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Revisiting The Precautionary Principle: Courts And Law.

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Abstract:

"*The precautionary principle was declared to be the customary international law in India. This paper presents the argument that such a status being conferred upon the precautionary principle is not without doubts. It presents various arguments after the detailed scrutiny and analysis of the relevant judgements of the court in India and also substantiates it with the decisions of the international court and tribunals.*"

1. INTRODUCTION.

The precautionary principle came under the international scanner just after its incorporation in the "London Conference of the Protection of the North Sea Conferences" in 1987.[1] It was then adopted by the UNCED under the Rio Declaration of 1992.[2] It is also without doubt that this principle has been widely debated and deliberated upon in the international academic platforms.[3] The reason for such a prolific academic scrutiny is that the principle has the capacity to change ongoing policies of the government or of its organs if it is not in consonance of the idea of protection of the environment. It can be substantiated by the fact

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[1] SECOND INTERNATIONAL CONFERENCE ON THE PROTECTION OF THE NORTH SEA: MINISTERIAL DECLARATION CALLING FOR REDUCTION OF POLLUTION in 27:3 INTERNATIONAL LEGAL MATERIALS 835-848, 838 (American Society of International Law., 1988).

[2] UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992), Principle 15.

[3] See James Cameron and JuliAbouchar, *The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protection of the Global Environment*, 14 B.C. Int'l & Comp. L. Rev. 1, (1991); Daniel Bodansky, *Scientific Uncertainty and the Precautionary Principle,*33:7, 4-44, Environment: Science and Policy for Sustainable Development (2005); M. MacGarvin, *The Implications of the Precautionary Principle for Biological Monitoring*, 49, 647-662 HelgolanderMeeresuntersuchungen(HelgolanderMeeresunters) (1995); Owen McIntyre and Thomas Mosedale, *The Precautionary Principle as a Norm of Customary International Law*, 9:2, 221, J. Envtl. L., Oxford University Press (1997); Sonia Boutillon, *The Precautionary Principle: Development of an International Standard*, 23, 429 Mich. J. Int'l L. (2002); A. Trouwborst, PRECAUTIONARY RIGHTS AND DUTIES OF STATES6-7 (MartinusNijhoff Publishers, 2006);ArieTrouwborst, *The Precautionary Principle in General International Law: Combating the Babylonian Confusion*, 16:2, RECIEL (2007); AgneSirinskiene, *The Status of Precautionary Principle: Moving Towards a Rule of Customary Law,* 4:118,349–364 Jurisprudence (2009).

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that the very object of the "precautionary principle" as defined in the "Rio Declaration" is preventing the environmental degradation by taking actions in cases of uncertainty of scientific proof about the existence of the threat.[4] Therefore it somehow directs the authorities to act knowing that there is uncertainty of the threat and there is a possibility that threat or risk or danger may not even culminate into reality. To a public official or a government of a state it would simply mean a roadblock to development and hence the prolific debate. In India the precautionary principle is an important principle of environmental law and it has been incorporated from developments in international regime and then finally statutorily adopted and this paper presents the academic arguments of the development mainly between the incorporation and the statutory recognition of the principle.

Firstly, the author of this paper takes this opportunityto establish the importance of detailed scrutiny and analysis of the judgments delivered by the courtsof any jurisdiction which is the sole reason of the birth of this article. The Faculty of Law, University of Delhi, my *alma mater*, from the very first semester engages the students in having a direct contact with the judgements which have been delivered by the Hon'ble Supreme Court of India to assist them in understanding the reasoning of delivering a judgment so that when they appear in courts, become judges and become scholars can apply the same reasoning and either provide a strong argument infavour of clients, decide the matter or the rights of the parties, write any article on a similar contemporary issue.It is the submission of the author that detailed analysis and scrutiny of judgments is losing grip among scholars and students of law.

