



POLLUTER PAYS PRINCIPLE IN INDIAN LAW: EFFECTIVENESS AND IMPLEMENTATION IN RURAL AREAS

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ABSTRACT

The environment is extremely important for our lives. From the environment, we get oxygen, greenery, and many other essential things. If any factory or company harms the environment for its benefit, then it should compensate for that damage. That is why the Polluter Pays Principle is very important. In this paper, it has been described how laws have been made based on this principle and whether these laws are implemented on the ground or not. Most factories, especially those located in rural areas, do not pay much attention to environmental concerns. There have been some important case laws related to this, such as M.C. Mehta's cases and the Vellore Citizens' Welfare Forum case, through which Public Interest Litigations (PILs) were filed and efforts were made to save the environment based on court directions. Some of the important laws govern the Rio Declaration and other international treaties. The polluter pays principle is a good achievement towards the environment.

Keywords: Polluter Pays Principle, Environmental Compensation, Public Interest Litigation.

INTRODUCTION

Principle 16 of the Rio Declaration, 1992, declares the Polluter Pays Principle as a part of sustainable development. Initially, the principle was promoted by the Organisation for Economic Co-operation and Development (OECD) during the 1970s when there was a great public interest in environmental issues. The principle means that the polluter should pay for their mistake. He/she should bear the expenses of carrying out the measures for reparation/restoration of the damage caused to the environment by him. Remediation of the injured environment is a part of the practice of sustainable development, and the polluter is legally responsible to compensate the individual victims and also pay for reversing the

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damaged ecosystem.

UNDERSTANDING THE POLLUTER PAYS PRINCIPLE

In environmental law, 'the Polluter Pays Principle' has been enacted to make the party responsible for producing 'pollution' pay for the damage done to the natural environment. In simple words, "The Polluter Pays Principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment." For instance, a factory that produces a potentially poisonous substance as a byproduct of its activities is usually held responsible for its safe disposal. 'Polluter Pays Principle' is also known as 'Extended Producer Responsibility' (EPR). This is a concept that was described by Thomas Lindqvist for the Swedish Government in 1990 . The credit for popularising the 'Polluter Pays Principle' for the first time goes to the Organisation for Economic Co-operation and Development (OECD). The OECD defines EPR as "a concept where manufacturers and importers of products should bear a significant degree of responsibility for the environmental impacts of their products throughout the product life-cycle, including upstream impacts inherent in the selection of materials for the products, impacts from manufacturers' production processes itself, and downstream impacts from the use and disposal of the products." The Supreme Court of India interpreted the 'Polluter Pays principle' as the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also to cover the cost of restoring the environmental degradation. The Environment Protection Act, 1986, expressly empowers the government "to take all such measures as it deems necessary or expedient for protecting and improving the quality of the environment". Thus, it includes environmental costs as well as direct costs to the people or property. So, it means that the polluter should bear the cost of pollution, as the polluter is responsible for it. The 'Polluter Pays Principle' has been incorporated into the European Community Treaty. Article 102 Rule 2 of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles:

1. The need for preventive action;
2. The need for environmental damage to be rectified at source; and
3. That the polluter should pay

The 'Polluter Pays Principle' finds a prominent place in the 'Rio Declaration of 1992'. Principle 16 of the Declaration proclaims that national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

CONSTITUTIONAL PROVISION

The 'Right to Life' contained in Article 21 of the Constitution of India includes the right to a clean and healthy environment. It means you have the right to live in a clean and healthy environment. Article 38 of our Constitution requires the State to ensure a social order for the welfare of people, which can be obtained by an unpolluted and clean environment only. .

Article 48A of the Constitution requires the State to adopt the Protectionist policy as well as the Progressive Policy. Protectionist policy imposes a ban on those things which lead to environmental degradation, e.g. ban on the use of leaded petrol, a ban on the use of plastic bags, etc. Progressive policy refers to alternatives that can be used for the improvement of the environment, e.g. use of CNG or low-sulfur fuel, tree plantation in industrial areas, etc.

Article 48A of the Constitution declares, "The State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country."

