application of the precautionary principle, in line with India's commitment to sustainable development goals. It takes inspiration from regulatory standards in other countries.

[2285] C. Weiss, 'Expressing Scientific Uncertainty '(2003a) 2 *Law, Probability and Risk* 25–46; C. Weiss, 'Scientific Uncertainty and Science-Based Precaution ' (2003b) 3 *International Environmental Agreements: Politics, Law and Economics* 137–166; C. Weiss, 'Can there be Science-Based Precaution? '(2006) 1 *Environment. Research Letter* 014003.