CASE ANALYSIS: VELLORE CITIZENS WELFARE FORUM V. UNION OF INDIA

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I. Introduction

This is the originating case in these proceedings which concern the Supreme Court's environmental intervention in terms of extensive industrial pollution by tanneries in Tamil Nadu. Almost a decade of regulatory activism by the State and the Tamil Nadu Pollution Control Board (TNPCB), including incentives through Central Government subsidies for Common Effluent Treatment Plants (CETPs) did not work because many tanneries did not even install pollution control mechanisms. In its order dated 1st May 1995 the Court classified 553 tanneries into compliance categories on the basis of such report and directions and put them on positive assured compliance on conduct of 28th February, 1994 and modified them to suit such categories.

Though 57 tanneries were continually non compliant, they were ordered to close down with factors immediately, while some units were given until three months to build effluent treatment facilities. It emphasized accountability by ordering district authorities to carry out and report on these closures. Yet, the Court was also procedurally fair by suspending the closure of seven units which were along the way towards closure and demanded verification of the closure on its own from the pollution control Board by July 1995.

This judicial episode also reflects the importance of judicial supervision, rule enforcement, judicial supervision, rule enforcement and ethical responsibility. As such, it presents a critical platform for examining the judicial process, the judicial reasoning and socio-ethical aspects of judicial infringement of environmental adjudication in the milieu of statutory interpretation and constitutional governance.

Supreme Court adjudication, thus, went beyond formalist legalism and was in the nature of jurisprudential crucible, where textual interpretation blended in with judicial activism and socio

ethical demands redefining the content of right to life under Article 21 and statutory environmental governance.[1]

II. Issues

The tanneries with effluent treatment plants became party to the PIL and challenged the application of the statute outside the pollution zone. The legal questions hinged on:

1. Whether Article 21's guarantee of right to life would include right to a pollution free environment.

2. How to use as interpretative methodology to statutory terms such as 'sustainable development' and 'precautionary principle' when they are not expressly defined by statutes.

3. An inquiry into the legitimacy of integrating international environmental norms which do not constitute as incorporated in Indian statutes and domestic law.

4. Enforcement of fundamental rights by recourse to Article 32 on account of administrative apathy.

5. Environmental degradation and loss of soil fertility across approximately 35,000 hectares of cultivable land.

6. The issues relating to public health and pollution of drinking water sources (wells and River Palar).

In the judgment authored by Justice Kuldip Singh, the Supreme court had adopted innovative hermeneutics which combine the tools of purposive interpretation, harmonious construction and judicial creativity as a means to fill legislative lacunae. The court utilized ideas that will be familiar to many international law scholars—such as the precautionary principle and the polluter pays principle, ideas that, while admittedly rooted in international law, are lacking in Indian statutes—and brought them to bear on the meaning of Article 21 to produce the expansion of Article 21 into the realm of environmental protection as an aspect of a

[1] Bobbitt, P. (1982). Constitutional Interpretation. *Columbia Law Review, 82*(1), 1–30.

fundamental right. Justified by teleological reading of constitutional provisions and constitutional morality thus over rigid textualism.

III. Rules

In the case of Vellore Citizens Welfare Forum v. Union of India[2], the Supreme Court of India observed categorically that certain specific principles of environmental part are in Indian law. The first principle was the Precautionary Principle which applied a standard that all environmental protection measures must be adopted until there is full scientific knowledge about the possible harm. But this principle puts the responsibility of proving their polluting act green on the polluting party. Second, the prohibition was supported by the Polluter Pays Principle ensuring that the polluter should cover damages in preventing and remedying damage to the environment. Such compensation may be for the injured persons themselves, but it also means payment for deformities of damaged ecosystems.

The Court also held that principle of Sustainable Development is a binding legal principle in India. The latter laid down that development should not be at the cost of environment degradation with economic growth and ecological integrity to be balanced. In fact, these norms were born of and made sense of in the light of provisions contained in the Constitution—Article 21 (right to life)[3] which now includes a right to a healthy and clean environment, Article 48A (directive to preserve the environment) and Article 51A (fundamental duty of citizens to protect the nature).

Moreover, the Court reaffirmed that these norms constitute an essential part of customary international law and as such under Article 253 of the Constitution, they are easily enforceable in this country without requisite domestic legislation. Lastly, Environment (Protection) Act, 1986 was referred as the statutory vehicle under which these rules needed to be enforced and the Court also directed to setup an authority under this Act to enforce the environmental obligation. And that these principles—precautionary principle, polluter pays principle and sustainable development—were not just announced to be applicable but also, enhanced up to the level of enforceable environmental norms under Indian law.

[2] Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.
[3] Constitution of India, 1950, art. 21.