Article 51A(g) of the Indian Constitution says: "It shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

EVOLUTION OF DOCTRINE IN ENVIRONMENTAL JURISPRUDENCE

Indian Council for Enviro-legal Action v. Union of India: The Bichhri Village Case: Bichhri is a little-known village in the Udaipur district of Rajasthan. However, in 1988, a group of chemical industries established plants to produce hydrochloric acid and related chemicals for export. Although the production of this acid is prohibited in European countries, there remains a need for it. Thus, a remote village in India became a site for the production of this lethal chemical. 'Rogue Industries' commenced production of these chemicals without obtaining the appropriate 'no objection certificates' from the pollution control authorities. The factories' waste products amounted to between 2,400 and 2,500 metric tonnes, which were highly toxic.

At least 400 farmers and their families in eleven villages were directly affected by the groundwater pollution.

However, in October 1989, a PIL was filed in the Supreme Court by a Delhi-based NGO, the Indian Council for Enviro-Legal Action, led by Mr M.C. Mehta. The NGO presented the subhuman living conditions being experienced by the villagers and requested remedial action by the court. The Supreme Court accepted the petition and thus began the legal struggle, which continues to this day. Between 1989 and 1994, Orders were passed by the court. They included a request to establish an expert committee to examine the situation in and around the affected area and thereafter provide recommendations for both short- and long-term remedial action.

In February 1996, the Court declared the final order. It stated that ‘absolute liability’ rested with the rogue industries to compensate for the harm caused by them to the villagers in the affected area, to the soil and underground water and that they were bound to take all necessary measures to remove the sludge and other pollutants and defray the costs of remedial measures required to restore the land and underground water. The Court invoked the ‘polluter pays’ principle and empowered the central Government to determine and recover the cost of remedial measures from the industries. The Court ordered the closure of all chemical plants located in the Bichhri area. It is noteworthy that the Court suggested the establishment of dedicated environmental courts for the adjudication of such matters, and the establishment of the National Green Tribunal fulfils this long-standing demand made by the Court.

In November 1997, the Court required the industries to pay Rupees 37.38 Crores towards the cost of environmental remediation and Rupees 34.28 Lakhs to the villagers, which were not immediately complied with. Finally, in 2011, the Supreme Court imposed a compound interest of 12 per cent on the remedial amount of Rupees 37.38 Crores on the polluter for the 15-year delay in making the payment. The polluters were given two months to make the payment; failure to do so would result in the recovery being made as arrears. The polluting industries had no other option but to comply with the orders of the Court this time.

The importance of the Bichhri case is that it allowed the villagers’ grievances to be heard via a PIL. The application of Article 21, ‘absolute liability’ and the ‘Polluter Pays Principle’ makes the case a landmark judgment in India’s emerging environmental jurisprudence.

T. N. Godavarman Tirumulkpad v. Union of India: The idea of ‘sustainable development’ had its influence on the judiciary in interpreting the provisions of law relating to forests.

Various dimensions of the problem came to be examined by the Supreme Court in this case. The decision of the Court can be summarised as follows:

Mining license in a forest area without proper approval by the Government is violative of the Forest (Conservation) Act. All ongoing activities under such an invalid license must cease. The State Governments have to take necessary remedial measures.

Running saw mills of any kind is a non-forest activity. All saw mills within a distance of 100 kilometres from the border of the State of Arunachal Pradesh are to be wound up. Responsibility was imposed on each State Government to report on the number of saw mills, actual capacity of mills, proximity to the nearest forest and their sources of timber.

Complete ban on felling of trees in the forests of Arunachal Pradesh. Felling of forests in other States also suspended except by working plans. Each State Government is to constitute expert committees to identify forest areas and forests covered by plantation trees and to assess the sustainable capacity of the forest for saw mills. In the State of Jammu & Kashmir, no private agencies should deal in felled trees or timber.

In Tamil Nadu, the tribals who are residing in the forest area continue to grow and cut trees according to the Government scheme and by the law applicable. The case came back within four months for review of the follow-up action as directed by the Court. Interestingly, the Court proceeded to constitute a committee to oversee the implementation of its orders in the north-eastern region of India. Unlicensed saw mills and veneer and plywood industries in the States of Maharashtra and Uttar Pradesh were directed to be closed. All trees felled in the Janman areas of Tamil Nadu were ordered to be delivered by the plantations to the State Government.

The orders passed by the Supreme Court demonstrate the failure of the executive to ensure compliance with the forest laws of India, so much so that even for the supervision of the implementation of the Court orders, the Court had to constitute a committee, a task which otherwise should have been done by the executive.

