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Principles of international environmental law and judicial response in India

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Abstract
There are some basic principles of international Environmental Law and some of them are now customary international law. These principles should implement in the domestic legal system for the sake of environmental interest. But there is a problem of the countries like India to implement these principles because of inadequate national legal mechanism. In this arena the judiciary of these countries can play an important role by incorporating these principles with the harmonious explanation of the existing legal framework. However it is important to mention here that India is also trying to adopt such principles by either amending its constitution or by enacting new national legislation regarding environmental protection. So this paper seeks to analyze briefly various principles of international environmental law and the application of the principles of International Environmental Law in the domestic legal system of India. In some extent this paper has tried to describe the environmental synopsis of India. As little of the study suggests, the main purpose is to expose what are the legal stipulations as regards the principles of International Environmental Law in the national law of India and also in some cases this paper has taken initiative to compare with other south Asian Countries regarding implementation of environmental principles in the domestic legal system. An attempt has been taken by this paper to examine the role of the Judiciary relating to the implementation of such principles.

Keywords: India, constitution, international environmental law, judiciary, legal framework, principle, protection, principle, protection

1. Introduction
This article attempts to analyze the issues relating to the linkages between international environmental law principles and their applications in domestic law by the state courts in India. Global Environmental crisis has questioned the modernity and its values. The very existence and survival of man and other forms of life have become a matter of deep concern.

The global concerns for environmental crisis have led the evolution and remarkable growth of international environmental law [1]. Like international human rights law, discipline of international environmental law is one of the most important phenomena in post Stockholm Conference (1972) period. The growth of international environmental law has compelled us to revisit to our existing political, economic and social values and structure both at national and international levels.

2. Sources of international environmental law
Under International law traditional sources of 'hard law', which establish legally binding obligations, there are rules of 'soft law', which are not binding per se but which in the field of International Environmental law have played an important role and have given rise to a large body of International legal obligations which relate to the protection of the environment.

The traditional sources of International legal obligations which equally apply in the field of the environment comprise 'the body of rules which are legally binding on states in their intercourse with each other. These rules derive their authority, as per Article 38 (1) of the Statute of the ICJ, from four sources: treaties, International custom, general principle of law recognized by civilized nations, and subsidiary sources. The main "subsidiary sources" are the decisions of courts and tribunals and the writings of jurists. Apart from the ICJ the other international courts dealing with environmental issues are the European Court of Justice, the European Court of Human Rights, GATT Dispute Settlement Panels and international arbitral tribunals. "National" courts and tribunals have often interpreted international obligations in environmental law field and jurisprudence of these courts is likely to become an important source in the development of international environmental law. According to Prof. J.G. Starke, "the decisions of state courts may, under the same principle as dictate the formations of customs, lead directly to the growth of customary rules of international law [2].

2.1 General principles and rules of international environmental law
General principles of international environmental law reflect in treaties, binding acts of international organizations, state practice, and soft law norms. They are general in the sense that they are applicable to all members of the international community in respect of the protection of the environment. According to Prof. Philippe Sands [3] in environmental law context, the main general rules and principles which have broad support and are frequently endorsed in practice are:

1. The obligation reflected in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration, namely that states have sovereignty over their natural resources and the responsibility not to cause environmental damage;
2. The principle of preventive action;
3. The principle of good neighborliness and international co-operation;

4. The principle of sustainable development;
5. The precautionary principle;
6. The polluter-pays principle; and
7. The principle of common but differentiated responsibility.

2.2 Legal status of general international environmental principles

Prof. Philippe Sands has opined that in the absence of judicial authority and conflicting interpretations under state practice it is frequently difficult to establish the parameters or the precise international legal status of each general principle or rules. The legal consequences of each in relation to a particular activity or incident must be considered on the facts and circumstances of each case and take account of several factors. Some general principles or rules may reflect customary law, other may reflect emerging legal obligations, and yet others might have an even less developed legal status. Of these general principles and rules only aforesaid Principle 21 of Stockholm, Principle 2 of Rio and the good neighborliness are sufficiently substantive to be capable of establishing the basis of an international cause of action i.e. to give rise to an international customary legal obligation the violation of which would give rise to a legal remedy. The status and effect of the others remains inconclusive, although they may bind as treaty obligations or, in limited circumstances, as customary obligations. Whether they give rise to actionable obligations of a general nature is open to question.

