

AN ENCAPSULATION OF POLLUTER PAYS PRINCIPLE

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ABSTRACT

“Environment is no one’s property to destroy; it’s everyone’s responsibility to protect.”

— *Mohith Agadi*

Pollution has been the main concern in topical times due to which every person has to pay a price for it metaphorically, the governments have had to build up laws that address the rising concern for the fortification of environment and human welfare, one such principle arrogated by governments all around the world is the Polluter Pays Principle (PPP). The vital notion behind the Polluter Pays Principle is that the person or entity accountable for an act of pollution and consequences thereof should be answerable for the costs associated with the pollution. The subject of pollution is a relatively new concept in terms of politics and government legislation in 21st century. When the contemporary era started the industries were polluting atmosphere, oceans and groundwater on habitual basis with very slight government interference or legal repercussions but with that social awareness also started budding in people towards making environment a priority. As a upshot of growing awareness regarding the negative effects of human interaction with the environment, governments all around the world started adopting legislations that barred pollution much of which was ushered by polluter pays principle. This principle plainly places the accountability of paying the damages upon the person who is ought and liable to pay. PPP was one of the guiding principles in 1972 OECD Council Recommendation and in Rio Declaration 1992 espoused in principle 16. It is one of the most renowned principle in the international environmental law where the polluter has to reimburse the cost for fixing the contamination caused by him. In India this principle has grown as well

as developed through many cases and is considered as an impression embodied in sustainable development which facilitates towards a better environment.

Keywords: Polluter pays principle, Rio Declaration, OCECD Council, Pollution, Damages, Sustainable Development, Environment, Liable, Social Awareness, Legal Repercussions.

EXORDIUM TO POLLUTER PAYS PRINCIPLE

“Humanity is a biological species, living in a biological environment, because like all species, we are exquisitely adapted in everything: from our behavior, to our genetics, to our physiology, to that particular environment in which we live. The earth is our home. Unless we preserve the rest of life, as a sacred duty, we will be endangering ourselves by destroying the home in which we evolved, and on which we completely depend.”

— Edward O. Wilson

Polluter pays principle is an approach that abets in deadening of the environmental degradation. This principle has aroused due to the responsibility and ethics that our society follows where in the actors involved in a pessimistic act must and always bear the negative externalities for their activities and the consequences blooming from those activities. The polluter pays principle is based on the economic theory stating that producer should bear the cost of externalities such as environmental pollution resulting from production or consumption of goods and services by him or her. The phrase “as you sow shall you reap” is somewhat relevant with the principle of polluter pay as same as the phrase goes, this principle also makes one liable for his own acts by putting him in a position where he or she has to swallow the cost of rectifying the damage caused by his/her events to the environment. It became a principle of remediation of the damaged environment—a part of the process of sustainable development as this principle means absolute liability for harm to the environment.¹

Polluter pays principle is a principle that is widely applauded in the arena of environmental law wherein a system is setup by which the polluters (the persons who produce the pollution by their products or services) tolerate the financial burden of the public policy to protect the environment. Earlier this principle was more of a economic and environmental expression but

later on this principle also gained the much deserved legal expression . PPP is also known as the extended polluter responsibility as whoever is responsible for the damage to the environment has to abide the cost allied with it. It is a great way to reallocate the burden in dealing with waste from governments to entities producing it. The burden of proof lies on the environmental regulators. Basically, the interpretation of this principle tells us that if the consumption or production activities of one group of consumers or producers have harmful effects on others then the perpetrators of the harms should be held liable for damages.

