BLOGS

Passage-Based Test on Environmental Law for CLAT PG [Part 5]

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The Polluter Pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action vs. Union of India JT 1996 (2) 190. The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtained in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas".

The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluters are liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48A and 51A(g) of the Constitution

In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environment law of the country. Apart from the constructional mandate to protect and improve the environment there are plenty of post independence legislations on the subject but more relevant enactments for our purpose are : The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), The Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the

Environment Protection Act, 1986 (The Environment Act).

We are of the view that before any shrimp industry or shrimp pond is permitted to be installed in the ecology fragile coastal area it must pass through a strict environmental test. There has to be a high powered “Authority” under the Act to scrutinise each and every case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms.

The conceptual framework of the assessment must be broad-based primarily concerning environmental linked with shrimp farming. The assessment must also include the social impact on different population strata in the area. The quality of the assessment must be analytically based on superior technology. It must take into consideration the inter-generational equity and the compensation for those who are affected and prejudiced.

Excerpt from S. Jagannath vs Union of India & Ors, AIR 1997 SC 811

1. The Coastal Regulation Zone (CRZ) Notification can be issued under which of the following statutes?

a. Water (Prevention and Control of Pollution) Act, 1974

b. Forest (Conservation) Act, 1980

c. Environment (Protection) Act, 1986

d. Biological Diversity Act, 2002

2. Assertion (A): Economic development cannot override ecological considerations.
Reason (R): Sustainable Development is part of the Indian environmental law.

a. Both A and R are true, and R is the correct explanation of A

b. Both A and R are true, but R is not the correct explanation of A

c. A is true, R is false

d. A is false, R is true

3. Assertion (A): The Court in S Jagannath v. Union of India applied the Precautionary Principle even in the absence of conclusive scientific proof of harm.
Reason (R): Under Indian environmental law, the burden of proof lies on the developer or industry to show that the activity is environmentally benign.

a. Both A and R are true, and R is the correct explanation of A

b. Both A and R are true, but R is not the correct explanation of A

c. A is true, R is false

d. A is false, R is true

4. According to Section 3 of the Environment (Protection) Act, 1986, the Central Government may:

a. Restrict areas for the operation of industries

b. Lay down procedures for the regulation of hazardous substances

c. Direct closure or regulation of any industry

d. Constitute authorities for environmental protection

Which of the above statements are correct?

a. a and b only

b. a, b, and c only

c. a, b and d only

d. a, b, c, and d

5. According to the Precautionary Principle, which of the following statements are true?

a. Burden of proof shifts from the State to the affected citizens

b. Burden of proof shifts from the affected community to the developer

c. Burden of proof shifts to environmental tribunals

d. No burden; it is advisory only

6. Which of the following statements is accurate regarding the distinction between Strict Liability and absolute liability in environmental law?

a. Strict liability has no exceptions, while absolute liability has exceptions

b. Absolute liability applies only to hazardous industries and has no exceptions

c. Strict liability applies only to public corporations

d. Absolute liability is expressly mentioned in the Environment Protection Act

7. Which of the following statements best describes the Public Trust Doctrine in India?

a. Natural resources are private unless nationalised

b. The state holds natural resources in a fiduciary capacity for public use

c. Parliament has absolute power over matters regarding the environment

d. The judiciary cannot interfere with executive environmental decisions

8. Which of the following statements is correct regarding the doctrine of Intergenerational Equity?

a. The present generation has absolute ownership over resources

b. Future generations have no enforceable interest

c. The present generation holds Earth as a trustee for future generations

d. Only Parliament can legislate for future protection

9. Identify the correct statement with regard to Environmental Impact Assessment (EIA)?

a. It is a constitutional requirement

b. It arises from executive notification under the Environment Protection Act

c. It is mandatory under Article 21

d. Provided under the Water Act

10. Assertion (A): Principles of the Environmental Law, like Polluter Pays, are enforceable without express provision in the Statutes.
Reason (R): The Courts have interpreted Article 21 to include environmental rights.

a. Both A and R are true and R explains A

b. Both A and R are true but R does not explain A

c. A is true, R is false

d. A is false, R is true

11. Which of the following sections of the Environment (Protection) Act, 1986 deals with the power to issue directions including closure of industry?

a. Section 3

b. Section 5

c. Section 15

d. Section 24

12. Identify the correct statements:

a. Directive Principles overrides Fundamental Rights

b. Fundamental Duties helps in interpreting environmental obligations

c. Environmental protection comes under the State List.

a. a only

b. b only

c. b and c only

d. All of the above

13. Identify the statement that best explains the relation between international and domestic environmental law?

a. International law overrides domestic laws automatically

b. International law does not apply unless ratified

c. International principles can be applied if not inconsistent with domestic statutes

d. Constitutional amendments are necessary for the application of international laws

14. Identify the correct statements with respect to the Precautionary Principle:

a. Precautionary principle applies in circumstances where environmental harm cannot be reversed

b. The principle shifts the burden of proof to the developer

c. The principle permits regulation even in the absence of scientific proof

d. The principle requires complete prohibition of all harmful activities.

a. a and b only

b. b and c only

c. b, c and d only

d. a, b and c only

15. Identify the correct circumstance where the Public Trust Doctrine would be violated?

a. Granting short term lease for fishing

b. Complete privatisation of river for commercial purpose

c. Regulation of groundwater extraction

d. Creating protected marine zones

Answers

1. (C) The CRZ Notification, 1991 can be issued under Section 3 of the Environment (Protection) Act, 1986.
2. (A) The Court balanced development with ecological preservation, recognizing Sustainable Development as a governing principle.
3. (A) Following the Vellore Citizens Welfare Forum, the burden shifts to the industry under the Precautionary Principle.
4. (D) Section 3 is extremely wide — it empowers the Central Government to take all necessary measures including area restriction, regulation, closure (read with Section 5), and constitution

of authorities under Section 3(3).

5. (B) After Vellore Citizens Welfare Forum v. Union of India, the burden lies on the developer to show environmental harmlessness.
6. (B) Absolute liability (developed in M.C. Mehta v. Union of India) removes all exceptions available under Rylands v. Fletcher.
7. (B) Recognised strongly in M.C. Mehta v. Kamal Nath.
8. (C) Developed prominently in State of Himachal Pradesh v. Ganesh Wood Products and later cases.
9. (B) EIA is based on notifications issued under the Environment (Protection) Act, 1986.
10. (A)
11. (B) Section 5 empowers the Central Government to issue binding directions, including closure or regulation.
12. (B) DPSPs cannot override FRs (Statement 1 incorrect). Article 51A(g) is used for interpretative guidance (Statement 2 correct). Environment falls in Concurrent List post-42nd Amendment (Statement 3 incorrect).
13. (C)
14. (B)
15. (B) Because the State cannot abdicate trusteeship.