Prof. Sands is also of the view that the international community has not adopted a binding international instrument of global application which purports to set out the general rights and obligations of the international community on environmental matters. No equivalent to the Universal Declaration on Human Rights or the International Covenant on Civil and Political Rights or Economic and Social Rights has yet been adopted.

2.3 International law and state courts

The environmental decisions of the national / state courts and international environmental law have influenced each other [4]. The decisions of the state courts which are 'subsidiary sources' under Article 38(1) of the statue of the ICJ, may lead directly to the growth of 'customary' rules of international law. Similarly, the state courts have often developed national environmental jurisprudence by taking inspirations and helps from the international environmental laws. In the light of aforesaid development, hereinafter, an attempt has been made to analyze the linkages between certain international environmental law principles and their application in domestic law by the state courts in India.

3. International law and the Indian constitutional scheme

3.1 Internal Law and the Distribution of Legislative Power

Article 245 of the Constitution of India deals territorial Jurisdiction of the legislative power, confers the power to the parliament to make laws for the whole or any part of the territory of India. Article 246 deals with the subject matter of laws, empowers the parliament to have 'exclusive' power to make laws with respect to the Union list. The parliament has exclusive power to legislate on all conceivable international matters which have been enumerated under the Union List. Under this list main entries relating to international matters are: foreign affairs (entry 10), United Nations Organization (entry 12), participation in international conferences, associations and other bodies and implanting of decisions made thereat (entry 13), and entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries (entry 14) etc. Under Article 253 the parliament has exclusive power to make any law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. These provisions suggest that the parliament has sweeping power to legislate on international matters. However, this power of the parliament, according to the Supreme Court, can-not override the fundamental rights enumerated under Part III of the constitution [5]. Under the constitutional scheme the union government's executive power is co-extensive to the legislative power of the parliament (Article 73). According to the Supreme Court treaty making is regarded as an executive power rather than legislative activity [6].

3.2 International law and constitutional duty

Though Part IV (Article 37 to 51) of the Indian Constitution, known as the Directive Principles of State Policy, is not enforceable by any court but principles contained therein are fundamental in the governance of the country and it "shall" be the duty of the State to apply these principles in making laws (Article 37). Article 51 specifically deals with international law and international relation, inter alia, provides that the 'state shall endeavor to foster respect for international law and treaty obligations.' In *Telephone Tapping Case* [7] the Supreme Court by invoking Article 51 developed right to privacy as a fundamental right under Article 21. Here, the court took inspiration from the privacy provision of the Covenant on Civil and Political Rights. However, in environmental matters, it appears, no such use of Article 51 has been done by the courts. Here, it may be recalled that the courts have invoked Article 48-A (duty of the state to protect environment) to develop a fundamental right to environment as part of the right to life under Article 21 [8].

3.3 Statutes enacted in India pursuant to the international environmental law

In India many important environmental statutes have been enacted to ratify or to fulfill national obligations under the international environmental treaties, conventions and protocols etc.

Hereinafter, an effort has been made to present a table which contains a list of international environmental laws and relevant Indian environmental statutes showing close linkages between the same.

Table 1

S. No.	International Environmental Laws	Relevant Indian Environmental Statutes
1.	The Stockholm Conference, 1972	The Air Act, 1981
2.	The Stockholm Conference, 1972	The Environmental Protection Act, 1986
3.	The Rio Conference, 1992	The Public Liability Insurance Act, 1991

4.	The Rio Conference, 1992	The National Environmental Tribunal Act, 1995
5.	Convention of Biological Diversity, 1992.	The Biological Diversity Act, 2002
6.	Convention of International Trade in Endangered Species of Wild Fauna and Flora, 1973.	The Wild Life Protection (Amendment) Act, 2002

Although the detailed discussion on executive ratification or legislative exercise in India, in pursuant to the international environmental obligations, is outside the main objective of this article. Yet, it would be relevant to briefly point out, with approval, the stand taken by Prof M.K. Ramesh that in India such ratification or enactment has often been done either without necessary national preparation or under compulsion to conform to the conditionalities of international financial institutions like World Bank [9]. The ratification or enactment of environmental statues in India, without real commitment to implement the same by the executive, has resulted into judicial interventions and activism in the field of environmental law.

