

THE SUPREME COURT'S X-PRESS PEARL JUDGEMENT: A LANDMARK IN ENVIRONMENTAL CONSTITUTIONALISM AND MARITIME ACCOUNTABILITY

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“The ultimate task and goal of the Apex court as laid down clearly and precisely in our Constitution, is not only to protect the declared and recognised Fundamental rights of the citizenry, but also to respect, secure and advance such rights of the People on whom the sovereignty lies, by all the organs of government and by this Court.”

The Supreme Court of Sri Lanka, on the 24th of July 2025, delivered a historic and far-reaching judgement in the MV X-Press Pearl Marine Environmental Pollution Case. Following the invocation of its fundamental rights jurisdiction, the Supreme Court delivering a judgement spanning 360 pages issued by a special five-judge bench, identifies the X-Press Pearl Marine disaster as “the worst maritime disaster in the Indian Ocean” and “the largest recorded marine plastic spill in the world”. In consideration of the legal significance of this judgement, the Supreme Court marks a pivotal moment in constitutional and environmental law, charting a new territory in public interest litigation, prosecutorial

accountability and environmental restoration. As such this landmark judgement is much more than a judicial verdict. It represents an ambitious and systemic response to the ongoing ecological catastrophe, combining a masterful reconstruction of the fire and the sinking of the MV X -Press Pearl, together with forward looking institutional remedies. With this article, an integrated legal analysis of the Court’s decision is considered, with emphasis on key findings, legal reasoning and the potential of this judgement in reshaping environmental governance both within Sri Lanka and on the global stage.



Jurisdictional and Constitutional Foundations

The Supreme Court's Fundamental Rights jurisdiction was invoked under Article 17 and 126 of the Constitution, a framework typically reserved for the protection of individual rights such as equality before the law and other such rights protected under Article 10, 11, 12, 13 and 14.

The Court's continued willingness to entertain four consolidated petitions, brought forward by the Centre for Environmental Justice, a coalition of religious and coastal community leaders, an environmental scientist and the Archbishop of Colombo, showcases a clear endorsement of Public Interest Litigation within the Fundamental Rights jurisdiction. In doing so, the Court has affirmed that even such diffused environmental harms qualify as justiciable violations of constitutional rights when they intersect with systemic State inaction or misgovernance. As such, this development brings Sri Lanka in line with the growing global trend of environmental constitutionalism, whereby access to justice, ecosystem preservation and public accountability have all converged into the courtroom.

Legal Liability and Doctrinal Innovations

The current judgment is a significant contribution to the environmental jurisprudence that courts have been developing for the past two decades.



The Supreme Court in a successive line of environmental litigation related judgments starting from *Bulankulama v Secretary, Ministry of Industrial Development* [2000] 3 Sri LR 243, have followed an extensive and holistic approach in incorporating international environmental principles, norms and environmental treaty provisions into the domestic context.

It is notable that the current judgment has relied upon this line of precedents in recognizing the applicability of key environmental principles such as polluter pays, intergenerational equity, sustainable development and public trust doctrine in the context of Xpress pearl pollution incident.

Application of Polluter Pay Principle

The essence of the Polluter Pays principle is that the polluter is liable to restore the environment to its original state and compensate for any harm caused. This principle had served as the central pillar in numerous environmental litigation cases domestically and internationally through which environmental justice was upheld.

The Polluter Pays Principle, which the courts of Sri Lanka have been developing since *Bulankulama* case, the *Ravindra Kariyawasam v Central Environmental Authority* SC/FR 141/2015 case and more recently in *Centre for Environmental Justice v Anura Satharasinghe* CA Writ 291/2015, is the central pillar of the current judgement. While the Petitioners claimed that the compensation to be ordered against the polluter should not be less than USD 6.483 billion and the pleadings of the Petitioner in SC FR 184/2021 identified the actual loss suffered would amount to USD 9 billion, and therefore the full amount must be recovered, the Court identifies that it would be unjust to require the polluter to pay the full amounts so claimed, unless the relevant claims are independently verified and found to be accurate.

Sustainable Development and Intergenerational Equity

The court's tendency to identify the incident in question as a violation of Sustainable Development is evident throughout the judgment. The case refers to landmark Indian judgments such as *Vellore Citizens Welfare Forum v. Union of India* [AIR 1996 Supreme Court 2715] and the recent *Vedanta Limited v. State of Tamil Nadu* [2024 INSC 175] and scholarly articles, in order to recognize the nexus between Polluter Pays principle and Sustainable Development which intergenerational equity (fairness and justice between generations) is part and parcel of. The current judgement firmly establishes that in order to foster sustainable development, the polluter pays principle must be duly upheld.