IV. Analysis

The Vellore Citizens Welfare Forum v. The Union of India (1996) judgement forms a jurisprudential nexus as it explicitly brings together apparently conflicting theoretical debates on judicial role, interpretive methodologies and a specifically socio-legal ontology. If an order interpreting the presumption of availability as meaning that no absolute exemption is available to the citizens of India to participate in activities aimed at the gaining of 'Azadi' and 'Shahadat', that is, the bearing witness to death, were to come from the premier Courts in India, it would make a difference not merely in the domain of environmental law but in constitutional hermeneutics[4] and the identity of the judiciary as a political actor in the Indian setting of a constitutional democracy. This assessment disassembles the judgment in terms of how it deals with the central theoretical paradigms embodied in the activities of statutory interpretation, judicial philosophy and/of the socio-ethical responsibilities of the courts, as it critically appraises its compliance or transgression with settled principles of the law.

1) Judicial Activism vs. Restraint: Cardozo's "Social Engineers" in Action

Judicial activism at its most transformative is clearly demonstrated in the Court's proactive creation of the "precautionary principle" and "polluter pays principle"—both of which are determined in the Court despite their absence in statutory text. This Court transcended Article 21's textual limitations by framing the protection of the environment as intrinsic to the 'right to life', thus conceivably placing itself in the office of a 'social engineer' akin to the famous construction of the office by Benjamin Cardozo in his jurisprudential theory[5]. According to Cardozo, judges should change the law to the society when legislative frameworks do not answer to the immutable call of moral and ethical imperatives. This philosophy of Vellore Court was operationalised here through importing some principles of international law (e.g. Rio Declaration) into environmental governance as a way to deal with legislative inertia in filling statutory voids.

But this activism draws suspicion under the separation of powers doctrine. Alexander Bickel (The Least Dangerous Branch) is critical of unelected judges too, contending that they pose a threat to democratic legitimacy because they create policy laden principles. The Court turned

[4] Bickel, A. M. (1962). The Least Dangerous Branch: The Supreme Court at the Bar of Politics. *Yale Law Journal, 72*(1), 1–35.
[5] Cardozo, B. N. (1921), *The Nature of the Judicial Process*, Yale University Press.

the 'precautionary principle', which it created, into a regulatory imposition on industries, a task ordinarily left to legislatures. Although, the decision fits in with Aharon Barak's defence of judicial activism expressed in The Judge in a Democracy, in which he argued that courts should act as 'guardians of the constitution' when 'fundamental rights are endangered through legislative or executive inertia'.

2) Interpretive Pluralism: Dworkin's "Moral Reading" and the Rejection of Originalism

The methodology of the interpretive exercise adopted in the judgment is consistent with Ronald Dworkin's theory of 'law as a seamless web', that is, that the law is a morally coherent whole.[6] In order to purposefully construct, the Court preferred the teleological aims of constitutional provisions (eg dignity and equality) over pedantic textualism. For instance, under Article 21 of the "life" term was not taken in the connotation of a static biological concept but in a sense of a dynamic right to "quality of life" including environmental health. In this aspect, Dworkin's stance in Law's Empire about judges' interpreting the law in its 'best moral light' is followed, relating this to the need for law to conform to the society's values.

In addition, the Court revealed itself to be interpretively pluralist by bringing in external aids: Rio Declaration (1992), Law Commission of India reports. In doing so, this approach follows the Law Commission's 183rd Report (2002) which appropriates the codification of external aids to resolve ambiguity in statutes. However, the Court adopted a comparative legal approach and referred to international norms to the extent of counsel on using non-binding instruments as persuasive authorities. However, this practice is contentious. The originalists, also known as textualists unwaveringly maintain that in setting forth the public meaning of a statute, they cannot rely on extrinsic materials because 'original public meaning doesn't exist if they do,' as originalists, including Justice Antonin Scalia (A Matter of Interpretation),[7] deny that a statute can be interpreted in reliance on extrinsic materials without losing the public meaning due to the danger of distorting legislative intent

Furthermore, the socio ethical reasoning adopted by the Court of giving primacy to public health against industrial interests can be considered as Method of Sociology of adjudication. The social existence of the judiciary was discussed by Roscoe Pound in his book, Social

[6] Dworkin, R. (1986). *Law's Empire*, Harvard University Press.
[7] Scalia, A., & Garner, B. A. (2012). *Reading Law: The Interpretation of Legal Texts*. Thomson/West.