Apart from the statutes relating to the environment that we refer, in the study of environmental law, some of the landmark judgements delivered from 1985 to 2007 which still have not lost its tas they are not only precedents but their*ratio*(s) have gained the statuses as "*a settled law*" and thus have more binding authority . To put it simply in the context of this article it can be said that the judgements which were delivered in the abovementioned time period made us aware of the various other elements of the environmental law which are called concepts, doctrines and principles which are still applied to restrain the state and even individuals from degrading the environment. Differently put, the "concept of sustainable development"[5], the "public trust doctrine"[6] and the "polluter pays"[7] and "precautionary

[4]Definition "
[5]Vellore Citizens Welfare Forum v Union of India, https://sci.gov.in/jonew/judis/15202.pdf; AIR 1996 SC 2715.
[6] (1997) 1 SCC 388.

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principle"[8]were recognised by these judgments and have also been held to be part of the law of the land as far as India is concerned. Finally, after of about 14 years of the *Vellore case* which by its judgement recognised the precautionary principle was then statutorily recognised by passage of the National Green Tribunal Act.[9]

However, it is submitted that though the efforts of the "Supreme Court of India" in recognising and implementing the precautionary principle establishes India as a leading state with respect to any other country, except the European Union which can be said to be a parallel, it raises some issues, though not relevant for the decisions made thereinby the court but relevant for those who consider the municipal law separate or distinct from international law.[10]To delve in this area requires retracing of the timeline and hence the following parts of this piece discusses those developments to bring out one of the issue.

2. TIME TRAVEL: BACKWARDS.

2.1 IN THE YEAR 2005.

In 1995 Research Foundation For Science Technology and Natural Resources Policy filed a petition for directing the government to regulate dumping of hazardous waste by ship breaking industry, claiming that it results into serious and irreversible damage to the environment and the court ordered High Powered Committee (HPC) to be constituted and to submit its report in this regard.[11] The committee, headed by Prof M.G.K. Menon, submitted its report and it resulted into various directions which were issued by the Court.[12]

However on 05/01/2005 in a detailed order and in reference to the judgment of the court in Vellore case stated that the same court in "*Research Foundation For Science Technology National Resource Policy v. Union of India 2003(9) SCALE 303)*" while examining the "precautionary principle and polluterpays principle"stated that:

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7 AIR 1996 SC 1446.
8 Vellore Citizens, *supra* note 5.
9 National Green Tribunal Act, 2010, Section 20.
10 Dualism and Monism in relation to municipal and international law.
11 2007 (10) SCALE 594.
12 Including the case at hand the discussed judgment are, dated 6th of September 2007 https://sci.gov.in/jonew/judis/29507.pdf, dated 11th of September 2007 https://sci.gov.in/jonew/judis/29517.pdf, dated 6th of July 2012 https://sci.gov.in/jonew/judis/39386.pdf, dated 30th July 2012 https://sci.gov.in/jonew/judis/39436.pdf,

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> "*These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum's case that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) and Ors. [(1996) 5 SCC 718] where, after referring to the principles noticed in Vellore Citizens' Welfare Forum's Case, the same have been explained in more detail with a view to enable the Courts and the Tribunals or environmental authorities to properly apply the said principles in the matters which come before them.*"[13]

As stated it means that the "precautionary principle" was taken to be a "customary international law" by this court and it interpreted the Vellore and the A.P. Pollution case to substantiate its argument. Let us see what happened in the A.P. Pollution Case.

2.2 IN THE YEAR 1999/2000

In the year 1996 some industries required consent for the establishment of their branches to produce castor oil near the Usman Sagar and Hussain Sagar in the city of Hyderabad.[14] This consent was to be granted by the Andhra Pradesh Pollution Control Board. The industries applied for their consent but to their dismay the consent application was rejected by the Board stating that the application filed fall in the prohibited list as there was a notification which restricted the establishment of red category industries within the radius of 10 kms of the two lakes mentioned above.[15] The industry then approached the government and was granted an exemption from the effect of the notification particularly on those industries. They again filed the application for the grant of the consent but again to their dismay the board effected the same fate on that very application.[16] Aggrieved, naturally to say so, the industries approached the Appellate Authority created under the Water Pollution Act of 1974. The appellate authority in its order reversed the decision of the Board. Aggrieved, now the Board, filed for the review of the decision in the High Court of the state.[17] The Hon'ble High Court affirmed the order of the appellate authority by observing that the "matter was highly