4. International law and Indian courts

4.1 Role and status of the Indian judiciary

The role of judiciary depends on the very nature of political system adopted by a particular country. This is the reason that role of judiciary varies in liberal democracy, communist system and countries having dictatorship. The role of judiciary has been important in liberal democracies like India. Constitution of India in fact took inspiration from US Constitution and therefore adopted similar concept of judicial review. In independent India, history of judiciary, judicial review and judicial activism has been a fertile area for legal researchers. It is now a well-established fact that, in India, in view of legislative and executive indifferences or failures, the role of judiciary has been crucial in shaping the environmental laws and policies. The role of the Indian Supreme Court may be explained quoting the views of Professor S.P. Sathe and Professor Upendra Baxi two leading academics who have extensively written on the role of judiciary in India. Professor Sathe has analyzed the transformation of the Indian Supreme Court "from a positivist court into an activist court". Professor Upendra Baxi, who has often supported the judicial activism in India, has also said that the "Supreme Court *of* India" has often become "Supreme Court *for* Indians" [10]. Many observers of the Indian Supreme Court including Professor Sathe and Baxi have rightly opined that the Indian Supreme Court is one of the strongest courts of the world [11].

Power and judicial activism of the Indian courts have resulted into a strong and ever expanding regime of fundamental rights. Stockholm Conference on Human Environment, 1972, has generated a strong global international awareness and in India it facilitated the enactment of the 42nd Constitutional Amendment, 1976. This amendment has introduced certain environmental duties both on the part of the citizens [Article 51A (g)] and on the state (Article 48-A).

Under the constitutional scheme the legal status of Article 51(A)-(g) and 48-A is enabling in nature and not legally binding per se, however, such provisions have often been interpreted by the Indian courts as legally binding. Moreover, these provisions have been used by the courts to justify and develop a legally binding fundamental right to environment as part of right to life under Article 21 [12]. Hereinafter, an effort has been made to demonstrate that how both the 'soft' and 'hard' international environmental laws have been used by the Indian courts to develop a strong environmental jurisprudence in domestic law.

The judicial adoption of international environmental law into domestic law in India has not been done overnight rather it has been gradual. In order to understand the judicial process of such adoption the present discussion can be divided into the following three periods [13]:

- First period of Judicial Adoption (1950-1984)
- Second period of Judicial Adoption (1985-1995)
- Third period of Judicial Adoption (1996 onwards)

4.2 First period of judicial adoption (1950-1984): Traditional dualist approach

During the period of 1950 to 1984 the Indian courts have adopted a traditional dualist approach that treaties have no effect unless specifically incorporated into domestic law by legislation. In *Jolly George Verghese* v. *Bank of Cochin* [14] the Supreme Court upheld the traditional dualist approach and gave overriding effect to the Civil Procedure Code over International Covenant on Civil and Political Rights. However, the court in this case, minimizes the conflict between the Covenant and domestic statue by narrowly interpreting the Civil Procedure Code.

As for as the customary international law is concerned, during 1950-84, there was hardly any legislative exercise in the name of customary international law.

The Indian judicial approach relating to the legal status of the customary international law was clarified in *Gramophone Company of India Ltd.* v. *Birendra Bahadur Pandey* [15]. In this case the court relied upon the English decisions and endorsed the doctrine of incorporation. According to this doctrine rules of international law are incorporated into national law and considered to be part of national law unless they are in conflict with an Act of the parliament.

