



APPLICATION AND DEVELOPMENT OF POLLUTER PAYS PRINCIPLE: INDIAN CONTEXT

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Abstract-- Environmental law is one amongst the rapidest developing facets of law. It is generally agreed upon that those that those who cause harm or damage should compensate for the same. However, due to lack of sanctions in environmental law, it became very difficult to keep an eye on the hazardous activities. This required the initiation of a penalty to punish the folks that caused damage or harm to the environment. This gave ascent to what we all know today as the 'Polluter Pays Principle'. This principle implies that the value of pollution should be paid by polluter and not by the authorities. This principle is taken into account to be the foremost adequate environmental strategy and has been constituted in numerous international and regional agreements regarding pollution. This conception of Polluter pays has been breathing even prior to the Organization for Economic Co-operation and Development (OECD) approved it as a recognized precept of environmental law. The research paper explores the applicability, advantages and limitations of the polluter pays principle while also looking at the role of Indian judiciary in applying this principle in different situations.

Key Words: Environmental Law, Polluter Pays Principle, Environmental Harm, Judiciary.

INTRODUCTION

It is a matter of common agreement that those who cause damage or harm should pay, in one way or another for such damage. Such damage can be to body, society or our environment. Environmental Law is one of the fastest growing aspects of law. This has come about mainly due to the unabated exploitation of the environment by humans as well as the growing concern for protection of the environment. Various laws have been enacted domestically and internationally prohibiting certain practices that harm the environment or ways to conduct activities that might potentially harm the environment in an environmental friendly way. Thus to create a balance between development and environmental protection the concept of sustainable development was introduced. However, because of absence of sanctions, it became difficult to keep a check on harmful activities. This required the introduction of a penalty to punish people who caused harm to the environment. This gave rise to what we know today as "Polluter Pays Principle". It is one of the fundamental principles of modern environmental law. Basically, the principle means that the cost of pollution should be paid by the polluters and not by their governments. This principle is considered to be the most efficient environment policy and has been included in various regional and international agreements on pollution. The concept of polluter pays has been in existence even before the Organisation for Economic Co-operation and Development (OECD) adopted it as a recognised principle of environmental law

Long ago Plato, a Greek Philosopher, stated that "If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...". Thus it can be said that Polluter Pays Principle is one of the oldest principles of environmental law and is rooted in legal systems.



Polluter Pays Principle has become a popular catchphrase in recent times. 'If you make a mess, it's your duty to clean it up'- this is the main basis of this slogan. It should be mentioned that in environmental law, the 'polluter pays principle' does not refer to "fault." Instead, it favours a curative approach which is concerned with repairing ecological damage. Few people could disagree with what seems at first glance to be such a straightforward proposition. Indeed, properly construed, this is not only a sound principle for dealing with those who pollute but is an extension of one of the most basic principles of fairness and justice: people should be held responsible for their actions. Those who cause damage or harm to other people should "pay" for that damage. This appeal to our sense of justice is why the "polluter pays principle" has come to resonate so strongly with both policy makers and the public. The polluter pays principle is an economic rule of cost allocation. The source of the principle is in the economic theory of externalities.

POLLUTER PAYS PRINCIPLE: CONCEPTUAL UNDERPINNINGS

The Polluter Pays Principle (PPP) is one of the internationally recognized principles that influence the environmental legislation, management and economics in common. The PPP is expressed in numerous international recommendations and treaties. The PPP was first defined and recommended by the Organization for Economic Co-operation and Development (OECD) in 1972 as a guideline for national environmental policy. The discussions among economists regarding the allocation of pollution prevention costs in order to achieve an efficient environmental policy resulted into PPP. In the Guiding Principles Concerning International Economic Aspects of Environmental Policies of OECD, it is stated that- the principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid the distortion in international trade and investment. In 1974 Swedish Government described PPP as Extended Polluter Responsibility (EPR). The World Commission on Environment and Development 1987 explained PPP as one of the features of sustainable development. The polluter pays principle was also reaffirmed in the United Nations Conference on Environment and Development during 1992 at Rio De Janeiro.

In the Rio declaration, Principle 16 explains that "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 the principle, bear the cost of pollution, with due regards to the public interest and without distorting international trade and investment." And is mentioned, recalled or otherwise referred in both Agenda 21 and World Summit on Sustainable Development- Johannesburg plan of implementation. In simple words PPP means "the polluter should be held responsible for environmental damage caused and bear the expenses of carrying out pollution prevention measures or paying for damaging the state of the environment, where the consumptive or productive activities causing the environmental damage are not covered by property rights." Professor Bugge stated that the Polluter Pays Principle has several meanings and has identified four versions of the polluter pays principle, that has found expression in various jurisdictions:

1. The principle is an economic principle; a principle of efficiency;



2. The principle is a legal principle; a principle of “just” distribution of costs;
3. The principle is one of international harmonization of national environmental policy;
4. The principle is a principle of allocation of costs between states.