[13] Research Foundation for Science, *Supra* note 7 at 11,12
[14] A. P. Pollution Control Board v N.V. Nayudu, https://sci.gov.in/jonew/judis/17022.pdf, AIR 1999 SC 812,
[15] *Id.* at 3
[16] *Id.* at 4
[17] *Id.* at 5

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technical" and hence "no*interference"*,was "called for".[18] Aggrieved, the Board, knocked the doors of the Supreme Court to administer justice in the matter.

The Supreme Court in this particular proceeding did not decide the matter but farmed some important guidelines to be followed by the Boards, Appellate Authorities and also the High Court in some way. More importantly this court framed the issues for this particular dispute to be disposed by the National Environment Appellate Authority.[19] In the process of framing the issues it referred to the precautionary principle. It would be pertinent to mention here that the contention of the industries was that they had taken all necessary measures into consideration and were relying on a technological advancement which would assist the industries in making it a "*Zero Discharge*"industry.[20]Some scientific evidence of such a technology was presented by the industries which were to be used by the industries. The court after hearing the parties delivered that it was the inadequacies of science which had resulted in the acceptance or recognition of the "precautionary principle in international law".[21] In order to emphasise on the uncertainty of science it laid down the famous "*assumption and presumption*" with regard to science and provided the "*paradigm shift*" in the approach towards environment protection."[22]

From the perusal it becomes more than clear that it was the intention of the court to realign the contemporary domestic thinking about the protection of the environment in accordance with the recent developments in the international regime. However, apart from the above observation of the court it referred to the judgement of the *Vellore Case* wherein the precautionary principle was held to be the "part of the law of the land".[23] Further it recognised one more observation of the court in the Vellore case and stated that:-

> "*The Court observed that even otherwise, the above said principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law*."[24]

Therefore the customary status of the precautionary principle can be seen to be conferred by the Vellore judgment as interpreted by the A.P. Pollution judgment. Let us now see what happened in the Vellore case.

[18] *Id.* at 6
[19] *Id.* at 20,21
[20] A.P. Pollution, *supra* note 5
[21] *Id.* at 11,12.
[22] *Id.* at 11.
[23] *Id.* at 10.
[24] *Id.*

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2.3.IN THE YEAR 1996

An NGO aggrieved by the situation in the city of Vellore filed a writ petition under Article 32 of the Constitution of India for the protection of the fundamental right of clean and healthy environment under Article 21. The facts as basis for reaching the Supreme Court was that there were numerous "Tanneries" in the region and they were creating nuisance by unregulated and untreated discharge of toxic wastes of the tanneries in the nearby regions which was the settlement for people living in the vicinity. The result of the unregulated discharge was that the area had become polluted with the soil and underground water made unfit for production and consumption respectively.[25] This court in *Enviro Legal Action case* had held that polluter pays principle can be used alternatively with the absolute liability principle enunciated in the *Oleum Gas Leak case* to impose pecuniary liability of restoring the environment and also payment of compensation to the victims of the pollution or environmental damage.[26] However, it was a fact in the*Enviro Legal Action case* that the erring industries had already been closed down after a revolt by the people of Bicchadi village and as a result the question of closing the industries did not come up as a direction. Therefore, the only legal question which was to be decided in the *Enviro Legal case*was the question of who is liable and to what extent.The erring industries dealt in the production of an acid which was mainly for exports and its contribution to the economy of the country was negligible and as the industries were not running or active anymore, the question of future pollution or further degradation of the environment did not arise.[27] But in this case the tanneries could not be ordered to be closed down as they were contributing a lot to the development of the country and also that these industries were labour intensive and such a direction could result in loss of employment of the large number of persons engaged in these industries leading to further economic and social loss. Though it was important to continue the running of the industries it was also important to prevent the future environmental degradation and thus the concept of sustainable development was referred to by the Supreme Court.[28] The court discussed the concept of sustainable development in connection with the polluter pays principle and the precautionary principle declaring that these two principles also form an essential part of the concept.[29] The court in this case also stated that the court was of