4.3 Second Period of Judicial Adoption (1985-1995) Growing influence of international environmental law

During this period international environmental law was used to interpret the character of state obligations with respect to the right to life (Article-21), which has been interpreted to include the right to a healthy and decent environment.

Treaties

Before 1996 there were very few references to international environmental treaties though by 1990 India was party to more than 70 multilateral treaties of environment significance [16].

In *Asbestos Industries Case* [17] the Supreme Court extensively quoted many international laws namely ILO Asbestos Convention, 1986, Universal Declaration of Human Rights, 1948, and International Convention of Economic, Social and Cultural Rights, 1966. In this case the court dealt the issues relating to occupational health hazards of the workers working in asbestos industries. The court held that right to the health of such workers is a fundamental right under article 21 [18] and issued detailed directions to the authorities [19]. In *Calcutta Wetland Case* [20] the Calcutta High Court stated that India being party to the Ramsar

Convention on Wetland, 1971, is bound to promote conservation of wetlands.

Soft law standards

The Stockholm Declaration, 1972 and the Rio Declaration, 1992 have been considered milestones in the development of international environmental law. Though these two declarations have often been characterized as 'soft' law but their impacts both at international and domestic levels, have been profound. In India, the post Bhopal Mass Disaster (1984) era was a creative period for environmental jurisprudence. During this period, in landmark *Doon Valley case* [21], the Supreme Court dealt with the impact of mining in the Doon Valley region and through its orders impliedly generated a new fundamental "right of the people to live in healthy environment with minimal disturbance of ecological balance [22]. In this case there were series of orders and in one of its orders the court recognized the influence of the Stockholm Conference by accepting that this "conference and the follow-up action thereafter is spreading the awareness [23]. Again, in *Kanpur Tanneries Case* [24] the Supreme Court extensively quoted the Stockholm Declarations and strengthened the then nascent fundamental right to environment in India. In this case the court gave preference to 'environment' over 'employment' and 'revenue generation'. During this period the Rio Declarations, 1992 was also cited in the *Law Society of India case* [25].

During this period of 1985-1995, according to Prof. Anderson, the said soft laws were invoked by the court simply to make the general point that environment should be protected. The use and role of soft laws was 'secondary' rather than 'substantive' [26]. The courts were just using soft law standards to evolve and strengthening the fundamental right jurisprudence under Article 21. In fact, international environmental law played primary and substantive role in the next period starting from the year 1996.

4.4 The third period of judicial adoption (1996 Onwards): A new approach/substantive use of international environmental law

4.4.1 Customary international law and the *Vellore Case* (1996)

In contrast to its previous caution during 1985-1995 periods, the Supreme Court adopted a more robust attitude to customary international law in the year 1996 [27]. In the year 1996 the Supreme Court, led by an activist green judge-Justice Kuldip Singh, inaugurated a new environmental jurisprudence in historic *Vellore case* [28] and invariably applied the ratio of this case in a series of other landmark environmental cases. In all such cases international environmental law was used 'substantively' and the Supreme Court developed a unique domestic environmental jurisprudence by blending the Indian environmental law with the international environmental law. Hereinafter, an effort has been made to discuss important cases of this period and their outcome.

In *Vellore case* the court considered a public interest litigation highlighting discharge of toxic waste and polluted water from the large number of tanneries in the State of Tamil Nadu. A three judges' bench led by Justice Kuldip Singh adopted a very strict stand against the polluting tanneries. In this case the court reviewed the history of the concept of sustainable development under international law. In this connection the court briefly referred important legal developments such as the Stockholm Conference 1972, Burndtland Commission Report, 1987, Caring of the Earth Report, 1991, Rio Conference, 1992, Convention on Climate Change, 1992, Convention on Biological Diversity, 1992 and Agenda -21 (A programme of Action for Twenty-first Century) etc. The important legal findings of the *Vellore case*, relevant for this article, are summarized below.

1. The court held that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of customary international law though its salient features are yet to be finalized by the international law jurists. (p. 658, Para 10, *supra* note 25).
2. The court was of the view that "The precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development." (*ibid*., p. 658, Para 11).
3. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. (*ibid.*, pp. 659-660, Paras 13 & 14).
4. According to the court, "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. It is almost an accepted proposition of law that the rules 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" [29]. (*ibid.*,p. 660, Para 15).

