

Analysis of the Effectiveness of the Polluter Pays Principle in India

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ABSTRACT: *"If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water..." Polluter Pays Theory has in recent times become a common phrase. If you make a mess, clean it up is your duty—this is the main basis of this slogan. It should be noted that the polluter pays principle does not refer to "fault" in environmental legislation. Rather, it favours a curative approach to repair environmental damage. The polluting party pays for the damage done to the natural environment under global environmental law. It is considered to be a regional custom due to the strong support it has received in most Organization for Economic Co-operation (OECD) and European Community (EC) countries. The present article is going to deal with the history of the principle and its implementation at domestic level, as also the major flaws prevailing in the implementation of this principle in India. The author concludes by presenting the major problem our country is facing in its implementation.*

KEYWORDS: *PPP Polluter Pays Principle, Environment, Pollution, Guidelines.*

INTRODUCTION

The 'Polluter Pays' theory is the generally recognised practise that the costs of handling it should be borne by those who generate pollution to avoid harm to human health or the environment. For example, for its safe disposal, a factory that manufactures a potentially hazardous material as a by-product of its operations is generally kept accountable. The Polluter Pay Concept was developed more by Organization for Economic Cooperation and Development (OECD) in 1972 to direct the Principles relating to International Economic Aspects of Environmental Policies, where polluters were kept accountable for environmental harm and pollution. The Sustainable Development Principles were subsequently laid down in the Rio Declaration, meaning a plan to meet the needs of the present generation without needs of the present generation generations. The Polluter Pays Principle network connects on a person who pollutes the environment to compensate for the harm caused and, irrespective of intent, restore an ecosystem to its original state.

DISCUSSION

Drawbacks in PPP

It is true that the polluter-pay principle has a beneficial impact on reducing emissions. The principle appears to be very applicable to emissions occurring during industrial activity, although it remains inadequate in the case of historical pollution. However, most developed countries haven't quite signed up to the PPP as the main environmental policy platform. As Rege (1994) points out, this seems to be due to unfavourable economic conditions. Legal scholars have found a few loopholes in this law.¹

Second, doubt always persists when determining 'who is a polluter'. A 'polluter' in legal terms is anyone who damages the environment or creates circumstances related to such damage directly or indirectly. This description is clearly, in many instances, so broad that it is not supportive.

Second, a large number of poor households, informal businesses and seasonal farmers are unable to pay any additional charges for electricity or waste disposal. Third, it is difficult for small and medium-sized enterprises in the formal sector, mainly serving the domestic market, to pass on higher costs to domestic end-users of their products. Fourth, exporters in developing countries are traditionally unable to transfer the burden of cost internalisation to international customers due to elastic demand.

¹ webdomino1.oecd.org/horizontal/oecdacts.nsf/

Finally, the over-exploitation of popular pool assets in developed countries creates many environmental problems. In certain cases, access to these common property (in line with the PPP) could be restricted by granting private property rights, but this approach could result in serious redistributive conflicts. Both of these problems make the implementation of the PPP as a structure for environmental policy challenging for developing countries. Due to the fact that the Polluter Pay Concept was advocated by early environmentalists as a way of mitigating environmental pollution, most still see it as a vague notion.

Indian Judiciary and PPP

As is seen from the judgement given by the Supreme Court of India in written petition no 657 of 1995, the judiciary in India accepts the Polluter Pays Principle. "In its order of February 4, 2005, the Supreme Court held that "The Polluter Pays Regular activities that total responsibility for environmental damage continues not just to minimize the losses of pollution. We would not decline to argue that "Sustainable Development" has been accepted as a balancing principle between nature and development as part of Pacta Sunt Servanda, while its outstretching principle is that "Sustainable Development" has been accepted as part of Customary International Law.

Inter-Generational Equity, Natural Resources Use and Conservation, Environmental Protection, Precautionary Principle, Polluter Pays Principle, Assistance and Partnership Obligation, Poverty Eradication and Financial Assistance to Developing Countries have been some of the main concepts of "Sustainable Development" as illustrated in the Brundtland Report and other international documents. We assume, however, that the "Principle of Precaution" and the principle of "Polluter Pays" are central features of the principle of "Renewable Energy"

This Court found the 'Polluter Pays' principle to be a sound principle in the Indian Council for Enviro-Legal Action v. Union of India. The Court observed, "We believe that any principle developed in this name should be simple, practical and sufficient to the conditions obtained in this country," In this case, as a result of the number of private companies functioning as chemical companies producing hazardous waste in the soil, polluting the surrounding village area and even operating without licences, a written petition was lodged by an environmental NGO pursuant to Article 32 of the COI, requesting the Court to oblige SPCB and CPCB to recover costs from communal remedies.

Once the activity performed is unsafe or potentially dangerous, the person performing such activities is liable to indemnify any other human for the damage incurred by his activity, irrespective of whether he has taken due care while performing his activity. The rule is based on the very nature of the activity performed. Consequently, the polluting factories are 'absolutely liable to compensate for the harm caused to the villagers in the targeted limb, the soil and the underground water, and are therefore required to take all steps appropriate to remove sludge and other pollutants in the affected areas.'