Many developing countries look to India as a country where human rights are championed by an independent judiciary, and certainly in the area of environmental protection through the means of PIL, the Indian judiciary has led by some landmark examples, which aptly show the commitment of the Courts in India towards this cause.

MC Mehta v Union of India: The Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industry by interpreting the scope of the power under Article 32 to issue directions or orders, 'whichever may be appropriate' in 'appropriate proceedings'. According to the court, this power could be utilised for forging new remedies and fashioning new strategies" The new provision is that whenever any company or factory causes harm to the environment, it will fall under Absolute Liability, or it will have to compensate for the damage as per the Polluter Pays Principle. If any factory does anything wrong related to the environment in a village, the villagers can file a case against that factory.

LEGISLATIVE FRAMEWORK

Environmental Protection Act, 1986: This act empowers the central government to take measures for environmental protection and incorporates the Polluter Pays Principle as a key principle for pollution control. It provides a comprehensive framework to prevent and remediate environmental damage. .

Water (Prevention and Control of Pollution) Act, 1974: This act regulates water pollution by holding industries accountable for contaminating water resources. It ensures polluters bear the cost of restoring water quality. .

Air (Prevention and Control of Pollution) Act, 1981: This act establishes air quality standards and mandates industries to adopt pollution control measures to minimise air pollution.

National Green Tribunal: The Polluter Pays Principle is one of the three key principles upon which the National Green Tribunal (NGT), India's green court, relies for delivering decisions. As per Section 20 of the NGT Act, 2010 , while passing any order, decision or award, the Tribunal shall apply three core principles, including the 'principles of sustainable development, precautionary principle, and the polluter pays principle'. Adhering to these principles has been essentially underscored to ensure that the orders or decisions of the Tribunal not only take care of the current environmental nuisance brought before it, but also try to ensure a sustainable future.

Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016: These rules govern the management and disposal of hazardous waste. They ensure that polluters are responsible for the costs of safe disposal and environmental restoration .

CHALLENGES OF IMPLEMENTATION IN RURAL AREAS

Despite its strong legal foundation, the implementation of PPP in rural India faces several challenges-

Weak Institutional Mechanisms: Pollution control boards at the state level often lack manpower, technical expertise, and financial resources, especially in rural jurisdictions. Enforcement remains weak, with delayed or non-existent monitoring of small-scale polluting industries.

Lack of Awareness: Rural populations often remain unaware of their environmental rights. The illiteracy and limited access to legal aid compound the problem, making it difficult for rural communities to file PILs or claim compensation.

Inadequate Environmental Impact Assessment (EIA): Development projects in rural areas, especially mining and industrial operations, frequently bypass or conduct superficial EIAs. This leads to environmental harm without accountability.

Political and Administrative Inertia: Local governments are often reluctant to enforce stringent environmental regulations against industries that are key to local employment or political support.

Case-Based Illustration: Bichhri Revisited: The Bichhri village case exemplifies both the effectiveness and limitations of PPP in rural India. While the Court imposed heavy costs on polluters and ensured enforcement after decades of delay, it also highlighted the systemic failures of the executive. The rural poor had to rely on judicial activism and the intervention of an NGO to seek justice, a process that took over two decades.

Way Forward: To improve the implementation of PPP in rural India, the following reforms are essential-

Decentralised Environmental Governance: Empower local panchayats and rural bodies with legal authority and training to monitor pollution.

Environmental Courts at District Level: Expand the reach of the National Green Tribunal by creating regional benches or district-level environmental magistrates.

Legal Aid and Awareness Campaigns: Government and NGOs must work together to

educate rural citizens about their environmental rights.

Stronger Monitoring Mechanisms: Technological solutions like satellite imagery and real-time monitoring should be used to track environmental violations.

Corporate Accountability: Enhance implementation of EPR norms and mandatory CSR spending for environmental clean-up in rural areas.

CONCLUSION

The polluter pays principle is an important framework for environmental law nowadays. Environmental pollution is a big challenge for the whole of humanity. The growth of new machines and industries for the growth of the economy as a focus on environmental safeguards and public awareness environment to save human life and enjoy with environment without it, life cannot survive. It's a big implementation polluter pays principle. The factory raises according to the environmental policy.

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