4.4.2 Role of *Vellore Case* in Development of Environmental Law in India

Vellore case has been proved a turning point of the growth of environmental law in India. Though the aforementioned outcome/ratio of the *Vellore case* has often been questioned by the critics [30] but the Supreme Court itself has never cast a doubt on the ratio of this case. Conversely the courts in India have been enthusiastically applying the ratio of the *Vellore case* in majority of environmental cases. Hereinafter, an effort has been made to present an account of those cases in which *Vellore case* has been cited, approved and used. This discussion can be divided into two broader heads as below.

Application of *Vellore Case* by the Courts Led by Justice Kuldip Singh

The Supreme Court led by Justice Kuldip Singh decided the *Vellore case* on August 28, 1996, and in several important subsequent judgments written by him [31] he applied the ratio of the *Vellore case*. This account has been presented in a tabular form as below.

Table 2

S.No	Cases in Which *Vellore Case* Applied	Date of Order/Judgment	Judge Who Delivered the Order/Judgment
1.	*Bayer India Ltd. case* [32]	Sept. 09, 1996.	Justice B.L. Hansaria, (Justice Kuldip Singh was a member of the Bench)
2.	*Badkal & Surajkund Lakes case* [33]	Oct. 11, 1996.	Justice Kuldip Singh

3.	*Suo Motu case* (Vehicular Pollution in Delhi matter) [34]	Nov. 18, 1996	Justice Kuldip Singh
4.	*Shrimp Culture case* [35]	Dec. 11, 1996	Justice Kuldip Singh
5.	*Kamal Nath case* [36]	Dec. 13, 1996.	Justice Kuldip Singh
6.	*Calcutta Tannaries case* [37]	Dec. 19, 1996	Justice Kuldip Singh
7.	*Taj Trapezium case* [38]	Dec. 30, 1996.	Justice Kuldip Singh

Analysis of the cases shown in the aforementioned table shows that within a short period of four months i.e. from Sept. 1996 to Dec. 1996, the ratio of *Vellore case* was applied in seven important cases by the Supreme Court. Out of these seven cases, six judgments have been written/delivered by Justice Kuldip Singh himself and there was no dissenting opinion by the other judges in such cases. Only in one case namely *Bayer India Ltd*, the judgment was delivered by Justice Hansaria on behalf of a division bench of which Justice Kuldip Singh was also a member. In these seven cases ratio of the *Vellore case* [39] was verbatim referred and approved. Through this exercise *Vellore case* was virtually converted as the grundnorm by Justice Kuldip Singh without stating that it was he who created this grundnorm. The fact, that out of seven, six judgments delivered / written by Justice Kuldip Singh himself, suggests that before his retirement, which was due in Dec. 1996, he wanted to establish the ratio of *Vellore* as a settled precedent under Indian environmental jurisprudence. Our next discussion will show that Justice Kuldip Singh in fact succeeded in his endeavor.

Application of *Vellore case* by the Other Judges in Post Kuldip Singh Era

Even after retirement of Justice Kuldip Singh in Dec. 1996 the entire ratio of *Vellore case* remained intact. In fact, this ratio of *Vellore* has been further strengthened when in many other important environmental cases the Supreme Court reiterated and upheld the same. But, in post Kuldip Singh era nature and extent of the application of *Vellor's* ratio has varied from case to case. In these cases, briefly mentioned below, the courts have made passing references or restrictive use or selective use of *Vellore's* ratio. However, there has been no dissent against the *Vellore's* ratio in these cases.

In *Samatha case* [40] only meaning and importance of the term sustainable development as well as "the polluter pays principle as a facet thereof" have been briefly mentioned and affirmed by the Supreme Court. In *Nuyudu case* [41] citing *Vellore case* the Supreme Court felt it necessary to further elaborate the meaning of precautionary principle in more detail'. (Para 32, p. 733). In *Sardar Sarovar Dam* [42] majority judgment (Kirpal, J. for himself and Anand, CJI.) referred the *Nayudu & Vellore Cases* and approved the construction of a mega dam and found it compatible with the concept of sustainable development which requires that mitigative steps should be taken. The court refused to apply the precautionary principle in this matter by distinguishing the dam with the hazardous industries.

