
POLLUTER PAYS AND HUMAN RIGHTS: STRIKING A BALANCE IN ENVIRONMENTAL JURISPRUDENCE

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ABSTRACT

The Polluter Pays Principle, or "PPP," is a well-established environmental law theory in India and around the world. It has become a pillar of environmental law, emphasizing the need to hold polluters financially responsible for environmental harm. Though being aware of the fact that the idea is broadly accepted, there is considerable discussion and disagreement regarding its meaning and application. As a result, different circumstances have given the principle varied interpretations. The principle's interpretation is also influenced by its intended use in a given situation, whether it be redistributive or preventive. The SC's landmark 1996 decision in the Bichhri case marked the introduction of the principle into Indian jurisprudence, and the Vellore case swiftly followed with its reaffirmation.

This paper delves deeper into the principle's complex relationship with the absolute liability doctrine, a concept that was specifically drafted by the SC, as it attempts to address the twin issues of making polluters answerable for damage to the environment and guaranteeing the restoration of damaged ecosystems. Additionally,

implementing the PPP depends on various crucial elements, including identifying the polluter, specifying the circumstances that trigger their financial responsibility, identifying the recipients of the payment—whether they be the government, private citizens, or both—and determining the type and scope of the payment itself. Courts have explicitly or implicitly invoked this principle when addressing the accountability of current or potential polluters, and judicial decisions have often been based on it. However, the principle's conceptual foundation and its judicial interpretation have not been thoroughly analyzed. This paper seeks to address this gap or inadequacy of knowledge through a deep dive into the judicial pronouncements of the National Green Tribunal ("NGT"). Furthermore, this article provides a brief summary of the progress of the "polluter pays principle" as an environmental economics principle as well as the evolving jurisprudence. India's environmental jurisprudence has continuously connected the right to a

healthy and sustainable environment with the right to life, as guaranteed by Article 21 of the Indian Constitution. This essay examines the relationship between PPP and human rights, emphasizing how the principle affects underprivileged groups and the more general right to a clean and healthy environment. In order to improve the implementation of PPP, this paper's conclusion highlights the necessity of a strong institutional framework and more international cooperation.

The PPP has the potential to be a powerful tool for advancing environmental justice and sustainable development in India if its shortcomings are addressed and its implementation is improved. This article offers a thorough explanation of the PPP and its changing significance in India's environmental governance through a thorough examination of seminal judgments, legislative measures, and real-world implementations.

Keywords: Polluter Pays Principle, Emerging Jurisprudence, Judicial Interpretation, NGT, Right to Life.

INTRODUCTION

“The ‘polluter pays principle’ states that whoever is responsible for damage to the environment should bear the costs associated with it.”¹ A core concept in the field of environmental law is the Polluter Pays Principle (PPP), which stipulates that the costs of rehabilitation are borne by those who are responsible for the environmental deterioration. In contemporary times, PPP has become a widely accepted international standard for environmental policy. It establishes that any individual or organization liable for causing environmental harm must also bear the financial burden of its remediation. Liability encourages the guilty party to absorb the entire societal cost of his actions, which reduces environmental harm to the ideal level because environmental damage frequently results in externalities.

However, as environmental damage directly impacts human health, livelihoods, and fundamental rights, there is a pressing need to strike a balance between enforcing PPP and safeguarding human rights. Industrial factory owners often do not perceive environmental responsibility as aligned with their economic interests, making legal enforcement crucial to achieving environmental justice. Mere reminders of corporate social responsibility have proven ineffective, necessitating stronger legal and policy frameworks.

¹ Taking Action, Chapter 2, p. 3. Published by the United Nations Environmental Programme [sic], found at www.rona.unep.org.action.02.htm

Recognizing this challenge, the SC of India delivered five landmark judgments in 1996 and 1997, reinforcing PPP as a legal obligation rather than a voluntary commitment. These rulings marked a significant shift from the absolute liability principle, ensuring that industries internalize the full social and environmental costs of their activities. International treaty law has further contributed to the evolution of PPP, reinforcing its role as a key guideline in global environmental governance.

The principle also intersects with human rights concerns, as environmental degradation disproportionately affects vulnerable communities by compromising their accessibility to clean and purified air, water, and sustainable livelihoods. The right to a “healthy environment” is increasingly recognized as an extension of fundamental human rights, making it imperative to integrate economic, legal, and social mechanisms for effective enforcement.