An introduction of liability regime has been established since the preface of the polluter pay principle as it started make the resource users liable for the damaged caused by their acts to the environment. The damage caused to the society by the harmful activity of a polluter is the social damage to the environment which not the polluter but whole society has to pay as the social cost ⁱⁱ. The environmental economists through years of debates and discussions came to a general accord i.e. the abettor of environmental harm should pay and thus this doctrine qualified as an economic principle and a fundamental ground for other doctrines to be deduced from. This principle sooner or later gained its popularity amid the lawyers and they saw this principle has an occasion for getting reimbursement for sufferers of pollution (as per Article 21 of Indian Constitution) therefore PPP in due course gained its recognition as a legal principle to enforce the rights of the victims of environmental harm by putting burden on the polluter and inducing him to pay the outlay for his actions.

ARCHIVE OF POLLUTER PAYS PRINCIPLE

The polluter pays principle has been making rounds since 1920 when it was first mentioned by a British economists A.C. Pigou who is popularly known for his work welfare economics. This principle was first referred internationally in recommendation of 1972 by Organization of Economic Cooperation and Development (OECD) which also led to give some legal aspect to the principle of polluter pay. OECD in its recommendation promoted the partial cost internalization approach towards PPP which basically constitutes of two conceptsⁱⁱⁱ :- 1) cost allocation and 2) non subsidization. Cost principle is based on improving efficiency and encourages rational use of scarce natural resources. Here the government is responsible for deciding pollution prevention and control measures to ensure the environment is in acceptable

state and polluter is required to internalize or bear full cost of carrying out these measures, these costs should then be reflected in the cost of goods on services which cause the pollution. Coming on to the other theory of non-subsidization the crucial idea is to avoid distortions in international trade and investment arising from adoption of differential pollution abatement mechanisms or methods by the polluters. The principle of PPP does not pertain in absolute state as according to OECD exceptions are always there. OECD also gave another concept of full cost internalization which represents the wider scope of PPP, this includes costs of accidental pollution caused by hazardous installations as well as control, clean up and rehabilitation costs. This concept was reflected in the recommendation by OECD in 1989.^{iv}

Another spring of polluter pay principle is Principle 16 of Rio Declaration of 1992 which says that polluter should in principle bear the cost of pollution. It was stated within this principle that “National authorities should endeavor to promote the internalization 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 the public interest and without distorting international trade and investment.”^v

The European Community (EC) in 1973 become aware of of polluter pays principle and by the year 1975 EC Council Recommendation imposed it saying that in order to eradicate pollution every natural or legal person must bear a price as laid down by public authorities^{vi}. In 1986 EC applied this belief more regressively by introducing Single European Act which rectified and barred environmental damage and made sure that polluter was seized answerable. In 1985 ASEAN Agreement on Conservation on Nature and Natural Resources also recognized PPP as principle that could help to secure and improve the environment and similarly in 1992 UNCED also espoused PPP in its Principle 15.

In India this concept gained momentum through many case laws starting from Indian Council for Enviro-Legal Action v. Union of India^{vii}. This principle is still mounting in India and gained popularity after the mentioned case.

Polluter pays principle has certainly now become a fundamental principle which is used internationally and regionally both however there are still many debates plus discussions about its content and legal status moreover it's not an absolute principle as exceptions are permissible. There are questions raised till now on its international status of applicability though it is

considered as a general principle of international environmental law but still there is a necessitate to make this principle extra brawny one.

THE INDIAN STANDPOINT OF POLLUTER PAYS PRINCIPLE

“The earth will not continue to offer its harvest, except with faithful stewardship. We cannot say we love the land and then take steps to destroy it for use by future generations.”