LEGAL PROVISIONS RELATED TO POLLUTER PAYS PRINCIPLE IN INDIA

There is no direct implementation of Polluter Pays Principle in Indian law but there are some provisions in various acts which provides penalties for the pollution created by polluters. Some of them are given bellow-

a. Environment (protection) Act 1986-

Section 15 (1): whenever a person fails to comply with or contravenes any of the provision of EPA, is liable for fine 1,00,000 /- or with 5 years imprisonment, or both. The offence is continued ,an additional fine can be imposed against the offender which may be extended to 5000/-Sec.16 If any offence under this act has been committed by a company, every person who is in charge will punished accordingly.

b. Air (Prevention and Control of Pollution) Act, 1981-

Sec.31 A: Person whoever fails to comply with the provision of the act ,are punished with the fine and imprisonment such fine can be extended to 5000/- for everyday.Sec.38 Provides for the punishment with the imprisonment or with fine 10000/- if he destroy any property.Sec.39 If the contravention continued , the fine may extended Rs.5000/- per day.

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

Sec.32 C (1): If a person held guilty under Sec 20 (2) and (3) of Water (Prevention and control of pollution) Act,1974 , is punishable with imprisonment and fine up to 10,000/- or both. If any person disposes any polluting matter into any stream or well, then he is punishable with imprisonment up to 6 months and fine

LIMITATIONS OF POLLUTER PAYS PRINCIPLE

Though there are certain Provisions for controlling the pollution in Indian legislation, Polluter Pay’s Principle is accepted all over the world; there are certain limitations of this principle.

1. Ambiguity still exists in determining who is polluter. In legal terminology, a polluter is someone who directly or indirectly damages the environment or creates conditions relating to such damages clearly, this definition is unsupportive in many situations.
2. Large number of poor households, informal sector, firms and subsistence formers can not bear any additional charges for energy or waste charges.
3. Small or medium size firms from a formal sector, which mainly serves at home markets and find it difficult to pass an higher cost of domestic end users of their product.
4. Exporters in developing countries usually shift the burden of cost internalization to foreign consumers due elastic demands.
5. Many environmental problems in the developing countries are caused by an overexploitation to common pool resources. Access to these common pool resources could be



limited in cases through assigning private property rights, however this solution could lead to sever distributional conflicts.

POLLUTER PAYS PRINCIPLE: AN ENVIRONMENTAL POLICY

The Polluter Pays Principle is an environmental policy principle which requires that the costs of pollution be borne by those who cause it. In its original emergence the Polluter Pays Principle aims at determining how the costs of pollution prevention and control must be allocated: the polluter must pay. Its immediate goal is that of internalizing the environmental externalities of economic activities, so that the prices of goods and services fully reflect the costs of production. Bugge (1996) has identified four versions of the PPP: economically, it promotes efficiency; legally, it promotes justice; it promotes harmonization of international environmental policies; it defines how to allocate costs within a State.

Too often, however, the PPP is misdefined and misused to suppress private economic activity that benefits the parties directly involved and does no specific damage to other people, but which offends those who oppose human impact on the environment and prefer to leave resources undeveloped. The objective is to restrain the resource use at the expense of the property owners and consumers without cost to those who wish to see the resources remain idle. Under such a misapplication of the PPP, very often "a polluter" is not someone who is harming others, but is someone who is simply using his own property and resources in a way that is not approved of by government officials or environmentalists. In such cases there is no harm to be measured and no real victims to compensate. Consequently, the amount to be paid is not determined by the extent of any actual damage done. Rather, it is set at a level that curbs the politically disfavored activity to the degree desired by its opponents. And finally, the payment (whether there are real victims or not) typically goes to the government in the form of a tax. In other words, in most cases, the PPP is used as cover to promote a political or ideological agenda rather than to ensure that real polluters pay compensation to real victims of their activities.

JUDICIAL EXPOSITION

The Indian Judiciary has incorporated the Polluter Pays Principle as being a part of the Environmental Law regime is evident from the judgments passed.

- *Indian Council for Enviro-Legal Action v. Union of India* 1996(3) SCC 212
The Court held 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.

- *Vellore Citizens' Welfare Forum v. Union of India* 1996(5) SCC 647
The Court interpreted the meaning of the Polluter Pays Principle as the absolute liability for harm to the environment extends not only to compensate the victims of the 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 the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

- ***M.C. Mehta v. Union of India (Oleum Gas Leakage Case)*** AIR 1987 SC 1086
The Court laid down that an enterprise engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise is absolutely liable to compensate for such harm and irrespective of all reasonable care taken on his account. The larger and more prosperous the enterprise, greater must be the amount of the compensation payable for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

- ***M. C. Mehta v. Kamal Nath & Ors*** (1997)1SCC388

The Court held that pollution is a civil wrong and is a tort committed against the community as a whole. Thus, any person guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. Under the Polluter Pays Principle, it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.

Similarly, the Supreme Court has also applied the Polluter Pays Principle and precautionary Principle in, ***Research Foundation for Science v. Union of India*** (AIR 2012 SC 2627) The basic question involved in this case was permission of Union Government to import the toxic waste from the industrialized countries. On detection of various containers having toxic waste, the Court ordered for the disposal by incineration and the cost of incineration was to be recovered from the owner of the containers.

CONCLUSION

No doubt the polluter pays principle has helped to control the damage being done to the environment to some extent, the provision remains an inadequate remedy as ambiguity still persists regarding proper identification of the actual polluter. The polluter may a part of the "production chain" and it is difficult to impose the liability on such polluter when the courts consider the parameters of extent and contribution of causing pollution.

Moreover, under this principal, the amount of compensation to be charged for the restoration of the damage caused to the environment remains to be inadequate in comparison to the loss actually caused.

More effective and unambiguous provisions with regards to the implementation of the Polluter Pays Principle would be beneficial in the longer run.



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