5. Concluding Observations

The global environmental concerns have led the remarkable growth of international environmental law in post Stockholm Conference period. The environmental decision of the national/state courts and international environmental law has influenced each other. The decision of the state courts which is 'subsidiary sources' under Article 38(1) of the Statute of the ICJ, may lead directly to the growth of 'customary rules of international law.' Similarly, the state courts have often developed national environmental laws by taking inspirations and help from the international environmental laws.

The influence of international law in general and international environmental law in particular is growing and there has been a close interaction between international environmental law and municipal law in India. It appears that growth of Indian environmental law has often been co-extensive to the growth of the environmental law under international law. After the Bhopal Mass Disaster (December, 1984) all the three branches of the state and particularly the India Supreme Court, having inspired from the international environmental law, have fastly developed environmental law in India.

India, in its constitutional scheme, has adopted a dualist approach to treaty obligation. Similarly Indian courts traditionally adopted a cautious approach to read customary international law into the domestic law. In this connection Indian courts adopted a traditional position during 1950-1984 periods and endorsed the doctrine of incorporation. However, during 1985-1995 periods there was growing influence of international instruments in the Indian courts. Since 1996 the Indian Supreme Court has used the international environmental law in such a manner which not only blurred the distinction between monism and dualism but also redefined the role of international law in Indian courts.

The judicial activism of the higher judiciary and particularly the Supreme Court has led to incorporation of certain international environmental principles under domestic law whose legal status is still open to question under international law. The Supreme Court in *Vellore case* (1996) affirmed the principle of sustainable development, precautionary principle and polluter pays principle as 'customary international law' and made them as part of the Indian domestic law. Justice Kuldip Singh, who delivered the *Vellore* judgment applied the ratio of this case in several landmark cases and in this way successfully made the *Vellore case* as a grundnorm which, in post 1996 period, became a well settled judicial precedent under Indian environmental jurisprudence. Consequently, the international environmental law principles namely sustainable development, precautionary principle and polluter pays principle have not only been made 'part' of the Indian domestic law but have also been given 'new' meaning which is now a unique feature of the Indian environmental law. It appears that the international environmental law principles have been utililized by the Indian courts not only to 'formulate' much of the contemporary environmental jurisprudence in India but also to 'enrich' the same. This process is still going on and it has been resulting into the progressive integration of the Indian environmental law with the international environmental law.