— Pope John Paul II

In the India we can find the principle of polluter pay being referred explicitly and implicitly in various Supreme Court, High Court cases. The National Green Tribunal also explicitly mentions the polluter pays principle. The polluter pay principle in India is a result of various case laws. The Supreme Court of India has said that PPP is a sound principle which is universally accepted and has gained almost universal recognition. The Supreme Court of India looks at the PPP as a general principle of law that is prevalent to other systems around the world that ultimately helps to control the damage made to the environment by putting the burden of that damage on the polluter. In Indian concept the polluter pays principle includes both environmental costs as well as direct costs to people or property, on this the Supreme Court of India has said that this principle is seen for remediation of damaged environment and is thus a part of the process of sustainable development and the polluter is apt to pay the price to the individual victims as well as cost of reversing the damaged ecology.^{viii}

In the year of 1987 the principle of polluter pay was given an indirect detection by the Supreme Court of India in the case of M.C Mehta v. Union of India^{ix}(Oleum Gas Leak) in which the polluter pays principle was mentioned inexplicitly for the first time ever. In this case the court said that an enterprise which is involved in a hazardous or dangerous industry which poses threat to the health and safety of people working in that industry as well people around it must take proper care and precautions. In case any impairment is done by that enterprise then it would be held absolutely liable for the damage and it would not matter if he had or hadn't taken rational care, he would have to compensate for the damaged cause to the environment and the people. The court also said that the reimbursement would be calculated based on the magnitude and capacity of the enterprise. The court also recommended for developing new laws and ethics

to deal with the mishaps of the environment. Thus, we can say that in this case PPP was given some acknowledgment not directly but indirectly and subsequently the cases started applying this principle explicitly.

It was the case of *Indian Council for Enviro-Legal Action v. Union of India*^x that the polluter pays principle was explicitly applied for the first time. The court in this case said that once the activity carried on is hazardous or inherently dangerous then the person carrying on such activity is liable to make the loss caused to any other person by his activity irrespective of the fact that he took reasonable care while carrying out the activity. It was held in this case that polluting industry is absolutely liable to compensate for the harm caused and is also liable to pay the cost for restoring the dented environment.

The Supreme Court of India in the case of *Vellore Citizens Welfare Forum v. Union of India*^{xi} relied on 2 sources of PPP which are implicit inclusion of the PPP in the constitutional provisions relating to environmental protection as well as in environmental legislation such as water prevention act 1974 and environment protection act 1986. The court also relied on PPP as customary international law and also says that though polluter pays principle is a customary international law but this is not a general practice and is yet to be established as customary international law. In this particular case the Supreme Court said that each polluter pays principle and precautionary principle are part of our constitution under Article 21 which give the right to life and personal liberty and Article 48A and 51A which compromises the constitutional mandate to protect the environment and also improve it. Thereby we can say that the constitution of India also gives ample of magnitude to environmental protection and somewhat imitates the principle of polluter pay.

The PPP has been referred to in many landmark cases by the courts of India through which it has gained popularity. In the case of *M.C Mehta v. Union of India* 1986^{xii} famously know as Taj trapezium case the Supreme court ordered the industries to shut down that contributed towards the putrefying condition of Taj Mahal and as a result the industries had to be displaced from their places due to which the workers in those industries lost their jobs. Thereby the court in this case considered the workers who lost their jobs as victims and by applying this principle of polluter pay the court say that the industries that got dislodged in which they work are victims in this case and thus have a right to be remunerated by respective industries thereby

not undermining their rights and right to economic security. This case is considered to be one of the landmark judgments in environment law.

Apart from the above-mentioned cases there are many other cases also in which PPP played an important role. The polluter pays principle has also been included various domestic legislation. One of the important elements of PPP is its specific inclusion in National Green Tribunal Act 1995 and 2010 which requires the National Green Tribunal to consider PPP as well as precautionary principle and sustainable development while issuing its orders. The National Tribunal Act 1995 states that victims have a right to be compensated for the problems that they have faced to due the damage to the environment in accordance with Public Liability Act 1991 the amount of compensation shall be remitted to the authority specified under section 7-A (3) of the Public Liability Insurance Act, 1991. Also, the Section 20 of NGT Act 2010 deals with the principle of polluter pay and states that NGT should keep all the principles of environmental law while fleeing any order.^{xiii}

There are also many other acts and rules in India that have contributed towards promotion of PPP directly or indirectly from the constitution of India to Air and Water Acts etc. Hereby we can see that though this principle has not been regressively followed and measured to be binding by Supreme Court but still there is a continuous effort by the courts to implement this principle with as much assertion as it can. We can say from the above that PPP has come a long way in India and is given an imperative position to protect the environment and move towards better potential though it has still an elongated way to go.

