

# APPLICATION OF POLLUTER PAYS PRINCIPLE IN INDIA

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**Abstract :** The Polluter Pays Principle is one of the key principles of Environmental Jurisprudence that is deeply rooted in the International Environmental laws since time immemorial. The principle though simple in nature, points to the fact that those causing pollution must undertake the onus of compensating and remediating for the degradation caused.

The principle was brought to the fore in 1970s and 1980s by the Organization of Economic Cooperation and Development (OECD). In 1992, the principle was officially adopted as the 16th principle out of 27 principles by the International community in the Rio Declaration on Environment and Development. The globally acknowledged principle has been applied to various landmark judgments in India as well. In 2010, the National Green Tribunal in India acknowledged the principle as a significant base for civil cases involving environment. The acceptance of the principle gives a strong message to the multinational companies across the world that India can no longer be considered as a pollution haven. Many developing countries have been reluctant in recognizing the principle fearing economic consequences and lagged development.

During the World Culture Festival in 2016, the NGT directed Sri Sri Ravi Shankar's Art of Living foundation to pay fines amounting to INR 5 crores for causing damages to the biodiversity of the Yamuna flood plains. The tribunal directed the Delhi Development Authority (DDA) to undertake restoration work at the site and recover the additional damages exceeding 5 crore from the foundation. This was one of the recent examples of application of the polluter pays principle by the NGT.

The paper aims to focus on a pertinent question in this regard, whether the principle acts as a deterrent to environmental degradation by creating economic repercussions for the polluters and compensating the victims of pollution. The paper shall also critically examine the limitations of the principle.

**IndexTerms - Polluter pays principle, Environmental jurisprudence, Rio Declaration, National Green Tribunal, Pollution haven, Environmental degradation, World Culture Festival**

## INTRODUCTION

There are legal definitions of what comprises a pollutant in the Environmental Protection Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control) Act, 1974. The Water Act describes pollution as "such contamination of water that is likely to create a nuisance or liable to render such water harmful and injurious to health" and the explanations in the subsequent legislations are alike. It can be deduced from these definitions that they highlight the fact that pollution has a tendency to cause harm, or must actually cause harm. Release of emissions is not pollution per se. Pollution can be inferred as a coercive imposition of a harmful waste product or emission onto another person or their property; it is a "trespass" under the principles of common law. If the level of trespass is small that it causes no disturbance or inconvenience to the property owner, it is usually not frowned upon. However, pollution beyond a certain limit is not permissible.

Then question arises, what is meant by the polluter pays principle. The polluter pay principle is an extension of the principle of absolute liability. Under the principle of absolute liability, regardless of whether the person has taken reasonable care or not, he is liable to compensate those who have suffered as a result of his dangerous actions. While the Polluter Pays Principle, is one of the key principles of Environmental Jurisprudence that is deeply rooted in the International Environmental laws since time immemorial. The principle though simple in nature, points to the fact that those causing pollution must undertake the onus of compensating and remediating for the degradation caused.

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## APPLICABILITY IN INDIA

In 1996 and 1997, the Supreme Court of India delivered some landmark judgments encompassing application of the polluter pays principle in India as an improvement over the absolute liability principle. Despite the relevance of the polluter pays principle in the environmental sphere, it was not a part of the Indian law till it was invoked in the Enviro-Legal Action case in 1996.

In the Enviro-Legal Action case in 1996, Indian Council for Enviro-Legal action (an environmentalist organization), the petitioner, brought to light the woes of the people in Bichhri, a small village in Udaipur, Rajasthan who resided in the neighborhood of chemical industrial plants. Their woes began in 1987 when Hindustan Agro Chemicals Limited began production of chemicals like Oleum [concentrate of Sulphuric acid], whose manufacturing is actually banned in western countries due to its hazardous nature. The trigger point of this misery was when the sister concerns of Hindustan Agro Chemicals Limited started operations in the region and started releasing hazardous acidic wastes. This gave rise to gargantuan quantities of toxic effluents as this untreated water was discharged into the neighbouring water bodies, which was a lifeline for the village communities. This contaminated the water bodies rendering it unfit for consumption. In fact, due to release of pernicious wastes the soil quality was also impacted adversely which destroyed the cultivation by farmers. Several people staying in the vicinity of this area lost their lives due to the outbreak of diseases due to heavy pollution.

