
AN ANALYSIS OF THE POLLUTER PAYS PRINCIPLE IN INDIAN FRAMEWORK

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INTRODUCTION

According to the widely accepted "polluter pays" principle, individuals who cause pollution should pay the expenses of controlling it to prevent harm to the environment or to human health.

According to the "polluter pay concept," the polluter must pay for the rehabilitation of any environmental damage in addition to compensating the victims of pollution. Under the OECD Recommendation (1)(2) of 1972 and 1974, public authorities decide what steps the polluter should take to manage the pollution so that the environment is in an acceptable condition after the industry has operated. As a result, both the expense of environmental restoration and the cost of health risks to the general public are borne by the polluter.

For instance, a plant is often held accountable for the proper disposal of any potentially toxic waste that is produced as a by-product of its operations.

The Organisation for Economic Cooperation and Development (OECD) first proposed the "polluter pay" principle in 1972. According to the study, the polluter is in charge of limiting and preventing pollution caused by the factory's operations. The International Commission on Environment and Development quickly recognised pollutants as a type of waste. Hence, the spread of contaminants into the environment was seen as an inefficiency of industrial production. In order to control the pollution issue, the "polluter pays principle" was implemented as a powerful economic, administrative, and legal weapon. The "polluter pays" idea is a component of a larger set of guidelines for sustainable development that apply globally. It is a part of Indian environmental legislation.

OBJECTIVES OF POLLUTER PAYS PRINCIPLE

The objective of Polluter Pays Principle are as follows:

1. To reduce environmental contamination by controlling and reducing its occurrence.
2. To promote the adoption of non-polluting practises by businesses and individuals in order to stop any environmental degradation.
3. To ensure corporate accountability and hold them accountable for their impact on the environment.
4. To factor the cost of environmental deterioration into the firm's operating expenses.
5. To encourage the best possible use of available resources.

IMPORTANCE OF POLLUTERS PAY PRINCIPLE

The importance of polluters pay principle are as follows:

1. The polluters pay principle can be a powerful weapon in stopping further environmental deterioration.
2. The principle puts a fee on the generation of greenhouse gases that is equal to the expense of environmental harm. Thus, the polluter is compelled to bear its price.
3. According to WHO data, almost all the world's population (99%) breathes air that contains high levels of pollutants and exceeds WHO guideline limits, with low- and middle-income nations seeing the largest exposures. Globally, this has a propensity to influence community health.
4. The polluter pay principle would be put into practise to minimise expenses by cutting emissions. As a result, the principal can contribute to lowering the cost of pollution by lowering environmental emissions.

POLLUTER PAYS PRINCIPLE IN INDIA

In India, the idea of the polluter pays principle covers not just the costs to the environment but also the direct costs to those whose lives are impacted by the pollution. In the 1996 case of *Indian Council of Enviro-Legal Action v. Union of India*, the "polluter pays principle" was first used and articulated in India. In this case, Justice Dalveer Bhandari found that the industrial

process is integral to correcting the ecological imbalance that it has wrought. Hence, the industry that generated the pollution should bear the financial burden of taking preventative and controlling measures for the pollution that was caused. It is not possible to shift the financial responsibility for avoiding or repairing the dent on the government. After the court dismissed the writ petition, the review petition, and the curative petition, numerous interlocutory and interim applications were made in this matter. Judge Dalveer Bhandari, the judge in this case, believed that it was simpler for men in positions of authority to defy or fail to follow the court's orders.

According to the judges' findings in the cases of *Vellore Citizens' Welfare Forum v. Union of India and Ors.* and *Research Foundation For Science Technology National Resource Policy v. Union of India and Anr*, respectively, environmental laws in India are fundamentally based on ethical principles like the precautionary principle and the polluter pays principle. The "polluter pays principle" was previously regarded as a component of the accepted norms of international environmental law. The judges therefore believe that the principles should be written into India's environmental laws.

In the *Taj Trapezium Case*, the highest court in the nation implemented the polluters pay concept. It was said in this passage that lawmakers must draught legislation to address the issue of environmental pollution, which is getting worse in the nation as a result of the move towards industrialization. According to the document, "remediation of the damaged environment is a component of the process of sustainable development and, as such, the polluter is obligated to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecosystem."