QUANDARY WITH POLLUTER PAYS PRINCIPLE

Polluter pays principle has proved to be effective to an extent as it has helped to control the damaged caused to the environment but one cannot deny the fact that there are some issues that exists with this principle. First being is that there is proper definition of who exactly is a polluter. The definition of polluter is quite hazy. Another drawback is that this principle is frequently holds the government bodies liable to pay compensation like municipal authorities etc which are funded by taxes paid by citizens of the country, when these authorities pay

compensation under PPP to the people it's like they are compensating themselves thereby undermining the central idea of PPP.

One of the major problems is that it is often difficult to anticipate how much level of pollution is acceptable and often the industries do not unveil the exact amount of emissions which makes it difficult to measure and correct it. There is also no lucidity on what the polluter has to pay for as for the pollution done in past, present or future. At hand there is also no exact criteria on how the damaged done should be calculated and how much compensation should be given for those effected with the scratch. PPP comes into question in contemporary times as in many countries this principle has transpired a mode to gain compensation thus focusing less on the critical notion of restring the environment, people are concerned more only with the monetary benefits today.

Moreover, there still exists doubt over the content and scope of this principle. The Supreme Court of India clearly has said in *Deepak Nitrate Ltd v. State of Gujarat*^{xiv} that though this principle is a well settled principle of environmental jurisprudence, there still egress query regarding its scope and content. The court said that while compensating it has to be kept in mind the capacity of enterprise as well as the harm done by the industry. It said that to pull PPP it is fundamental that the harm done to the environment and man must be proved, sheer breach of legal provisions laying down the standards does not draw this principle.^{xv}

As a consequence, we can see that there egress some woolly provisions with regards to this principle which makes its realization kind of intricate and hence is not long-established so regressively throughout.

EPILOUGE

“To waste, to destroy our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed”.

— Theodore Roosevelt

The times that we are living in are the times where the healthy and safe environment needs to top our list of priority. Polluter pays principle is one such way to sponsor safe environment and repair the damage done to it ensuring that not only the needs of today's generation but the needs of tomorrow's generation are also met. This principle outlines the elementary principle in the arenas of law, environment and economy that make sure fairness plus justice. PPP tends to look after the environment that has beard damage along with the people who have facade the repercussions of that damaged environment. The principle along with precautionary principle and sustainable development have been renowned at both international plus regional podium. In India the constitution of India besides various legislations makes certain that everyone one is able to avail their right to safe, healthy and clean environment. The courts in India have continuously made an endeavor to implement this principle. PPP inculcates a vision within ourselves that we should always make an attempt to guard the environment in every which way we can.

Polluter Pays principle has urbanized immensely but it is still yet to gain the identification that it deserves on the international stage. This principle due to an assortment of issues like being not inert or not being consistent has made its universal submission difficult. The range of ambiguities that are present in PPP with regards to its content, scope and different interpretations makes its groundwork feeble. Talking about the Indian context, due to lack of apposite statutory provisions and lack of binding force ,PPP experience some hitch. This principle is yet to be established and get regressively applied internationally.

Nevertheless, despite some apprehensions this principle has proved to be a great way to deal with environmental degradation. There should be more meditation on environmental reinstallation along with the keeping in mind that polluter has to take the responsibility of both environment cost plus direct cost to people. Today there is great need to improve the environment which requires stringent realization of PPP all over the world as well as consciousness of people should be used and we all should become aware about our environment as the environment is not only for us but also for our future generations and thus PPP along with precautionary principle and sustainable development should all go hand in hand for the perpetuation of our mother earth and nature around us.

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