This paper studies the evolution of the principle within Indian and international legal frameworks, analyzing its implications for rights of human and environmental justice. It also explores how pollution taxes, tradable permits, and green incentives—can create economic incentives for industries to adopt sustainable practices. By analyzing legal precedents and policy mechanisms, this research aims to propose a balanced approach where environmental protection and human rights are upheld without compromising industrial growth.

The utmost questions arising upon the principle include: Firstly, how should pollution and polluters be defined? Secondly, what determines the amount a polluter must pay? Thirdly, how should the payment be received and utilized? This paper attempts to answer these three above-mentioned questions.

DEVELOPMENT OF PPP AS A LEGAL PRINCIPLE IN INDIA

The Polluter Pays Principle (PPP) was first implicitly coined in 1972 by the ‘Organisation for Economic Cooperation and Development (OECD)’ in the consequences of growing concerns over industrial pollution and its impact on both the environment and public health. Recognizing the need for effective policies to deter pollution and promote environmental responsibility, the OECD, through its ‘Recommendation of the Council on Guiding Principles’ concerning “Economic Aspects of Environmental Policies”, formally conceptualized PPP. The principle asserts: “This principle means that the polluter should bear the expenses of carrying out the above-mentioned measures decided by public authorities to ensure that the environment is in

an acceptable state.”² It was reaffirmed in ‘Principle 16 of the 1992 Rio Declaration on Environment and Development’, emphasizing the liability of the individuals who pollute to bear the costs of environmental harm. Additionally, PPP has been referenced in Agenda 21, which outlines global sustainability strategies, and in the ‘Johannesburg Plan of Implementation’, adopted during the ‘World Summit on Sustainable Development (WSSD)’ in 2002, further reinforcing its role in the governance of environment and sustainable-development.³ This principle acts as a pivot in both national and worldwide environmental policy and jurisprudence.⁴

India has created numerous environmental protection laws since the Stockholm Declaration of 1972, including the Forest (Conservation) Act of 1980, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and

Control of Pollution) Act of 1981, and the Environment (Protection) Act of 1986. This demonstrates the global shift towards environmental consciousness, depicting how people all throughout the world, especially in India, have begun to respond to the necessity for environmental protection identifying the urgency of safeguarding natural resources for a sustainable future.

In India, PPP emerged as an extension of the ‘absolute liability’ rule, which was established in the infamous case of *M.C. Mehta v. Union of India*⁵. In this precedent, the court decided that polluters must borne monetary responsibility for the environmental harm they cause. It directed them to pay a pollution fine, with the funds specifically allocated for restoring the affected area's environmental and living conditions, reinforcing the idea that environmental accountability lies with those who cause harm.

The Apex Court of India first interpreted the Polluter Pays Principle (PPP) clearly in the *Indian Council for Enviro-Legal Action v. Union of India case*⁶, also named as the *Bichhri* case. The

² Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies, <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=4&InstrumentPID=255&Lang=en&Book=False>.

³ United Nations Conference on Environment and Development (UNCED), "Rio Declaration on Environment and Development," 1992, Principle 16. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

⁴ Margaret Rosso Grossman, Agriculture and the Polluter Pays Principle, *Nederlandse Vereniging Voor Rechtsvergelijking*, 1.

⁵ *M.C. Mehta v. Union of India*, 1987 SCR (1) 819.

⁶ *Indian Council for Environment-Legal Action v. Union of India (UOI) and Ors*, (1996) 5 SCC 281

case concentrated on the harm that chemical industries' disposal of untreated wastewater and industrial sludge had to the environment and public health in Bichhri and the surrounding Rajasthani villages. Regardless of the precautions adopted, the SC ruled that any organization involved in hazardous or fundamentally risky activity is fully accountable for compensating people impacted. The Court upheld the polluters' need to remediate environmental harm caused by their operations, strengthening India's legislative structure for environmental accountability.

The SC of India subsequently affirmed that "absolute liability for environmental harm goes beyond merely compensating the victims of pollution"⁷, evaluating PPP in the context of the statutory constitutional obligation to prevent and improve the environment. It also covers the expense of restoring the damaged environment to make sure that polluters take full responsibility for the direct and indirect repercussions of their actions. This interpretation supports the notion that those who damage the environment need to take an active role in restoring it.