Control Through Law, where he stated that courts must balance competing social interests; for, law is the tool for societal harmony.[8]

3) Socio-Legal Ontology: Embedding International Norms into Domestic Jurisprudence

Transnational judicial dialogue is a practice of increasing occurrence in a globalized jurisprudence, whereby the Court incorporated these international environmental principles into Indian law. The fact that Article 21 was able to embed norms such as the precautionary principle (Rio Declaration Principle 15) into the order discursively redefined domestic law as an integral part of a greater cosmopolitan legal order. As this is, this fits in comparatively with Anne Marie Slaughter's concept of a 'global community of courts', in which domestic judiciaries peer through shared transnational values to cope with similar issues.[9]

However, this practice raises ontological questions as to what sources of law are. H.L.A. Hart (The Concept of Law) is a positivist who argues that law's validity is traced to formal sources such as statutes or precedents, not moral or international normative sources.[10] This is challenged by the Vellore judgment by reading non incorporated treaties as interpretive means, hence obscuring the line between legal and non legal norms.

4) Tension Between Literal and Dynamic Interpretation: The Role of the General Clauses Act

In the literal-dynamic dichotomy, the General Clauses Act, 1897 (GCA)[11] has been used as a bridge for the Court from textualism to purposivism. The open language in Section 3(26) of the GCA and reference to the "open" rather than "living" law of the environment render a literal construction inappropriate. However, the Court supplemented this definition with dynamic elements from the Rio Declaration and the Law Commission's 186th report (2003) on environmental law reform.[12]

[8] Pound, R. (1942). *Social Control Through Law*, Transaction Publishers.
[9] Slaughter, A. M. (2004). A Global Community of Courts. *Harvard International Law Journal, 44*(1), 191–219.
[10] Hart, H. L. A. (1961). *The Concept of Law*. Oxford University Press.
[11] Law Commission of India. (2002), *183rd Report on the General Clauses Act, 1897 with Reference to the Admissibility and Codification of External Aids to Interpretation of Statutes*.
[12] Law Commission of India. (2003), *186th Report on the Proposal to Constitute Environment Courts*.

To this end, a hybrid approach to constitutional construction is developed, one that corresponds closely to Philip Bobbitt's theory of constitutional interpretation in terms of modalities, or coexisting interpretive methods (historical, textual, ethical). But external aids have been harangued for selected use. For example, the precautionary principle included in the Rio Declaration's Principle 15 (which was adopted)[13] was ignored when its caveat (that precautionary measures must be guided by cost-benefit analysis) was overlooked. Such selective borrowing points to a cherry picking of international norms to fit pre ordained judicial outcomes, thereby compelling questions about methodological rigour.

5) Harmonious Construction and Ut Res Magis Valeat: Reconciling Statutes with Rights

For instance, the judgment shows the Court's determination to treat constitutional supremacy as such, by using harmonious interpretation to reconcile the Water Act, 1974 and the Environment Protection Act, 1986 with fundamental rights. Now, applying Construction Ut Res Magis Valeat Quan Pereat ("interpret to preserve rather than destroy"), the Court invalidated only those statutory applications contrary to the environmental norms while preserving the fundamental legislative framework. This approach invokes Aharon Barak's 'proportionality' doctrine balancing of interests but without the annihilation of statutory intent.[14]

The paradox in this is that this doctrine applies here. In attempting to respect the intent of legislation, the Court rewrote the effect of statutes such as the Water Act to prohibit, rather than regulate, industrial effluents. This exemplifies the constraints on harmonious building, in the event statutory goals contradict constitutional rights in the essence.

V. Precedent Analysis

The Supreme Court's landmark judgment in Vellore Citizens Welfare Forum v. In Union of India (1996), aimed to synthesize a number of decades of evolving environmental jurisprudence on industrial pollution by referring to preceding cases that broadened constitutional rights as well as statutory duties. Early cases like M.C. Mehta v. Union of India

[13] U.N. Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Principle 15 Doc. A/CONF.151/26/Rev.1 (Vol. I), at 3 (Aug. 12, 1992).
[14] Barak, A. (2006). *The Judge in a Democracy*. Princeton University Press.

(1987)[15] and Subhash Kumar v. State of Bihar[16]. It has been explicitly accorded this status in India, where Article 21 was interpreted to cover the right to a healthy environment and the principles of 'absolute liability' of the polluters were also laid. These precedents helped the Vellore Court to institutionalize the "polluter pays" doctrine and make environmental harm fundamental rights violation and thus move on from individual redress to the systemic accountability. The judgment globalized India's environmental framework by integrating international norms such as Rio Declaration for ensuring that industries were socially responsible for paying remedial costs when ecological damage is done.

Finally, the Ratlam Municipality cases (1980)[17] made an indelible mark by including the state's duty to have reasonable measures in place to prevent public health hazards even at the time of financial constraints. Tannery pollution was analogized to traditional public nuisances and hence the statutory tools like Section 133 of the CrPC were invoked to mandate effluent treatment and overrule the industrial interests with the interests of the community. Bridging these colonial nuisance laws with modern environmental governance, this reasoning, therefore, made authorities and industries strive to accommodate ecological and agrarian welfare with economic activities. In extending Ratlam's logic, Vellore expanded the municipal duties into larger constitutional duties of sustainable development.