"Remediation of the damaged environment is part of the process of sustainable development and as such, the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."
- *Vellore Citizens Welfare Forum v. Union of India*

Furthermore, it is notable that the relief granted by the courts is directed towards providing compensation for the affected communities and to fund the restoration efforts of the marine eco-system thereby giving effect to the polluter-pays principle. The remedial scheme granted by the courts closely follows Principle 16 of the Rio Declaration (which Sri Lanka is party to) which embraces the internalization of environmental costs by national authorities.

"National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment." - Principle 16 of the Rio Declaration

Public Trust Doctrine

Public Trust Doctrine is profoundly embedded in the current judgment as well as in the previous environmental litigation judgements. Public Trust Doctrine essentially means that the state must preserve and protect natural resources as custodians of public interest. In the current judgment, the failure of the Attorney General to diligently prosecute the Owner and the Operator(s) of MV Express Pearl in respect of their criminal responsibility arising out of section 26(a) of the Marine Pollution Prevention Act, was in contravention to Public Trust Doctrine. This interpretation arises from the fact that the Attorney General, being a Custodian of Power conferred by Acts of Parliament should discharge his powers in the interest of the public. On this basis, the Attorney General was held liable for the infringement of citizens' Fundamental Rights guaranteed by Article 12 (1) of the Constitution.

Precautionary Principle

Noting the failure of both state and non-state parties to take precautionary measures to prevent or mitigate the environmental risks posed by the vessel X-Press Pearl, the Court found a clear non-conformity with the Precautionary Principle. In its analysis, the Court referenced landmark judgments from neighboring jurisdictions, including *Vellore Citizens Welfare Forum v. Union of India* and *M.C. Mehta v. Kamal Nath and Others* [AIR 1996 SC 711], to underscore the evolution of environmental jurisprudence in the region. These cases established that the Precautionary Principle, along with the Polluter Pays Principle, is not only a part of customary international law, but also forms an integral part of domestic environmental law. The Court reaffirmed that these principles are binding and must guide the conduct of both state and private actors in matters involving environmental risk.

Prosecutorial Discretion and Right to Equality

Turning to the State's obligation, the bench censures the Attorney-General for failing to indict the Singapore based owner and operators under section 26 of the Marine Pollution Prevention Act.

Thereby, finding that the Attorney-General's decision to pursue civil damages in Singapore rather than domestically, as irrational and arbitrary, the Court further holds that prosecutorial discretion, though broad is bound by the equal-protection guarantee under Article 12(1) of the Constitution, and the neglecting of obvious defendants erode the rule of law. The Attorney-General is accordingly ordered to consider fresh indictments and report progress to court-monitored review hearings.

Piercing of the Corporate Veil and Infringement of Fundamental Rights by Non-State Actors

It is notable how the Court pierced the corporate veil, treating the various corporate entities; owner, operator, charterer and agent, as a single composite entity. This doctrinal move is especially significant for complex, transnational shipping operations, where liability is often diffused through technical ownership and contractual structures. Thus, the Court emphatically identifies functional control over the formal labels of operation, thereby holding that all parties shared in both decision-making and now misconduct.

It is also important to note that the court highlights that none of the Petitioners sought any declaration that any of the Non-State party Respondents had infringed their fundamental rights. Accordingly, under its fundamental rights jurisdiction, the court identifies that at the core of the reliefs sought by the petitioners against the Non-State Respondents were reparation for harm and losses caused. However, arguments were advanced by Non-State Respondents that under the Fundamental Rights jurisdiction, invoked by Article 17 and 126 of the Constitution, the jurisdiction of the Supreme Court is limited to the determination of infringements and imminent infringements resulting from executive and administrative harm, and therefore obtaining relief from non-State actors would not be possible. In consideration of this, the court identifies two questions,

- Under what circumstances could the Supreme Court arrive at findings against non-State actors in addition to reaching findings against State actors responsible for the impugned executive or administrative action?
- For the Supreme Court to arrive at findings against non-State actor Respondents, what should have been the relationship (causative or otherwise) between the impugned conduct of the non-State actor Respondents and the executive or administrative action found to have constituted an infringement or imminent infringement of a Fundamental right?

In answering this, the Supreme Court refers to *Paliyawadana v Attorney General* [1978] 1 Sri LR 65, where it was held that the 'the Supreme Court is the ultimate protector and guarantor of the Fundamental rights of the People' and further asserts itself as the upper guardian of such rights of the People. Following this, the court focuses on the 'just and equitable' jurisdiction granted to it under Article 126(4) of the Constitution.