With enforcement of the National Green Tribunal Act, 2010⁸ ("NGT Act"), a dedicated body for resolving environmental issues in India was established in 2010. Here, the PPP concept was formally recognized in a statute by law.⁹ PPP is specifically included in the NGT Act as a presiding principle when the NGT issues any orders, decisions, or awards.¹⁰ The compensation that the NGT may provide under this act are defined as the restoration of damaged property and the environment, as well as the payment to individuals subjected to pollution and environmental harm.¹¹

OPERATIONALISING THE 'PPP'

Identification of the person who pollutes, the circumstances under which the principle will be activated, the authority tasked with assessing environmental harm, determining the number of damages that the polluter must pay, the pattern in which those damages must be paid, etc., are all necessary to operationalize this principle. Based on a review of a few SC rulings and the more recent NGT guidelines, this section discusses each of these requirements.

⁷ Vellore Citizens' Welfare Forum v. Union of India, (1996) SCC 647: AIR 1996 SC 2715

⁸ The NGT was established on 18th October, 2010, vide notification No. S.O 2569(E) under the National Green Tribunal Act, 2010.

⁹ S. 20, The National Green Tribunal Act, 2010.

¹⁰ Ibid.

¹¹ S. 15, The National Green Tribunal Act, 2010.

Polluter and Pollution: Who Pays For What?

Determining pollution and recognizing one or more polluters are pre requisites for the application of PPP. The Environment Protection Act of 1986¹², the Water (Prevention and Control of Pollution) Act of 1974¹³, and the Air (Prevention and Control of Pollution) Act of 1981¹⁴ all define "pollution" as following: "any solid, liquid, or gaseous substance present in such concentration as may be, or tend to be, injurious to environment," which "may be or tend to be injurious to human being or other living creatures or plants or property or environment." Additionally, the presence of such substances "may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural, or other legitimate uses, or to the life and health of animals or plants or aquatic organisms."

As a result, "pollution" in the legal sense is entirely different from "pollution" in everyday speech. Alongside this, it is crucial to comprehend what the term "polluter" means. The individual or organization in charge of the polluting activity is typically referred to as the polluter. The common questions that arise are- Whether the polluter is always responsible; Is a polluter only a direct emitter of pollution, or does it include indirect contributors (such as consumers); and how is liability distributed when multiple actors contribute to environmental damage?

The implementation of the PPP depends on identifying the polluter, figuring out how accountable they are, and evaluating who has the financial and technological capacity to stop or lessen pollution. Assigning financial obligation is complicated since the immediate physical polluter is not often the only or key liable entity.

Pollution and Responsibility: Polluters may not always bear full responsibility for the pollution they produce. For instance, the car manufacturer that creates engines that are not ecologically friendly bears a larger portion of the blame when a driver produces pollution. In a similar vein, farmers who use dangerous pesticides and the businesses that manufacture them share responsibility for agricultural contamination. Therefore, it is necessary to distinguish between

¹² S. 2(c), The Environment Protection Act, 1986.

¹³ S. 2(e), The Water (Prevention and Control of Pollution) Act, 1974.

¹⁴ S. 2(b), The Air (Prevention and Control of Pollution) Act, 1981.

direct and indirect sources of contamination in order to assign culpability.

Pollution and Power: The organization that can regulate pollution the best should be given responsibility. It would be more efficient to compel automakers to create cleaner cars rather than taxing individual drivers for pollution. According to this theory, producers should be the focus of preventative actions rather than just paying victims after harm has been done.

Actual vs. Potential Polluters: Liability must occasionally be extended to possible polluters who might not have harmed people right away but might in the future. For this reason, in situations when direct guilt cannot be established, pre-emptive taxes, like Canada's oil spill compensation fund, are applied to pay damages.

Determining who pays and for what under PPP requires a nuanced approach. While physical polluters are often targeted, manufacturers, governments, and regulatory authorities must bear greater responsibility when they enable, permit, or fail to prevent pollution. Additionally, potential polluters should contribute to preventive and restoration funds to mitigate future environmental harm.