As interpreted by the Court, the 'Polluter Pays' concept suggests that the ultimate responsibility for damage to the environment extends not only to the liability of the victims of pollution, and also to the cost of the remediation of environmental degradation. The remediation of the damaged environment is part of the mechanism of "Sustainable Development" and, as such, the polluter is responsible for paying individual patients the costs of restoring the damaged ecosystem. "The court further observed that "according to the above principle, the duty of the offensive industry for repairing the harm is something like the offending industry. Sections 3 and 5 empower the Central Government to provide direction and take steps to give meaning to this principle. In all the facts of the case, we find it fitting that the task is to decide the amount required to implement the remedy. The Central Government is, of course, receptive to the assistance and encouragement of the State Government, the R.P.C.B. or any other agency or authority, as it considers necessary.

SC upheld the Enviro-Legal Action and Vellore People case in M.C.Mehta V. UOI, and ordered the Calcutta textile industry to transfer and compensate for the ecological/environmental loss of the affected areas and the suffering of the residents.²

² <http://www.unece.org/ie/intersol/documents/s.8e.pdf> (Who can pay for depollution ? an economic approach

In Vellore Citizen's Case, Court Held That:

The precautionary principle and the polluter-pays principle are recognised as part of the land law. The security of life and personal freedom is laid down in Constitutional right of India. The rules of the Constitution set out in Article 47, 48A and 51A (g) shall be as follows:

Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except from medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48A. Protection and improvement of environment and safeguarding of forests and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.³

Article 51A(g). To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Part of the constitutional mandate to protect and improve the environment is the abundance of post-independence legislation on this issue, but more applicable to our purpose are: the Water (Pollution Prevention and Control Act), 1974 (the Water Act), the Air (Pollution Prevention and Control Act), 1981 (the Air Act) and the Environmental Protection Act 1986 (the Environment Act). The Water Act provides for the Central Government's constitution of the Central Pollution Control Board and the State Pollution Control Board's constitution by various state governments in the country. The boards function under the oversight of the respective governments. The Water Act prohibits the use of streams and wells for disposal of polluting matters. Also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the later part of this judgment.

We do not hesitate to claim that the precautionary principle and the developed money market principle are part of the environmental law of the country, including the above constitutional and legislative provisions. Even if these concepts were recognised as part of *Pacta Sunt Servanda*, accepting them as component of public law would not be a problem. It is almost accepted that the rule of customary foreign law, which is not contrary to municipal law, is assumed to have been adopted and applied by the international courts in domestic law. We may refer to the opinion of Justice HR Khanna in *Addl in support of this. Distt. The case of Jolly George Varghese and the case including its Gramophone Company is Jabalpur v. Shivakant Shukla.*

In the *Kamalnath's* case, court by considering the PPP as the law of the land, ordered that:

"Therefore, it is settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts." Court ruled on this matter by notifying the span motels of a show cause, that, why Pollution-fine and damages are not imposed as directed by us.⁴

This case was subsequently brought before the court in the year 2000[21] and the court addressed to the span motels that: This Court's powers under Article 32 are not limited and it may award damages in a PIL or a Writ Petition as held in a number of decisions.⁵

Liability to pay damages on the principle of 'polluter pays' in addition to damages, exemplary damages for having committed the acts set out and detailed in the main judgment. Considering the object underlying the

³ Shyel Trehan and Shuva Mandal, *The Polluter Pays Principle*, 10, *The Student Advocate*, 1998.
organisation for Economic Co-Operation and Development, *The Polluter-Pays Principle: OECD Analyses and Recommendations*, OCDE/GD (92) 81, 1992.

⁴ www.springerlink.com/index/MN1GK731450477U5.pdf

⁵ *Indian Council for Environment-Legal Action v. Union of India (UOI) and Ors.*, (1996) 5 SCC 281.

award of exemplary damages to be to serve a deterrent for others not to cause pollution in any manner. So the quantum at Rs.10 lakhs is fixed for the span motels.⁶

CONCLUSION

It's nice that India has impregnated its land policy with the Polluter Country Principle (PPP). And it also helped to inflict harm on the polluter, in fact, but the difficulty with this concept is that it was not properly implemented. The exemplary damages do not serve the intent when we analyse the exemplary damages given to span motels. Nothing like span motels for big companies are ten lakhs rupees. Exemplary damage must be caused to them by at least 10 crores of rupees. And again, when we look either at penalty imposed in the Vellore People event, I'm only shocked at how 10,000 rupees might justify the tannery pollution with in neighbouring regions. The author personally believes that this is not a good way to collect funds. For deciding the amount of compensation, we can rethink the parameters laid down. Polluters should at least be dissuaded from the spread of waste. This law demands a strict interpretation from our judiciary with immediate effect and we are clearly unable to afford any kind of delay in its proper implementation in developing countries, such as India.



⁶ Rio Declaration on Environment and Development, UNEP