
POLLUTER PAYS PRINCIPLE: AN EFFICIENT TOOL TO CURB POLLUTION?

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ABSTRACT

It is a commonly accepted notion that the one who dirties is solely responsible for cleaning up too. This is just what The Polluter Pays Principle preaches. The Polluter Pays Principle is a globally recognized principle that holds the polluter responsible to bear the restoration costs. Through this article, I aim to discuss the various shortcomings and legal implications and to throw light on the success of the principle in controlling pollution.

Introduction

Every action of man has some direct or indirect effect on the environment. The transport we use for travelling, the food we buy, the clothes we wear, everything has consequences on the environment. The credit of it all goes to the Industrial Revolution, which started in the middle of the 1700s, replacing man with machines. As much as it made life easier for men due to the introduction of machines, it is safe to say that most of the modern world's problems are caused by the Industrial Revolution. The Industrial Revolution is alone responsible for a myriad of problems related to the air, water, soil etc. Back then, nobody thought about the repercussions the world would have to face created by the rampant industrial growth, it is only recently that the impact has started to be felt in the form of global warming or climate change. Industries, especially manufacturing and nuclear, are the major contributors to this change, destroying our very ecosystem. However, it is now time to roll up our sleeves and work towards saving this planet that we call home. Can we let the industries and other polluters get away with the destruction caused by them just to fill their pockets? Someone has to be held liable for the environmental loss, and it should be none but the very polluters responsible for it. This calls for the Polluter Pays Principle. As the name suggests, the Polluter Pays Principle is based on the concept that the polluter, who is responsible for environmental damage or is responsible for creating situations, directly or indirectly, that led to environmental damage shall bear the costs for fixing it. Thus, this principle holds the polluter liable for pollution and compensates the victims of pollution and for the restoration of the environment. The concerned enterprise will be expected to pay for carrying out measures suggested by the public authorities until the environment is returned back to its acceptable state post the incident. This simply means that if pollution were to happen, the cost of fixing it will be borne by the polluter and not delegate the work to an agent, the Government/society.

Historical Background

In a report by the World Commission on Environment and Degradation titled 'Our Common Future' stated that the price for restoring the environment has to be paid by the internalization of the enterprise i.e the polluter. The said enterprise will be needed to bear the cost of taking preventive, restoration and compensatory measures. For the purpose of allocating pollution control costs, the Polluter-Pays Principle (PPP) was an economic principle that was adopted

by the OECD in the year 1972.¹ It was also laid down as Principle 16 of the UN Declaration on Environment and Development in 1992 in Rio. The principle has also been included in the Treaty of the European Communities since 1987 and in a number of legislations worldwide.²

PPP in India

Article 21 of the Indian Constitution guarantees to its citizens, the right to life³. This right is not just limited to the physical act of breathing, mere animal existence or surviving through the drudgery of life, but implies everything that is necessary for the development of personality and improving the quality of life.

The environment is one of the most essential parts of man's life, without which, man's smooth survival will be hampered. This is why it is imperative that we protect and conserve our environment. Thus, as man has the right to a clean environment, it is his duty to protect it, which flows from Article 21 of the Constitution.

Article 20 of the National Green Tribunals Act also has provisions regarding the Polluter Pays Principle. It states that, *while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.*

Articles 48-A and 51 A-g also highlight the duty of the state and its citizens to protect and improve the environment. The court has observed that the principle has been become a part of the International Law, and thus, is also a part of the Indian jurisprudence.

Apart from this, the Supreme Court in its various judgments has also made it clear that the PPP is a well-established principle in the Indian legislation, without a statutory mandate.

Moreover, an industry that carries out hazardous activities has "absolute liability" under civil and criminal law, and is required to compensate the victims and restore the environmental loss, as declared by several judicial pronouncements.⁴

Shortcomings

¹ Polluter Pays Principle, oecd-ilibrary.org

² India: Polluter Pays Principle, Rubin Chopra (10th Nov 2017) <<https://www.mondaq.com/india/clean-air-pollution/645232/polluter-pays-principle> >

³ Article 21 of the COI- No person shall be deprived of his life or personal liberty except according to procedures established by law.