The NGT must determine what constitutes "pollution" and "polluter" by applying the legal definition in order to evaluate the term's legal meaning and apply the PPP principle. But because the terms "pollution" and "polluter" are applied and used in a variety of ways, the practice of NGT has been multifaceted rather than following a single, systematic pattern. On occasion, government representatives and agencies have been held personally accountable for pollution by the NGT. This includes local governments that qualified as polluters because their inactivity caused pollution and/or environmental degradation. For instance, in a case¹⁵, the municipal authority was ordered to compensate for the restoration of the solid waste site to its pre-damage state and to stop additional environmental harm. The Municipal Council was assessed a compensation cost in a case¹⁶ which involved the open burning of municipal garbage. This cost was later recouped from the contractor and other relevant personnel. The Ministry of Environment and Forests (MoEF), the Government of India, and the Government of Assam were deemed to be pollutants for allowing uncontrolled mining and quarrying operations in and near the Kaziranga National Park area. The statutory authorities were penalized by the NGT for

¹⁵ *Invertis University and Ors v. Union of India and Ors.*; Application No. 185/2013, order dated 24 October 2013, NGT (Principal Bench), para 45(iv).

¹⁶ *Dr. Karan Singh v. State of Himachal Pradesh and Ors.*; CWP No. 6114/2012, order dated 30 July 2013, NGT (Circuit Bench at Shimla).

not carrying out their mandated responsibility to allow an event that resulted in environmental harm on the Yamuna floodplains¹⁷. The people of India have also been viewed as the polluter in certain cases, such where in lieu to generate finances for the efficient execution of municipal solid waste disposal operations, the NGT "indicated" that the authorities will have the freedom to require payment from all individuals producing municipal solid waste.¹⁸ The principle has been adopted by various courts irrespective of the polluters' socioeconomic status.

An alternative interpretation of this would be that courts have largely adhered to their preconceived notions about who is polluting. For instance, the squatters' or "encroachers'" unsanitary conditions on public land led to pollution and ecological issues, which in turn prompted their eviction¹⁹. When polluters are unable to pay and victims require prompt compensation, the government may pay instead.²⁰ The government may finally reclaim the money from the polluter.²¹

Replacement may be necessary in certain cases to enable timely reimbursement for individuals and environmental restoration. In the leading case law, the SC ordered the state government to pay a share of compensatory damages to villagers for crop damage caused by polluting enterprises.²² In recent years, India has taken a transformative approach to preservation of environment through regulatory and judicial measures.²³ Recent advancements in prevention of environment in India have led to a reinterpretation of the PPP, as stated above.²⁴ India has implemented a legal frame-work of direct administrative responsibility, which requires the state to offer compensation to the individuals who are subjected to ecological harm and then collect money from polluters.²⁵ As environmental degradation worsened, the Indian judiciary became more aware of environmental standards. This created an obligation for state governments to compensate victims of environmental degradation.

¹⁷ Manoj Misra v. Delhi Development Authority and Ors, OA No. 65/2016, order dated 9 March 2016, NGT (Principal Bench) (Art of Living case).

¹⁸ OA No. 106/2013, order dated 3 September 2013, NGT (Principal Bench).

¹⁹ (2002) SCC Online Del 1335.

²⁰ Barbara Luppi, Francesco Parisi and Shruti Rajagopalan,

'The Rise and Fall of the Polluter-pays Principle in Developing Countries' (2012) 32 International Review of Law and Economics 135, 136.

²¹ See also Water Act s 33(4); Air Act s 22A(4).

²² Indian Council for Enviro-legal Action and Ors v. Union of India and Ors (2007) 15 SCC 633

²³ See also OECD (1972, 1974, 1989, 1992) and Babu, Eger, Raja, Schäfer, and Somashekhar (2010).

²⁴ Further analysis of the various legislation and environmental cases can be found in Jaswal (2008), which has provided a comprehensive source of information for this section.

²⁵ Faure and Raja (2010) discuss on the effectiveness of environmental regulation in India, with special reference to public interest litigation. See also Craig and Deshpande (1989), Prasad (2004) and Raja and Rathinam (2005).

In a leading case law, the 'NGT' laid down a specifically particular fund known as the "Green Tax Fund" to enable a proper progress for environmental protection in all domains.²⁶ The 'NGT' mandated that "those traveling by public or private cars to Rohtang Pass levy a reasonable contribution of Rs. 100 for big vehicles and Rs.