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5. Magambhai Ishwarbhai Patel V. Union of India, 1970; (3)400. *Ibid*.
6. People's Union for Civil Liberties, v. UOI, 1997, (1)301.
7. In several leading cases the Indian courts have been guided and inspired by Article 48-A and developed a general fundamental right to environment under Article 21. See, M.C. Mehta V. Union of India (Kanpur Tanneries Matter) AIR 1988 SC 1037 at 1038; Rural Litigation and Entitlement Kendra v. State of U.P. AIR 1988 SC 2187 at 2199: Kinkari Devi v. State of H.P. AIR 1988 4 at 8; Bichhri Village Case AIR 1996 SC 1446 at 1459, Sachindanda Pandey, v. State of W.B. AIR 1987 SC 1109 at 1114-1115; T. Damodar Rao v. Municipal Corp., Hyderabad, AIR A.P. 171 at 181 etc, 1987.
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11. RLEK, Dehradun V. State of U.P. (Doon Valley Matter) was the first case in which the Supreme Court recognized a fundamental right to live in a healthy environment with minimum disturbance of ecological balance. A.I.R., 1985 SC 625 at 656.
12. The idea of this classification and substantial information contained there under have been broadly adapted from: Michael Anderson, International Environmental Law in Indian Courts, Review of European Community and International Environmental Law. 1998; 7(1):22-31.
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24. Law Society of India V. Fertilizer & Chemical Travancore Ltd. AIR, 1994, Ker. 308.
25. Anderson, 1998, op. cit., note13, p. 25.
26. Ibid.
27. Vellore Citizens, Welfare Forum V. Union of India, 5 SCC 647: AIR 1996 SC 2715 Unanimous Judgment delivered on August 28, 1996; by a three judges bench of the Supreme Court of India, 1996.
28. In support of this conclusion the court referred to Justice HR. Khann's opinion in the A.D.M. Jabalpur v. Shivakant Shukla (1976) 2 SCC 521: AIR 1976 SC 1207, Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360: AIR 1980 SC 470 and Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534: AIR, 1984, SC 667.
29. For example Prof. BC Nirmal, an expert of international law at Law School, BHU, has questioned the reasoning of the Vellore case. See, B.C. Nirmal, 'From Vellore to Nayudu: The Customary Law Status of the Precautionary Principle; 30 Banaras Law Journal (2001) 58-99. For criticism of Vellore's ratio, See also, Anderson, (1998), op. cit; note 13, pp. 27-28. In his concluding observations Prof. Anderson opines that the direct incorporation of international environmental law principles raises serious questions regarding both the content of domestic environmental law and the place of international law in India's constitutional order. It would not be surprising if these matters are raised by industry groups in future litigation. (ibid., p 28). For example, in Bhopal Mass Disaster litigation the Union Carbide Corporation seriously contested the ratio of absolute liability principle of the Oleum Gas Leak case (AIR 1987 SC 1086). In Vellore case Justice Kuldip Singh affirmed the mixing of the Polluter Pays Principle with the Absolute Liability Principle (Para 12 at pp. 658-59 in SCC Report). Prof. Anderson opines that such mixing has no support under the international environmental law which has been invoked by the court to from the ratio of the Vellore case.
30. Except one order written by Justice Hansaria to which Justice Kuldip Singh was the party. See serial number 1 in the table.
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36. Mehta MC. (Calcutta Tannaries' Matter) V. Union of India, 1997, 2 SCC 411, 429-430 (Para 18 & 19).
37. Mehta MC. (Taj Trapezium Matter) V. Union of India, 1997, 2 SCC 353, 382-83. (Para 32).
38. It is a matter of surprise that during the year 1996 itself Justice Kuldip Singh court delivered many orders/ judgments prior to the Vellore case (Aug. 28, 1996), but, in none of these cases he invoked the international law principles to decide the said cases as he did in the *Vellore case*. These cases are: Delhi Water Supply case, Feb. 29, 1996. (1996) 2 SCC 572; Dr. B.L. Wadehra case March 01, 1996, (1996) 2 SCC 594; Coastal Regulation Zones case April 18, 1996: (1996) 5 SCC 281; Badkal and Surajkund Lakes case (main order) May 10, 1996: (1996)8 SCC 462. In M.C. Mehta v. Union of India (Delhi Hazardous Industries Relocation Matter) Justice Kuldip Singh court delivered two orders on May 10, 1996 (1996) 4 SCC 351 and July 08, 1996, (1996) 4 SCC 750 and no reference to the Vellor *case* was made. It may be pointed out here that in the main order (May 10, 1996) in Badkal Lake Case there was no use of international environmental law principle but in the clarificatory order (Oct. 11, 1996) of the same matter Justice Kuldip Singh court extensively used the international environmental law principles by reiterating the ratio of the Vellore case. The present author has not succeeded to find explanation of this sudden departure of judicial attitude of Justice Kuldip Singh court within the short span of few months.
39. Samatha V. State of A.P. & others, 1997, 8 SCC 191, 274. (Para 123) (Decided on July 11, 1997 by three judges' bench.
40. AP. Pollution Control Board V. Prof. MV. Nayudu, 1999, 2 SCC 718, 732-34 (Para 30, 31 & 36).
41. Narmada Bachao Andolan V. Union of India. 2000; (7) Scale 34, 91-92. (pares 119-121) (AIR 2000 SC 3751).