⁴ Polluter Pays Principle and the Supreme Court of India, Volume 42:1, Satish C. Shastri, Indian Law Institute

There are several reasons due to which the PPP is considered as more or less a 'vague' concept and difficult for many legislations to adopt it in its strict sense.

One of the major shortcomings in the principle is that the term polluter has no clear definition and thus, liability usually only falls on those who actually 'pollute' and not on indirect polluters. It is usually difficult to determine the amount of pollution being caused by industries. Thus, they are only charged for the pollution that can be easily determined, this gives large industries, an easy license to pollute as they can usually afford for such damages. This was also highlighted by the National Green Tribunal in **Saloni Ailawadi v. Volkswagen India (P) Ltd**⁵, wherein it stated that Polluter Pays' principle does not mean polluter can pollute and pay for it. It would include environmental cost as well as a direct cost to people.

A direct consequence of such unambiguity in determining compensation costs are that, usually all costs aren't covered. So, it is easy for industries to clean up the damage that is visible to the naked eye, but the long-term damage caused by such pollution is usually irreversible.⁶

The small and medium scale industries running in highly competitive urban areas are usually at a greater loss. Large-scale firms can usually afford such costs, whereas it adversely affects the smaller ones.

Third-world countries are majorly impacted by such shortcomings in the implementation of the principle. This is because their industries are mostly pollution-intensive, due to the lack of resources and technology. Also, producers can easily shift their burden on consumers, and thus, third-world countries who depend on such nations for raw materials usually bear the brunt of it.⁷

Suggestions for implementation

The climate is changing, there is rampant destruction, but in order to curb it, PPP is one of the most efficient methods out there. All that is needed now is to implement it in the right manner.

⁵ 2019 SCC Online NGT 69

⁶ Does the Polluter Pay?, Published 15th October, 2020 < <https://www.eea.europa.eu/signals/signals-2020/articles/interview-does-the-polluter-pay> >

⁷ The Polluter Pays Principle, Shyel Trehan and Shuva Mandal < <https://www.sconline.com/Members/SearchResult.aspx> >

Firstly, strong legislations are required which clearly define the polluter, the scope of pollution and the amount of monetary compensation.

There should be emphasis on preventing pollution in the first place. There should be a limit on the industrial emissions. All industries carrying out hazardous activities should be kept in close check in the form of environmental audits, along with tariffs; taxes, pollution quotas, etc. should be well implemented.

There should be voluntary agreements and all citizens, realising their social duty, should take active steps in protecting and preserving the environment.

Landmark Judgments

Indian Council for Enviro-Legal v. Union Of India & Ors ⁸

This was the first case where the Polluter Pays Principle was discussed and defined. In this case, an environmentalist brought into the supreme court's attention, profit-driven evil activities carried out by an industrial complex in Bichri, Udaipur. The company was allegedly producing and letting out highly toxic chemicals, which percolated into the earth, thus polluting ground water and amplifiers. In its long-awaited verdict, the Supreme Court held that in light of the dangerous activities that was being carried out by the industry, it was liable to restore the environment and compensate for the threat caused to human and natural life, thus imposing the PPP principle.

M.C. Mehta v. Kamal Nath⁹

This is a landmark judgment wherein the supreme court held that changing the course of the river in order to save their property from future floods is a civil wrong and thus the guilty person should pay damages for the restoration of the environment

M.C Mehta v. Union of India¹⁰

This is a landmark case and one of the prime examples of how a company's carelessness can cost the lives of innocent people. The constitutional need of the Polluter Pays Principle was discussed in this case. The court held that if an industry is carrying out risky activities, thus

⁸ 1996 AIR 1446, 1996 SCC (3) 212

⁹ 1987 SCR (1) 819; AIR 1987 965

¹⁰ 1987 SCR (1) 819; AIR 1987 965

posing a threat to the lives of the people in the surrounding areas, it is their responsibility to take utmost care and if any such mishap takes place, they will solely be liable to pay compensation.

Conclusion

Overlooking the flaws, the Polluter Pays Principle possesses huge scope and is the need of the hour for sustainable development, especially in a developing country like India. It needs a clear, unambiguous and a well-planned implementation by legislations around the world. A complete fool-proof mechanism will be an important step towards restoring the already damaged environment.