50 for light vehicles, depending on PPP". It also levied a Rs. 20 fees for tourists travelling to Rohtang Pass by electric or CNG buses. This and other comparable examples²⁷ demonstrate that the NGT has taken the approach of 'deemed to be polluting'. The use of 'PPP' in each of the examples above demonstrates that it is not dependent on the concerned companies or persons crossing a specific pollution threshold. There are various patterns apparently visible from the above-discussed cases of how the NGT decides upon the matter of who pays and for what.

The concept of having all polluters pay the cost of their pollution appears progressive, but it is critical to recall that this should not result in the establishment of a "right to pollute" for whoever can or will pay. Putting it another way, the endpoint is an ecologically conscious way of life that needs a significantly visible shift in the present methods of production and consumption, rather than a massive green fund or more PPP applications.

TRIGGERING OF 'PPP'

The Polluter Pays Principle (PPP) is not applied uniformly but varies based on the nature of pollution, regulatory thresholds, and potential environmental risks. While it is most commonly enforced when emissions exceed prescribed limits and cause damage, it can also be invoked in other scenarios. PPP applies when pollution levels surpass legal thresholds even if no immediate harm is observed, as exceeding standards signals a long-term environmental risk. Additionally, even when emissions are within permissible limits, if they still result in environmental damage, the polluter may be held liable to ensure full cost recovery for the harm caused. PPP is also preventively applied where- ever there is a potential risk of harm to the environment, regardless of regulatory compliance, aligning with the precautionary principle. Moreover, in cases where no formal pollution standards exist, PPP can still be enforced based on scientific evidence to prevent regulatory gaps from being exploited. This flexible approach ensures that PPP functions

²⁶ Court on its own motion v. State of Himachal Pradesh, 2014 SCC OnLine NGT 1.

²⁷ These and other comparable examples demonstrate that the NGT has taken the approach of 'deemed to be polluting'. The use of PPP in each of the examples above demonstrates that it is not dependent on the concerned companies or persons crossing a specific pollution threshold.

not just as a remedial mechanism, compensating for environmental damage, but also as a preventive tool, deterring polluters before harm occurs. Strengthening legal frameworks and enforcement mechanisms is crucial for ensuring that PPP remains an effective deterrent and accountability measure in diverse environmental contexts.

Calculation of Compensation: How Much Should One Pay?

Although it may seem progressive to hold all polluters accountable for their pollution, it is important to emphasize that this approach shouldn't lead to the creation of a "right to pollute" for those who can or will pay. To put it another way, the ultimate objective is an environmentally conscious way of life that demands a significant change in the manner that we currently produce and consume, not a huge green fund or more examples of PPP application. In *Samir Mehta v. Union of India*²⁸, the NGT declared respondent firms liable for oil spills and pollution happened due to the ship's sinking. The ship was deemed unfit for sea. The NGT identified several sources of pollution, including oil spills and ship and cargo sinkings. They have an impact on the maritime environment, which includes sea water, aquatic life, the shore, the sea bed, mangroves, tourism, and the public life of those who live on the coast, and the negative effects can be seen at a number of beaches. However, the NGT considered it difficult to estimate the damages in order to apply PPP. The court ruled that: "Pollution-related damage cannot be accurately and precisely quantified in monetary terms. This must be based on some hypotheses or guess work, as is necessary in such instances. For example, harm to aquatic life, mangroves, seashore, and tourism cannot be precisely quantified in monetary terms."²⁹ The NGT agreed that environmental losses cannot be measured in money with "exactitude and accuracy", thus it backed the practice of "hypothesizing or guess work".

The use of speculation does not appear to be uncommon. It has also been employed in other circumstances. However, the method of guesswork or approximation does not appear to be NGT's innovation. In reality, the NGT endorses the use of this procedure by citing the SC's decision in a precedent³⁰ and noting that the principle of 'limited' speculation is a 'recognized principle'.

Further, there are two other methods applied by the NGT to calculate the costs. First, in some

²⁸ Supra 31.

²⁹ Ibid, at 136.

³⁰ A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd), (1999) 2 SCC 718.

circumstances, the size of the respondent company was taken into account. In cases such as *The Proprietor M/s. Varuna Bio Products v. The Chairman Tamil Nadu Pollution Control Board*³¹, the NGT determined compensation based on the company's size³². Second, in some cases, the NGT assessed compensation depending on the project's total cost. It should be noted that the NGT has employed measures other than granting compensation. In other occasions, the NGT has declined to give a specified amount of compensation and instead directed the polluter to take certain corrective actions, which restore the damaged environment, which is the ultimate goal of PPP, even though it is different from imposing monetary compensation.