[25] Vellore Citizens, *supra* note 5.
[26] Enviro Legal Action, *supra* note 7.
[27]Id. ¶ 57.
[28] Vellore Citizens, *supra* note 5 at 11.
[29]*Id.*

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the opinion that sustainable development as concept has been accepted as a customary law, though it is submitted by the author here that it is still not clear whether it can be stated as such. The following para of the judgement is relevant for the above statement:

> "*We have no hesitation in holding thatSustainable Development‖ as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists*."[30]

As said above the court then proceeded to state that the precautionary principle was an essential part of the sustainable development and then discussed some of the provisions of the Constitution of India, the Environment Protection Act, the Water Act and the Air Act.[31] It was then held by the court that principle of precaution can be implied under these provisions and the Acts and was declared to be the law of the land.[32]

The A.P Pollution case, which we discussed in the preceding part of this article, recognised one of the observations of the case which was rewritten by the court in that case for the claim for the customary status of the principle. For the perusal that observation is:

> "*15. 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 the domestic law*."[33]

3. THEDISSECTION.

The preceding part of the paper outlines the development of the law relating to the precautionary principle with a presentation of the facts under which the courts have applied the principle. Barring one example, of *Narmada BachaoAndolan case*[34]where the principle was not applied by the courts even after strong arguments in favour of the principle but it still caught the eye of the minority judgment, the principle has been applied to uncountable instances and there can be no question raised on the importance of the principle in law and policy regarding the environmental protection. However when we look carefully the three cases which have been outlined in this paper it will appear that the customary status conferred upon by the Supreme Court is not without doubt. In order to appreciate the forgoing

[30] *Id.*
[31] *Id.* at 11-13.
[32] *Id.* at 13
[33] *Id.*
[34] AIR 2000 SC 3751.

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submission it is important to take into consideration two aspects which have been discussed in this part of the paper.

3.1. CUSTOMARY INTERNATIONAL LAW.

Any student or scholar of international law when asked about the customary international law will state that there are two essential requirement for it to be a source of law recognised under the Statue of the International Court of Justice.[35] Those are "State Practice" and "*Opinio Juris*".[36]Therefore the law relating to the customary international law or also termed as general international law as developed mainly from the "*SS Lotus case*", "*Anglo Norwegian Fisheries case*", "*North Sea Continental Shelf case*" *and* "*Nicaragua case*" needs to be assessed on the two grounds beforementioned.[37] In 2018 the International law Commission has also submitted the each of the element is necessary to be found out to confer a law such a status and either one of the two singly cannot prove the existence of customary international law.[38]

However, a perusal of the judgments of the Vellore case does not find any evidence brought for *state practice* or *opiniojuirs* and neither these two words are mentioned anywhere in the whole judgement. Neither in the A.P. Pollution case there is any mention of the same. It is the reason why LavanyaRajamani when referring to these judgements call it intellectually sloppy.[39] The author also agrees to the claim of LavanyaRajamani that *Vellore case* did leave the question as to the customary status of the precautionary principle "open ended" which is taken to be conclusive by A.P.Pollution case and this can be clearly seen when the observation of the Vellore judgment is restated in the A.P. Pollution case.[40] The two observations are again brought here for comparison:-

Vellore Case:

[35] 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945), art. 38.
[36]*See* art. 38 (evidence of "general practice" "accepted as law).
[37]*See* Lotus Case (France v. Turkey), PCIJ, Ser. A, No. 10 (1927);Anglo-Norwegian Fisheries Case (United Kingdom v. Norway), ICJ Rep. 1951, p.116;North Sea Continental Shelf Cases, ICJ Rep. 1969, p. 3; Nicaragua Case (Nicaragua v. USA) ICJ Rep.1986, p. 14.
[38]A/73/10, http://legal.un.org/docs/?path=../ilc/texts/instruments/english/commentaries/1_13_2018. pdf&lang=EF
[39]LavanyaRajamani, *The Right to Environmental Protection in India: Many a Slip between the Cup and the Lip*?, 16:3 RECIEL 274-286, 282 (2007)
[40]*Id.*

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> "*15. 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 the domestic law.*"[41]
>
> A.P. Pollution Case:
>
> "*TheCourt observed that even otherwise, the above said principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law.*"[42]

Form the perusal it is apparent that the second observation removes the word "once" and then changes "would be" to "should be". The act of removing these words changes the meaning of the sentences made in the earlier judgment and hence which was left open for future was accepted as the present status by the latter judgment. Finally, what the Research Foundation Case takes note of is not the observation of the *Vellore Case* but of the changed sentence stated in the *A.P. Pollution case.*

3.3.INTELLECTUALLY BUT SLOPPY.

In this part the author is in disagreement with the statement made by Professor V. G. Hegde in 2013 in "International Law in the Courts of India" where he states that the court in Vellore Case accepted precautionary principle as customary international law while discussing the transformative and incorporative methods of recognition of international law.[43] He states that the court accepted sustainable development as a customary law and then states the very contentious observation mentioned in the Vellore case to conclude his argument.[44] However when we see the judgment in its entirety the sustainable development is mentioned as a concept which then is stated to include the principles of precaution and polluter pays within the concept. The "no hesitation" observation of the court is in reference to the sustainable development argument but not in relation to the principles of precaution and the polluter pays and does leave it open to be decided in future about the customary status of "these principles" and thus "once". Again even before the above statement he in 2010 in "Indian Courts and International law" while showing the ambit or the extent to which courts accept international

[41] Vellore Citizens, *supra* note 5 at 13.
[42] A.P. Pollution, *supra* note 5 at 10.
[43] V. G. Hegde., International Law in the Courts of India, 19 Asian Yearbook of International Law, 63-87, 78 (2013)
[44] *Id.* 77

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law stated about the "long and arduous" process of the formation of the customary international law but believed the fact that the court had in fact conferred such status to the precautionary principle.[45] He believed such because declaration by jurists are also having persuasive value, as mentioned by him, and as mentioned in the Article 38 of the ICJ Statute too.[46] However, it is again submitted here by the author of this paper that the court did leave the determination open. The next paragraphs will substantiate the submission.

As mentioned earlier it was LavanyaRajamani who stated that the judgement appears to be intellectually sloppy but it is my submission that it is intellectual but sloppy. The forgoing paragraph and the statement can be proved by the detailed analysis of the A.P. Pollution case. In the case the court ordered the National Environmental Appellate Authority to submit a report based upon the order of reference given by the court. Before this one important fact was that science as a means was argued by the industries to cater to the problem of pollution. The court with the intention to reject such an evidence, which was stated to be "highly technical" by the High Court in the case, reaffirmed the basis that "inadequacies of science had led" to the emergence of the precautionary principle.[47] The Vellore case did not result in the closure of the tanneries as they were noted to be part of countries economic progress and it was directed by the court to set up treatment plants before discharging the effluents. Here, in the A.P. Pollution case, the danger was more than the benefit which would accrue after the setting up of the industries near the two lakes and therefore consent to establish the industry would have been a difficult answer. In other words, the court needed to find force in the argument that precautionary principle was really a law of land consolidating upon the observation of the Vellore Case. Therefore it chose to turn the "open ended" observation to an conclusive statement. For this it required some evidence in support.

Interesting is the fact that the A.P. Pollution judgment refers to only two documents i.e. an article by Charmian Barton[48] and a report of Dr.Sreenivasa Rao Pemmaraju. The court uses the piece by Barton to explain the importance, shift and the elements of the principle and uses the report to confer the status of customary international law to the precautionary principle.