Thereby, the court holds that both ex-facie and per its literal meaning, Article 126(4) has not limited the situations where the Supreme Court may grant such directions which the Court deems to be just and equitable. Therefore, the Court opines that the power to issue directions which are just and equitable is to be exercised by the Supreme Court either in addition or in the alternative to granting such reliefs, with reference to *Mohamed Faiz v Attorney General* [1995] 1 Sri LR 372 and other seminal judgements relating to environmental pollution. Following this legal analysis, the Court concludes that 'it is not only a component of its jurisdiction but also a Constitutional duty of the Supreme Court to in the exercise of its just and equitable jurisdiction contained in Article 126(4) of the Constitution, to issue directions on the polluter'.

Structural and Remedial Orders

Responding to these circumstances, the Supreme Court extends beyond declaratory relief and further engages with structural judicial intervention. Central to the remedial architecture was the creation of a comprehensive compensation and governance framework. Therefore, the Court ordered the X-Press Pearl group to deposit an initial payment of USD 1 billion into a Sri Lankan escrow account to fund environmental remediation, community compensation and long-term scientific monitoring. The first of such instalments must be paid within a two months from the date of the judgement and must not be less than USD 250 million.

A further minimum of USD 500 million should be paid within a period of six months, and the remainder should be paid before the expiry of one year from the date of the judgement. Furthermore, to ensure transparency in the disbursement of these funds and ensure accountability, the Court establishes a five-member statutory commission, known as the MV X-Press Pearl Compensation Commission, chaired by a retired Supreme Court judge to oversee the disbursement processes. Complimenting this body, is a Technical Committee mandated to design and cost a twenty-year rehabilitation plan addressing marine and coastal recovery, including nurdle extraction, coral reef transplantation and mangrove regeneration, known as the MV X-Press Pearl Marine and Coastal Environment Restoration and Protection Committee.

In these few days following the judgement, some critics argue that Sri Lanka has missed the opportunity to pursue a larger award. But it is essential to recognise that the Supreme Court's directive for a USD \$1 billion payment is far from nominal. In determining the quantum, the Court appears to have sought a pragmatic balance between both justice and enforceability, while being mindful that such legal obligations imposed must be one that a corporate entity like the X-Press Pearl group can realistically meet. Furthermore, it is important to stress that the judgement clearly frames this amount as an 'initial payment', and not a final settlement. Accordingly,



the Court emphasises that the proceeding relating to these application are not terminated, and directs to mention the matter on the 25th of September, 2025, for the Court to take cognisance of the status of implementation.

Additionally, the Court directs the Bribery Commission to reopen investigation into corruption allegations linked to the choice of the litigation forum, and compels the Attorney-General to reassess the failure to pursue criminal charges against the ship's foreign operators under domestic laws. These directives relating to criminal and anti-corruption aspect given by the Supreme Court underscore that discretion, including prosecutorial discretion must remain within the strict boundaries of the constitution, particularly when such discretion affect on the public's right to equal protection.

On top of that, the Court urges administrative reforms, by urging the government to expedite accession to outstanding International Maritime Organisation (IMO) conventions, to upgrade port safety regulations and to mandate real-time tracking of hazardous cargo entering the borders of Sri Lanka. This multi-tiered remedial approach demonstrates the pro-active stance of the Supreme Court in addressing environmental degradation, as a constitutional steward committed towards long-term ecological recovery and relevant institutional reform.

It is noteworthy, that the Supreme Court stipulates that notwithstanding the delivery of the judgement, that the court will continue to remain vested with the jurisdiction invoked by the several Petitioners till further notice.

Conclusion

The decision in the X-Press Pearl case by the Supreme Court of Sri Lanka represents a significant development in both constitutional and environmental law. In order to attain complete justice; retrospective, restorative, and forward-looking, it blends factual rigour, doctrinal innovation, and structural remedies.

Too often have governments and people alike, treated the oceans as a dumping ground, out of sight and out of mind. This judgement forces a reckoning with that dangerous complacency. Confronting the long-standing habit that the sea is the silent absorber of industrial negligence, corporate concealment and regulatory failure, the Supreme Court makes it clear that what is discarded into the seas do not disappear, it resurfaces poisoning ecosystems, shattering livelihoods and causing irreversible ecological loss.

The seas are not sacrifice zones. They are living, breathing commons, worthy of constitutional protection, legal redress and collective care.