In some cases, the SC has not assessed the loss caused by polluting activity or determined the amount to be paid by the polluter to reverse environmental/ecological damage and compensate victims (individuals and families). In *Bichhri*, the Court questioned its authority to impose and recover costs for enforcing fundamental rights, including remedial measures.³³ However, the Court did not provide a final opinion on this matter.

The Court has not explicitly stated that it cannot award damages.³⁴ Nonetheless, the central government (via the MoEF) was directed to carry out this responsibility under Section 3(3) of the EP Act.³⁵

The fundamental objective of compensation as understood in civil law is not served by any of the three approaches covered above. Even while the idea of restitution is obviously incompatible with guesswork or approximation, punishing larger businesses more severely may cause issues when the harm they do is minor, and vice versa. Cost integration, which shifts the outside expenses of producing and/or consuming products and services to the polluter rather than the state or the general population, is completely rejected. Therefore, given the objective of recognizing the PPP, such an imposition is unwarranted and needs to be re-examined.

Polluter Pays What: What and How Does The Polluter Pay?

The PPP is built on the idea of making the person who pollutes pay for it. The polluter pays

³¹ *The Proprietor M/s. Varuna Bio Products v. The Chairman Tamil Nadu Pollution Control Board*, 2015 SCC OnLine NGT 138.

³² *Murugan v. Member Secretary Karnataka*, 2015 SCC OnLine NGT 8.

³³ *Bichhri* (n 26), para 60.

³⁴ The Court observed: 'Be that as it may we are of the considered opinion that even if it is assumed (for the sake of argument) that this Court cannot award damages against the respondents ...', *ibid.*, para 60.

³⁵ *Ibid.*, para 70. The Court derived its authority to issue the necessary directions to the central government from its earlier decision in *Indian Council for Enviro-legal Action v. Union of India* (1995) 3 SCC 77. See *ibid.*, para 60.

primarily based on the meaning ascribed to the concept and its intended purpose. The polluter pays principle, which is non-curative and redistributive, demands polluters to cover the social cost of pollution prevention and control, as paid by public agencies.³⁶ PPP has been used as a legal tool in India to address civil liability. The Green Tribunal uses a variety of techniques to implement PPP, such as environmental reparation, victim compensation, penalties, and fines. The Green Tribunal has generally utilized PPP as a punitive instrument, regardless of its mode of application. It has further employed pre-emptive measures such as taxes and charges to implement PPP.

The Green Tribunal stressed the importance of public-private partnerships (PPPs) in sustainable development, stating that "it is no longer *res integra*" for polluters to pay for their damages and rehabilitate the environment.³⁷ The Green Tribunal clarified that PPP covers environmental restitution and restoration costs. Further clarifying the issue, it stated: "The 'Restitution' is an act of making good or giving the equivalent for any loss, damage or injury while 'restoration' is the act of restoring, renovating or re-establishing something close to its original condition, like restoring a damaged habitat."³⁸ In *Madhumangal Shukla v. UOI*³⁹, the Nagar Palika Parishad and the Deputy Commissioner of the Uttar Pradesh temple town of Vrindavan were both sentenced to pay Rs. 5 lakh in environmental compensation for inappropriate rubbish disposal. For violating the Municipal Solid Waste Rules of 2010 and the Air (Protection and Prevention of Pollution) Act of 1981, the Uttar Pradesh Pollution Control Board was forced to pay an extra Rs. 1 lakh. A fine of Rs. 50,000 was also levied, and it would be subtracted from the salary of the offending officers.⁴⁰

Vehicle, construction, sewage, and plastic pollution are examples of non-industrial pollution that the Green Tribunal addresses with preventative measures like taxes, levies, and spot penalties. The administration has instructed state agencies to put in place long-term regulations requiring polluters to make PPP-based payments. In large-scale non-industrial pollution cases, the NGT has employed PPP, which requires polluters to pay taxes, fines, and pollution charges upfront in order to stop further pollution. In *Vardhman Kaushik vs. Union of India & Ors.*⁴¹, the

³⁶ de Sadeleer (n 3) 35.

