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**Polluter Pay Principle**

**Rishikesh Shanker Gupta**

## INTRODUCTION

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### WHAT IS POLLUTION?

Environmental pollution has become a worldwide issue which causing adverse effect on the human health. The world health organization in its report in 6<sup>th</sup> march 2017 release a report of 1.7 million child death in a year , environmental risk such as indoor and outdoor air pollution, second-hand smoke, unsafe water, lack of sanitisation, and inadequate hygiene are the causes of deaths worldwide.<sup>1</sup> In its recent reports by European environment agency<sup>2</sup>, one in eight European deaths is a result of poor quality of environment. Deaths due to environmental factors include cancers and health issues that can be linked to environmental pollution, Bruyninckx said. The report adds that research links air pollution to higher COVID-19 death rates.<sup>3</sup>

### WHAT CONSTITUTES AN ENVIRONMENTAL POLLUTION

While we interpret what constitutes pollution under polluter pays principle, it would define pollution as any by-product of a production or consumption process that harms the environment in any way. The polluter can be the person, company, or other organization whose activities are generating that by-product. And finally, payment should equal the damage and be made to the person or persons to which that part harmed. Pollution is the type of a harm caused to the environment, by contaminating the natural environment.

While we talk about environmentalist who define a "polluter" far more broadly, not as someone who is harming others, but often as someone who is simply doing an activity which is causing a harm to the environment, Because, in such cases, there are no victims to compensate, the amount to be paid is then determined by the extent it caused harm to the environment. And then the payment which is made by the person who harmed the environment typically goes to the government in the form of a tax. In such cases, the PPP is used to promote an environmental agenda rather than to insure that real polluters pay compensation to real victims of their harmful activities.

In order to decide who the polluter is and who should be paid one must first know who has rights to the resource whose use is in dispute. There are situations where ownership is in dispute or property rights are undefined. These problems need to be clarified, either in the courts, as is typically the case

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<sup>1</sup> <https://www.who.int/news-room/detail/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who>

<sup>2</sup> <https://www.euronews.com//2020/09/08/one-in-eight-deaths-in-europe-linked-to-environmental-pollution>.

<sup>3</sup> <https://www.euronews.com/2020/09/08/one-in-eight-deaths-in-europe-linked-to-environmental-pollution-report-says->

when there are disputes over property rights, or legislatively, as may be necessary when rights are completely undefined, as might be the case with rivers, the ocean, etc.

## **POLLUTER PAY PRINCIPLE**

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The Idea behind the polluter pay principle was whosoever will pollute the environment, will bear the cost, to the extent it caused harm to the environment or to the human beings. This principle was given by organization for economic cooperation and development (OECD) under the polluter will be held responsible for the pollution caused and should bear the cost.

Under the Rio declaration which was adopted in 1992, also recognize this principle under principle 16 of the declaration- which states that “National authorities should endeavour to promote the internalization of environmental costs and 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”. With this it is clear that the Rio declaration all emphasized the need of this principle i.e. an economic concept which consists in charging a polluter for all the costs that his activity created for other persons.

The principle mainly states two things:-

- 1) That the polluter should pay for the administration of the pollution control system;
- 2) That the polluter should bear the cost of pollution he did to the environment – through compensation or clean up;

This principle also clearly states that , it is not the responsibility of the government to meet the costs involved in either prevention of damage caused by pollution or carrying out any other activity which harmed the environment.

Forcing polluters to bear the costs of their activities is also said to enhance economic efficiency. Appropriately applied, policies based on a polluter pays principle (PPP) should enable us to protect the environment without sacrificing the efficiency of a free market economic system.



## **WHO IS A POLLUTER**

Sometimes the identity of the polluter is not self-evident, at community level the polluter has been defined by the person who is directly or indirectly involved in the causing damage to the environment or creating such things which eventually will cause damage to the environment. If we talk about the industrial plant, then the plant operator who looks after the plant is the main accused. But the difficulty here is deciding the person behind causing pollution linked to transportation and consumption. Suppose the vehicle manufacturer can be said as a polluter but it also depends upon the owner of the vehicle who uses it secondly if we see the pesticide producers can be the polluter but the reason can be different who is using it as it may be improper use of pesticides which cause the pollution.