The justices in the case *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors.* expanded the parameters of how the theory was put into practise. When cases are filed with tribunals or other environmental organisations, the judges have made it possible for those institutions to adopt these principles.

Every Indian citizen's fundamental right is emphasised in Article 21 of the Indian Constitution. The right to life and personal liberty is the fundamental freedom listed in Article 21. Simply put, denying a locality's residents their basic rights would include contaminating the area around them. Every citizen has a responsibility to participate in the community in order to protect the environment because pollution is an inevitable by-product of industrialization.

Therefore, it is thought that Article 21 of the Indian Constitution naturally follows that the right to community participation in environmental protection.

According to Section 20 of the National Green Tribunal Act, while passing any order, award, or decision for balanced development without damaging Mother Earth, the tribunal may apply the concepts of sustainable development, the polluter pays principles, and precautionary principle.

ISSUES WITH THE POLLUTER PAYS PRINCIPLE

The issues with the concept of Polluters pay principle are as follows:

1. The supreme court has often reaffirmed that India's environmental laws are fundamentally based on the idea that polluters must pay. Nevertheless, the idea has not been applied in its original form.
2. Vehicle emissions continue to be the biggest source of air pollution in the nation, and treatment of this pollution is still on the to-do list.
3. Every yearly, news of the nation's capital being enveloped in thick pollution throughout the winter months draws headlines. This illustrates the reality that environmental issues have not yet gotten the attention they merit.
4. The uncertainty over who constitutes a polluter must be eliminated in order to assure the application of the principle.
5. In addition, the nation is home to a large number of small and medium-sized businesses, who find it challenging to internalise the cost of pollution because doing so would increase their production costs and reduce their ability to compete in the market.
6. The main cause of air pollution is vehicular emissions. A total of 385,000 deaths in 2015, or around two-thirds of all deaths, were attributed to diesel engine exhaust emissions. The effluents released into water bodies can be treated, and proper management can reduce the amount of trash dumped on the soil. It is impossible to clean up filthy air. However, it is even harder when an entire country or city is impacted by air pollution. Sometimes, such as in landlocked cities in northern India, where even

the annual rainfall is scant, the government's efforts to prevent air pollution are never sufficient.

7. There is no doubt that air pollution from vehicle emissions is greater than that from industrial emissions. The "polluter pays principle" places a strong emphasis on industrial pollution compensation. Who should be held accountable for the vehicle's emissions, the owner, or the manufacturer? Regrettably, the "polluter pays concept" does not explicitly state who is responsible for vehicular emissions.

CONCLUSION

The application of the principle in the Indian situation has been strengthened by many rulings. Yet, because the principle is not expressly acknowledged, its applicability varies and is unclear. The judiciary has made clear, unambiguous, and conclusive rulings. It was discovered that businesses are social entities with responsibilities to their society and surrounds. The outdated idea that ecological balance and development should go hand in hand is no longer valid in the twenty-first century. Yet destroying the environment for growth is no longer acceptable.

The PPP philosophy has come to be more focused on paying the victims than it is on making up for environmental destruction. Sometimes it is difficult to determine who is actually causing the pollution, and the damage done does not always correspond to the actual loss incurred. Each of these flaws leaves the principle's application vulnerable. As a result, to strengthen the application of PPP in the Indian context, it is essential that the principle be given a clear and express legislative recognition and that it be used in a way that would result in the restoration of the environment.

The "polluter pays" principle, the "precautionary principle," and the "sustainable development" notion should ideally be ingrained in us. Our subconscious minds should be ingrained with the idea that nothing we do should endanger the environment. If every citizen took small measures in the direction of nature, such as carpooling, riding a bicycle to work, and avoiding single-use plastic, it would make a big difference. On major days like Independence Day, Earth Day, etc., several institutions and universities have started planting trees. Sustainable growth requires such actions. Harmony between us and nature requires balanced development. The millennial generation should develop these habits.