³⁷ *Hindustan Coca Cola Beverages Pvt. Ltd. vs. West Bengal*, Appeal No.10 of 2011 (PB). Dated March 19, 2012

³⁸ *Ajay Kumar Negi v. UOI*. Application No.183 (THC) / 2013, para 22 and 21

³⁹ Old Original Application No. 136 of 2015. Dated May 5, 2016.

⁴⁰ Cited in new Original Application No. 6 of 2017, para 3.

Dated July 3, 2017.

⁴¹ Original Application No.21 of 2014. Dated November 10, 2016.

Green Tribunal addressed the serious condition of severe air pollution in Delhi and neighbouring areas, which was negatively impacting public health. To address the "environmental emergency," an 'environment compensation tax' was applied to all automobiles coming into Delhi. In an effort to combat water pollution in the Yamuna River in Delhi, the Green Tribunal forbade the disposal of debris from pooja offerings and other materials into the river outside of designated places. The penalty for violations was Rs. 5,000.⁴²

The NGT has directed State authorities to create a policy system that includes PPPs as a preventive strategy. The Green Tribunal examined contamination in the Ganga River from Gomukh to Haridwar in Uttarakhand. The main cause of pollution was untreated sewage from hotels, Dharamsala (inn), and Ashrams (religious abodes). The majority of these locations lacked a sewage treatment plant (STP) and required permission from the relevant authority to access subterranean water sources. Further, the NGT requested that State authorities develop a scheme to clean the Ganga, presumably based on the Polluter Pays Principle. The tribunal determined that "the state governments, its instrumentalities, public authorities and bodies would be entitled to invoke the Polluter Pay Principle and requires the industries, hotels and Dharamsala and even a household to pay environment compensation and/or sewage charges, on the basis and directly proportionate to the discharge of the effluent from such premise".⁴³

LIMITS OF THE PPP

In the 1990s, after the Rio Conference, the SC prioritized environmental concerns over polluting industries, despite their importance in generating foreign exchange and employment (directly and indirectly).⁴⁴ The SC has also stated that the notion does not imply that the polluter can 'pollute and pay'.⁴⁵ The HC of Gujarat ruled in Pravinbhai that legalizing a breach is not permitted.⁴⁶ Courts have used the PPP to enforce fines or compensation for environmental damage, but have often permitted polluting industries to continue operations. In Sterlite, the Court found that closing the plant would be detrimental to the public interest, despite the

⁴²Retrieved from:

<https://timesofindia.indiatimes.com/home/environment/pollution/Rs-5000-fine-on-those-throwing-waste-puja-offerings-in-Yamuna/articleshow/49031212.cms#> visited on July 23, 2019.

⁴³ Indian Council for Enviro-Legal Action vs. National Ganga River Basin Authority and Ors. Original Application No. 200 of 2014. Dated December 10, 2015.

⁴⁴ In Bichhri (n 26), the pollutant (H acid) was manufactured for export exclusively, while in Vellore (n 32) and Tirupur (n 34), the polluting industry (leather and garments, respectively) generated considerable foreign exchange and employment.

⁴⁵ Research Foundation II (n 45), para 29.

⁴⁶ Pravinbhai (n 129), para 108.

appellant/polluter's misrepresentation and suppression of essential facts in their petition.⁴⁷ In *Him Privesh*, the Court emphasized that damages should not halt polluting activities.⁴⁸ The interpretation of the polluter pays concept in rulings might set a precedent for future pollution and environmental harm. This strategy contradicts the polluter pays principle, which emphasizes prevention.

Direct monetary compensation may not always be given to victims. The money collected from polluters can be used to improve the socioeconomic status of villages by enhancing agriculture, livestock, medical, and educational facilities, as well as by building public facilities like schools, hospitals, community centres, and tube wells and enhancing the environment and ecology. In order to stop pollution, the money can also be utilized to construct common effluent treatment facilities (CETPs).⁴⁹ Courts may mandate pollution prevention and control measures, rather than monetary compensation. In certain cases, polluters have been ordered to plant trees by the NGT. If victims of pollution do not receive adequate compensation in spite of court decisions, the polluter-pays principle may not work. These instances can suggest that the fairness component of the polluter pays principle is not being given enough consideration.

INTERNATIONAL ENVIRONMENTAL LAW'S CHALLENGES AND ADAPTATIONS TO THE PPP

For the purpose of holding polluters responsible for environmental harm, the Polluter Pays Principle (PPP) is a generally recognized framework. Its implementation, however, is fraught with difficulties, especially when considering international environmental law. Economic gaps between wealthy and developing nations, uncertainty around polluter identification, and real-world challenges in imposing environmental fees frequently compromise the efficacy of PPP.