[45] V. G. Hegde., *Indian Courts and International law,* 23 LJIL, 53–77, 69 (2010)
[46] ICJ STATUTE, *supra* note 35 (*judicial decisions and the teachings of the most highly qualified publicists of the various nations*)
[47] Lavanya, supra note 39 at 282 (*at best intellectual sloppiness*)
[48] Charmian Barton., The Status of the Precautionary Principle in Australia: Its Emergence in Legislation and as a Common Law Doctrine, 22 Harv. Envtl. L. Rev. 509 (1998).

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At this juncture it is reiterated that A.P. Pollution case had changed few words of the observation of the Vellore case as explained earlier and follows the same pattern when reading the report of Dr.Sreenivasa Rao Pemmaraju. The report stated that:-

> *"Summing up the legal status of the precautionary principle, one commentator characterized it as "evolving". He further suggested that even though **a good argument could be made** that a principle which has received sufficient confirmation in various international treaties **may be regarded** as having acquired the status of a customary principle of international law, "the consequences of its application in any potential situation will be influenced by the circumstances of each case".*(At para 184 at page 218 of the report).[49]

However when the court sums it up then it states it like this:-

> *"However, summingup the legal status of the precautionary principle, one commentator characterised the principle as still evolving for though **it is accepted** as part of the international customary law,the consequences of its application in any potential situation will be influenced by the circumstances of each case".*[50]

Therefore it appears that the court was very much aware that the customary status for the precautionary principle was still an argument, at least at that moment in time, and not a conclusive affirmation in the international regime. It chose to take it as already conferred knowing that it has not been conferred and hence a deliberate act and may be influenced by the importance of the principle which also provided the court with a jurisdiction with complete discretion for justice to be done in the environmental matters.

4. THE INTERNATIONAL REALITY.

4.1.THE YEAR 2006

The WTO Dispute Settlement Body, the panel in this case, in a dispute between USA and EU regarding the restriction on imports into the European Union of products collectively called

[49] PemmarajuSreenivasa Rao., FIRST REPORT ON PREVENTION OF TRANSBOUNDARY DAMAGE FROM HAZARDOUS ACTIVITIES IN INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (PREVENTION OF TRANSBOUNDARY DAMAGE FROM HAZARDOUS ACTIVITIES), YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, Volume II Part One, A/CN.4/SER.A/1998/Add.1 (Part 1) Documents of the fiftieth session, (A/CN.4/487 and Add.1, 18 March 1998); https://legal.un.org/ilc/publications/yearbooks/english/ilc_1998_v2_p1.pdf
[50] A.P. Pollution, *supra* note 5 at 12

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as "biotech products" which were modified foods for consumption was asked to decide the validity of the restrictions.[51] It referred to the SPS Agreement wherein the argument of the European Communities was that precautionary principle is present in the agreement and is binding upon the USA as it has acquired a status of a customary international law. However the panel referred to a decision of the appellate body in 1998 in the Beef Hormones case where it was observed that

> "*the status of the precautionary principle in international law continues to be the subject of debate among academics, law practitioners, regulators and judges. The precautionary principle is regarded by some as having crystallized into a general principle of customary international environmental law. Whether it has been widely accepted by Members as a principle of general or customary international law appears less than clear.*"[52]

In addition to the above the appellate body also stated that the principle lacked "authoritative formulation".[53] After taking note of this observation the panel in the present dispute stated as follows:-

> *"Since the legal status of the precautionary principle remains unsettled, like the Appellate Body before us, we consider that prudence suggests that we not attempt to resolve this complex issue, particularly if it is not necessary to do so"*.[54]

4.2.THE YEAR 2010

The International Court of Justice was asked to settle a dispute regarding threat posed by the construction of Pulp Mills on the Uruguay river and the relief asked by Argentina was decommissioning of the plans for the erection of the mills.[55] It was at this juncture when asked by Argentina to apply the reversal of burden of proof element of the precautionary principle the court stated as follows:-

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[51] European Communities - Measures Affecting the Approval and Marketing of Biotech Products - Reports of the Panel WT/DS291/R,WT/DS292/R,WT/DS293/R.
[52] European Communities - EC Measures Concerning Meat and Meat Products (Hormones) - AB-1997-4 - Report of the Appellate Bod WT/DS26/AB/Rat ¶ 123 at 45,46.
[53] *Id.*
[54] EC Biotech, *supra* note 50 ¶ 7.89 at 340,341.
[55] Pulp Mills on the River (Uruguay, Argentina v Uruguay) ICJ GL No 135, [2006] ICJ Rep 113.

