

**CRITICAL ANALYSIS OF THE APPLICABILITY OF 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.”

Plato, Greek Philosopher

The principle of polluter pays has become a popular concept in the recent times in terms of environmental issues. The polluter pays principle simply says that, if you have created a clutter, then it is your responsibility to make it tidy, thus in parlance to environmental issues it holds that, if any business concern has adversely affected the environment by any of its by product which is a pollutant, then it is its responsibility to safely dispose off that pollutant. This principle constructs most of the regulations relating to land, water and air pollution. Article 48(A) and 51(A) impose a duty on the citizens and government to protect the environment. The Water act, the Air act, the Environment act, the Wildlife protection act, the Forest conservation act, etc have been passed for dealing with the matters relating to pollution. Polluter pays principle has not been strictly imposed in India, but recent landmark judgements by the Indian judiciary has laid down the basis of emergence of concept of PPP in India as well.

This article aims at pointing out the effectiveness of the polluter pays principle and its applicability in the Indian legal scenario in the recent years.

Keywords – Polluter Pays Principle, PPP, environmental law, Water act, Air act, Environment act, Wildlife protection act, Forest conservation act, Indian judiciary, Supreme Court, OECD.

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Introduction:-

Environmental pollution has been a matter of great examination throughout the globe. Global warming has affected the environment in such an adverse manner that it has led to drastic changes in the climate. The Polluter Pays principle is one of the aged principles in the field of environmental law. Making the polluter pay for the wrong done to the environment seems legit, practically and morally as well. It is held that the Polluter Pays Principle will create a deterrent effect also on the other would-be polluters. The Polluter Pays Principle is ordained in environmental law, to make the party causing pollution responsible for paying for the damages done to the nature. It is regarded as a regional custom because of the strong support it has received in Organisation for Economic Co-operation and Development (OECD) in 1970s and 1980s and European Community (EC) countries. It is a fundamental principle in US environmental law. Finally in the year 1992 it was adopted by the international community in Principle 16 of the Rio Declaration: “Authorities should endeavour to promote the internalisation 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.”

The Indian legislative system lacks in the application of rigid provisions to check the pollution and to punish the wrongdoers. While the judiciary has made great endeavors in conceiving and adapting principles and interpretations to punish the guilty with the appropriate penalties, the Indian legal system is still, in need of provisions that are strict and deterrent in nature. The judiciary in India has now adopted the principle of polluter pay in many recent decisions and the courts have been making efforts on its applicability. On many occasions they have imposed costs and fines to try and ensure that polluters do not flee from the responsibility of paying compensation.

What is the “Polluter Pays Principle”:-

The polluter pays principle is an addendum to the principle of absolute liability. Like the principle of absolute liability, the polluter pays principle enlarges the liability of the polluter to the costs of repairing the damage to the environment. The gravity of this principle is that the impairment caused to the environment may be rectified and this is exceedingly crucial for the

sustainable development of the environment. "The polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology". [1]

History of PPP:-

Polluter Pay Principle appeared for the first time in the year 1972 in the OECD Guiding Principles Concerning International Economic Aspects of Environmental Policies, which defines it as an instrument for "allocating costs of pollution prevention and control measures".[2] PPP became an incumbent principle across countries. The polluter should bear the costs in order to achieve an acceptable state of environment which is fixed by the public authorities.

The range of costs to be borne by the polluter has expanded over time. In 1989, the OECD suggested extending the PPP in order to cover the costs of accident prevention and to internalise the environmental costs caused by accidents. In 2001, the OECD Joint Working Party on Agriculture and Environment stated that according to the PPP "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." This version of the PPP is referred as very strong in the field of environmental law. [3]

A year later, the European Community followed the OECD Principles 1972 by adopting the first Environment Action Programme (EAP). The Polluter Pay Principle has been a part of European Law since 1987. It is included in Article 174 of the EU Treaty (1997). Since 1990, when the International Convention on Oil Pollution Preparedness, Response and Co-operation was agreed upon by the International Maritime Organization (IMO), the PPP has been admitted as a "general principle of international environmental law." In 1992, the Rio Declaration (UNCED) included the PPP in Principle 16: "National authorities should endeavour to promote the internalisation 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 public interest and without distorting international trade and investment." [4]

The Indian Judiciary on the Polluter Pay Principle:-

Despite of the fact that the Polluter Pays Principle protects the environment, it was not a part of the Indian legal system till it was invoked in the Enviro-Legal Action in 1996. [5] The court 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 judgement of this case on the polluter pays principle was reaffirmed in 1996, in the case of Vellore Citizens Welfare Forum v. Union of India. [6].

The judiciary in India recognizes the Polluter Pays Principle and it is evident from the judgment of the Supreme Court of India in writ petition no 657 of 1995. [7] In which it was held that “The Polluter Pays Principle means that absolute liability of harm to the environment extends not only to compensate the victims of pollution, but also to the cost of restoring environmental degradation. Remediation of damaged environment is part of the process of sustainable development.”

The Court observed, “We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country”. The case involved a number of private companies which operated as chemical companies which were creating hazardous wastes in the soil, resultantly polluting the nearby villages, and they were also running without licenses. Thus an NGO filed writ petition under article 32 of the Constitution of India, which sought from the court recover costs of the remedial measures from the companies. The Court further ruled 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”. Consequently the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas”. The court further stated that: “according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we

think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986. It is of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.”

The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Article 47 provides for the 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 talks about the 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. Article 51A (g) says to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Apart from the constitutional mandate the other relevant enactments for environment protection are: The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), The Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment Protection Act 1986 (the Environment Act). The Water Act provides for the Constitution of the Central Pollution Control Board by the Central Government and the Constitution of the State Pollution Control Boards by various State Governments in the country. 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.

In *M.C.Mehta V. UOI*, [8] Supreme Court referred the case of *Enviro-Legal Action and Vellore Citizens case* and ordered the Calcutta tanneries to relocate and pay compensation for the loss of ecology/environment of the affected areas and the suffering of the residents.

In *Kamal Nath's Case* the court held that [9] "It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts." This case subsequently came up before the supreme court in the year 2000 [10] and court directed to the span motels that: "The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a Writ Petition as has been held in a series of decisions". Henceforth, court directed a fresh notice to be issued to M/s. Span Motel to show cause why in addition to damages, exemplary damage be not awarded for having committed the acts set out and detailed in the main judgment. Finally in 2002 [11], while granting exemplary damages court held that: "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 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."

Conclusion:-

The polluter Pays Principle proves to be a very great effort in making the polluter to realize the wrong done by him to the environment and compensating for the same. Justice Christopher G. Weeramantry [Vice President of the ICJ] has correctly said that "we are interested not only in the development but also in the enforcement of law" [12] 'Sustainable Development' holds as a concept balancing between ecology and development has been accepted as a part of the Customary International Law though its salient features have yet to be finalised by the International Law jurists. The "Polluter Pays" principle as the Indian judiciary interprets says that the absolute liability for harm to the environment expands not only to compensate the victims of pollution but also the cost of reinstating the environmental loss. Indemnification of the damaged environment is part of the exercise of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The principle is a very good initiative, but India still needs to work a lot towards its effective implementation. A strict implementation of this principle with heavy amount of compensation shall be charged on the polluter so that it creates a deterrence effect on the other

polluters and thus the sustainable development can be achieved. The polluter pays principle has become a part of the environmental law of the country and the judiciary is working towards its applicability and in the near future India will witness the Polluter Pays Principle as a strong concept in the field of environmental law.

Reference:-

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