One of the major flaws in PPP is the difficulty in determining who qualifies as a polluter. The legal definition of a polluter extends beyond direct contributors to pollution, including vehicle owners, manufacturers, fuel suppliers, and even governments that create conditions enabling pollution. This broad interpretation makes liability complex and difficult to enforce.

⁴⁷ *Sterlite* (n 143), para 48. The 'considerations of public interest' identified by the Court included: substantial contribution to copper production in India, which is used in defence, electricity, automobile, construction and infrastructure, etc.; employment to large number of people, directly as well as through contractors; support to ancillary industries; generation of revenue for central and state governments; and contribution to 10 per cent of the total cargo volume of Tuticorin port.

⁴⁸ *Him Privesh* (n 145), para 106.

⁴⁹ *Puniya* (n 115), para 31.

Additionally, the financial burden of PPP is not equally bearable by all—poor households, small businesses, and exporters in developing countries often lack the economic capacity to internalize pollution costs. This creates an imbalance where wealthier nations and corporations can afford to pay for pollution, while developing countries struggle with environmental and economic trade-offs.

This challenge is further complicated in international law, where countries have unequal economic and regulatory capacities to enforce PPP. Developed nations, with stronger environmental policies, often shift pollution-intensive industries to developing countries, effectively outsourcing environmental harm while maintaining cleaner domestic standards.

This imbalance aligns with critiques of PPP that argue polluters sometimes fulfill their obligations merely by paying administrative fines, rather than fully compensating for environmental restoration. Cases like the Exxon Valdez oil spill demonstrate how corporations can evade full accountability, raising concerns that PPP is sometimes reduced to a token financial penalty rather than a true deterrent.

To bridge these gaps, PPP must be adapted to incorporate Common but Differentiated Responsibilities (CBDR), ensuring that wealthier nations and corporations bear a greater share of environmental costs. This approach would shift the financial burden away from struggling economies, preventing unfair distributional conflicts while ensuring genuine environmental accountability. Furthermore, a clearer legal framework defining degrees of responsibility among direct and indirect polluters is necessary to close loopholes and ensure that PPP serves as an effective tool for both environmental protection and sustainable development worldwide.

CONCLUSION

The Polluter Pays Principle (PPP) is an essential mechanism in India's environmental governance, integrated into constitutional and legal frameworks through judicial interpretation. However, its implementation faces challenges, particularly in determining liability, ensuring consistent enforcement, and balancing environmental protection with social justice. While the SC and NGT have applied PPP in various cases, inconsistencies in judgments, weak penalties, and delays in enforcement limit its effectiveness. The principle's preventive function is undermined when the cost of non-compliance remains less than compliance, reducing its

deterrent impact. Furthermore, PPP has been applied more curatively than preventively, often focusing on compensation rather than proactive pollution control.

One of the major flaws of PPP is ambiguity in identifying polluters. As the excerpt highlights, the definition of a "polluter" is broad and complex, involving not just direct contributors (such as vehicle owners or factory operators) but also indirect players like manufacturers, suppliers, and even governments that create conditions enabling pollution. This complexity often allows corporations and wealthier entities to evade full responsibility, shifting the financial burden onto small businesses, workers, and marginalized communities. For instance, in cases where polluting industries are shut down, workers lose their livelihoods without proper compensation. Similarly, slum dwellers may be evicted in the name of pollution control, despite contributing minimally to environmental harm. These issues highlight justice concerns, as the poor often bear the costs of pollution mitigation while large-scale polluters escape with minimal financial consequences.

From the perspective of human rights, PPP is deeply connected to Article 21 of the Indian Constitution, which ensures the right to life, including a clean and healthy environment. However, for PPP to effectively uphold this right, its enforcement must be fair, proportionate, and aimed at long-term environmental justice. Incorporating elements of Common but

Differentiated Responsibilities could help ensure that wealthier nations and corporations bear greater responsibility for global environmental harm, rather than shifting the burden onto developing economies. Ultimately, strengthening PPP requires stricter enforcement, judicial consistency, and a focus on both prevention and compensation, ensuring that environmental sustainability does not come at the cost of social injustice.