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> *".the reversal of the burden of proof .. the Court considers that while a precautionary approach may be relevant in the interpretation and application of the provisions of the Statute, it does not follow that it operates as a reversal of the burden of proof".*[56]

5. CONCLUSION.

The international reality of the status at least in the year 2006 and 2010 is still not clear if we refer to these judgments.[57] However it was observed that scholars and the court after the judgment in the Vellore case have taken the principle as a customary international law. Therefore the main point of the argument is that the Vellore case referred to the international developments to state that the precautionary principle may have that status in future whereas the judgement in the A.P. Pollution case refers to the international developments and emphasising on the paradigm shift provides conclusively that such a status have been conferred on the principle internationally. The decisions of the International Court of Justice has said that the principle "may be" relevant and in the process removed the very quotient of reversal of burden of proof provided in the Vellore and A.P. Pollution caseand held that the oldest principle of "one who alleges has to prove" is the main principle to be followed. In the year 2006 and that will be almost ten years after the Vellore judgment and six years after the A.P. Pollution judgment the WTO has stated that the status of the principle is still not clear.

It would not be wrong, looking at the facts displayed in this paper, to state that the relevance of the precautionary principle in the environmental jurisprudence is similar to a serendipitous act. In order to understand this it is important to see the developments with regard to the principle in the dispute resolution, in areas of environment, in India. Such was the popularity of the principle after the judgment of the Vellore and the A.P. Pollution judgement that one whole chapter was dedicated about the uncertainty of science in the 186th Report of the Law Commission which recommended the setting up of the Environment Court in India. Later when the National Green Tribunal Act was passed in the year 2010 it specifically recognised the principle for perusal for resolution of disputes. The National Green Tribunal has indeed taken the principle even further in its recognition and has resulted in some very important judgements in the *Sterlite Industries case*where anticipation of threat was recognised for

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[56]*Id.* ¶ 188 at 71
[57]For details see Akash Anand, Evolution and Development of Precautionary Principle in Furtherance of Environment Protection, Thesis to be submitted in Faculty of Law, University of Delhi.

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taking actions against such threats, *Society for Protection of Biodiversity case*where the recent amendment to the Environment Impact Assessment notification of 2006 was partially held to be invalid and more importantly the *Goa Foundation case*which provides the most important jurisprudence where it says inaction by responsible authorities is a breach of the precautionary principle.[58]Further if we take into consideration the European Union, a conglomerate of 27 Nations, have recognised the precautionary principle as a general international law.[59] Apart from the area of environment they apply the precautionary principle even on issues of public health and have regulated trade in food under the principle and the leading example is the 1998 judgement of the European Court of Justice in the Bovine Spongiform case where the export ban of bovine meat from the United Kingdom was held to be valid.[60] The author of this paper is also presenting in another paper, under publication, that India has also recognised the precautionary principle in the Food Safety legislation of 2006.[61]

[58]For details see Akash Anand, Evolution and Development of Precautionary Principle in Furtherance of Environment Protection, Thesis to be submitted in Faculty of Law, University of Delhi
[59]Communication on the Precautionary Principle,COM_2000_0001_FIN, ¶ 4 at 10;https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52000DC0001.
[60] United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities C-180/96, European Court Reports 1998 I-02265 ECLI, ECLI:EU:C:1998:192.
[61]Akash Anand, Environment and Public Health: Precaution and Food Safety in India,(under publication).