In the case of Indian Council for Enviro Legal Action v. Union of India (1996).[18] The pilots for Vellore's remedial framework were drawn. Both judgments focused more on preventive measures rather than compensatory measures and made sure that the premised industries were closed, and necessary monitoring mechanisms institutionalized. Beyond this, Vellore did go a step further by incorporating these principles into Article 21 and making environmental protection into a constitutional obligation that imposed an obligation on public authorities to act in a proactive manner. This doctrinal leap thereafter influenced other decisions: S. Jagannath v. Union of India (1997)[19] relying on Vellore, is said to have set precedence of regulating aquaculture by balancing economic growth along with ecological preservation.

In the end, the Vellore judgment is a watershed in jurisprudence for it brings about an harmonious synthesis of stray precedents into an integrated environmental mandate. It

[15] M.C. Mehta v. Union of India (Oleum Gas Leak Case), AIR 1987 SC 1086.
[16] Subhash Kumar v. State of Bihar, AIR 1991 SC 420.
[17] Ratlam Municipality v. Vardichand, AIR 1980 SC 1622.
[18] Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446.
[19] S. Jagannath v. Union of India, AIR 1997 SC 811.

synopsized absolute liability, state accountability and preventive principles, all in order to create a framework to deal with industrial pollution based on constitutional rights, statutory enforcement and international norms. The legacy of it is to convert environmental protection from a reactive judicial affair to an institutionalized rights based structure and open up further cases with ecological sustainability as a constitutional imperative.

VI. Criticism

While the Vellore Citizens Welfare Forum v. Union of India (1996) is celebrated for institutionalizing environmental jurisprudence in India. Despite that, it has not been without criticism. It is, indeed, bold for the Supreme Court to declaratorily assert that principles such as the Precautionary Principle, the Polluter Pays Principle and Sustainable Development are founding pillars of the law of the land, but the declaration has raised several theoretical and constitutional questions.

The second, of greater importance, is to do with accountability in judicial law making. Court arguably stepped into a quasi legislative domain by relying on international environmental law to import the general much discussed but unused notion of the precautionary principle and holding it judicially enforceable within India. Some critics say this goes too far, oversteps bounds of the judicial authority and strikes at the doctrine of separation of powers embodied in the Constitution.

In addition, the judgment exposes the divide between originalism and living constitutionalism. In that explicit departure from colonialism's industrial priorities, which tended to count the accumulation of wealth above all else regardless of environmental cost, the Court chose to vigorously embrace the ecological ethics of the present. According to the above rationale, the theory of William Eskridge's Dynamic Statutory Interpretation (Dynamic Statutory Interpretation)[20] states that statutes need to develop in line with the present societal requirements. However, such approach may be exposed to judicial arbitrariness as the Court chooses particular international documents as its sources of law (for instance, Rio Declaration), but without a more comprehensive modal of their integration . Unchecked interpretive liberty admonishes critics, can result in judicial subjectivism and uncertainty in the law.

[20] Eskridge, W. N. (1987). Dynamic Statutory Interpretation. *University of Pennsylvania Law Review, 135*(6), 1479–1555.

Furthermore, the institutional outcome of the judgment—when the Court itself ordered the executive to constitute an environmental authority under the Environment (Protection) Act, 1986—is such that the distinction between adjudication and administration collapses. In effect, the Vellore order is a watershed for the judiciary, which stepped in to make up legislative and administrative voids. But its legacy must be considered with its environmental importance and constitutional troubles with separation of powers, interpretive fidelity, and the bounds of judicial intervention in constitutional democracy.

VII. Conclusion

Indian environmental law is built on this case, the Vellore Citizens Welfare Forum judgment which carved out the right to a healthy environment as a fundamental right in Article 21 insofar as it read into it the precautionary principle and polluter pays principle. This was an especially bold strike of judicial activism to try to address environmental degradation that was not being addressed by legislation.

The Court chose a living constitutionalist approach, bringing industrial laws up to date by placing them in conformity with the current ecology values and using international instruments such as the Rio Declaration. Despite its expansion of environmental protections, this interpretive innovation also worried some people that it represented a judicial overreach, violation of the separation of powers, and that unelected judices essentially created policy not required by the legislature.

The importation of non-binding global principles without accordance to original legislative intent thereby compromising constitutional fidelity are what critics argue opposing the Court. However, those supporting the judgment see it as an intervention essential to the current reality of ecological crisis, and thus refer to the judiciary as the enactors of transformative constitutionalism. Thus, Vellore is not merely a landmark case in the history of civil rights struggles in India, but, its visionary ambition and the theoretical tensions of constitutional democracy that it has continued to provoke about the authority of law and democracy, making it a landmark.

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