In this case, the court applied the polluter pays principle as the industries had consciously released untreated acidic wastes adversely affecting the life of the villages. In this regard, the court had laid down, "The polluter pays principle demands that the financial costs of preventing or remedying the damage caused by pollution should lie in the undertakings which cause the pollution or produce the goods that cause the pollution." The court asked the industry to pay INR 3,738.5 lakhs as cost of damages and remediation cost. Also, all plants and factories in the Bichhri were closed down and this was the first instance when the polluter pays principle was applied in India.

The abovementioned judgement based on the polluter pays principle was again justified in a case in 1996, between Vellore Citizens Welfare Forum (VCWF) and Union of India. VCWF, the petitioner filed a Public Interest Litigation against massive discharge of untreated effluents by tanneries and other industries in Tamil Nadu. The industries discharged their wastes into river Palar, source of potable water for residents in that area. The court asked all the tanneries in the area to pay INR 10,000 as a fine which would be deposited in the Environment protection fund, failing which the industries would be liable under contempt of court.

In the above cases the application of the polluter pays principle has been justified as it is provided by the constitutional mandate as well as the international customary law.

In another case between M.C.Mehta and Union of India, the supreme court referred the case of Enviro-Legal Action and Vellore Citizens case and ordered the Calcutta tanneries to relocate and pay compensation for causing environmental degradation of the affected areas and affecting the residents adversely.

In another application of the principle, during the World Culture Festival in 2016, the National Green Tribunal (NGT) directed Sri Sri Ravi Shankar's Art of Living foundation to pay penalties amounting to INR 5 crores to the agency for causing damages to the diversity of the Yamuna flood plains. The tribunal directed the Delhi Development Authority (DDA) to undertake restoration work at the site and recover the additional damages exceeding 5 crore from the foundation. This was one of the recent examples of application of the polluter pays principle by the NGT.

## ISSUES RELATING TO THE POLLUTER PAYS PRINCIPLE

The main issue with this principle arises with the fact that by its very nature, environmental pollution cannot be narrowed down to a single source which can be strictly penalized. A great amount of pollution is from multiple sources, cumulative in nature that occurs over long time spans. Thus, identifying one single perpetrator is both difficult and in certain cases, technically not viable. Since identification of the sources of pollution is not viable in all cases, it might not be possible to penalize the perpetrator every time.

Another drawback of the applicability of the principle in India is that it lacks the gradation principle for Industries. The principle lacks clarity on the size of the industries causing damages. For the principle to be a real deterrent, it needs to impose heavy costs for causing environmental damages. Therefore, it must grade fines and penalties according to the size of industry. This is the only way by which it can become an important environment protection law as environmental degradation is often irreparable.

Moreover, when the principle is applied in urban areas it will be challenge for the medium, small and tiny enterprises as they operate in a highly competitive market today. Any increase in costs from emission or any other related cost would affect them adversely as the larger firms with greater amount of capital would be in a better situation to afford the installation of necessary equipment.

Although the polluter pays principle does not prohibit the polluter from passing on the additional costs that he might be incurred in terms of rising costs, thereby increasing price of the product, however in reality this might not be the case with developing nations. The developing nations which rely on exports of primary commodities for which demand in the international market is elastic may find that the costs are entirely borne by the producers in the form of damage to human health, property and ecosystems.

Representing a larger objection to the inclusion of Polluter Pays in Indian law, is the consequences it will have in the realm of the common property resource. The application of the principle will lead to the appropriation of rights by wealthy landlords to the disadvantage of the small land owners, if curbs are imposed on the manner in which a resource can be used, in this instance land.

Another issue relates to the principle itself, the principle gives no specifications or clarity on how exactly the damages should be remediated. This implies that a polluter might be asked to pay for the real costs of clean-up, the damage inflicted on the victims of environmental damage, a fine based on their ability to pay, or a general penalty aimed at the clean-up of the problem as a whole, or all of the above. This ambiguity relating to the principle can cause lack of homogeneity in different cases.

The judgements given by the Supreme Court inevitably go a long way in reiterating the commitment by the judiciary in protecting the environment and remedying the adverse impact of pollution. However, the court has erred in the manner in which it has adopted the polluter pays principle, as one of international customary law without demonstrating how the principle actually fits into the ambit of international law.

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