## **COSTS WHICH ARE COVERED IN PPP**

### a) PREVENTION AND CONTROL OF POLLUTION COSTS

Under 1972 and 1974 OCED recommendations 1 and 2, “the polluter pays principle means that the polluter should bear the cost of pollution and control measures” the measures and cost will be decided by the authorities. Polluter has to bear all the cost to prevent and control the pollution in the environment that he originated. And should not receive any kind of assistance from the pollution control board.

### b) ADMINISTRATIVE COSTS

The administrative cost for the process of waste management can be charged from the administrative authorities. Under the EC directives the authorities can charge the polluter to pay for the special measure taken by the government, analyses for instance, and for monitoring and control systems.

### c) ACCIDENTAL POLLUTION

The OCED states that the accidental pollution should also be included under this, it was said that the cost and measure to prevent and control accidental pollution should be borne by the polluter himself. Accident prevention will be more effective when the polluter has to bear the cost of all operations (cleaning, rehabilitation).

### d) COST OF DAMAGE

The cost of damage should be ensured by the polluter himself, if he fails to take necessary measures by the authorities then he would be liable to compensate the victims.

### e) DEGREE OF COST INVOLVED

Under this principle the polluter will have to bear if not all ,at least most of the costs that pollution caused damage to the environment , the cost is also included through compensatory mechanisms and fines with a view to prevent the damage to the environment.

### **DEFECTS IN POLLUTER PAY PRINCIPLE**

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As we can see that this principle not only helps in reducing the pollution but also warns the culprit not to pollute the environment in any way. But most of the countries are still developing and they cannot subscribe to this principle because either they want development or limiting the development.

- 1) As we see above who is a polluter, it's not self-evident, and the polluter may directly or indirectly be able to cause pollution to the environment. Due to its broad definition of a polluter sometimes is confusion.
- 2) There are several other who or either poor households or don't have knowledge (Informal sectors) to which extent they are causing harm to environment and due to which they cannot bear the damage they caused to the environment.
- 3) Thirdly, the formal sector small and medium sized firms having difficulty to pass on higher cost of domestic end users of their products.
- 4) The exporters, who are exporting goods to other countries, have a burden of damage cost to the environment.

These problems are causing the hindrance in implementing the polluter pay principle in the developing countries. But we should not also forget that this principle was came in very early and meant to reduce the pollution , some people criticize this as a vague principle as it puts burden on the payment of full damages caused to the environment.

## CASE LAWS

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Under the Indian perspective, how far this principle has reach out to being a part of the environmental law, We can see from the cases below :-

1) *Oleum gas leak case*

ISSUE HERE WAS:-

1. Whether such hazardous industries to be allowed to operate in such areas.
2. If they are allowed to work in such areas, whether any regulating mechanism be evolved.
3. Liability and amount of compensation how to be determined.

The Court laid down that an enterprise engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise is absolutely liable to compensate for such harm and irrespective of all reasonable care taken on his account. The larger and more prosperous the enterprise, greater must be the amount of the compensation payable for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

2) In one of the recent cases

*LG polymer gas leak case*

Lg polymer India private Ltd. vs. Andhra Pradesh pollution control<sup>4</sup>

A petition was filed in the national green tribunal, under which the justice adarsh Kumar goel delivered judgement on 8<sup>th</sup> may that

- 1) The LG polymer should deposit 50 crore rupees with the district magistrate of Vishakhapatnam.
- 2) It issued notice to the Andhra Pradesh pollution control board, the central pollution control board and to the union ministry of environment.
- 3) Thirdly, it constituted a 5 member fact finding committee to probe into the accident and deliver a report to the bench. The report found that the storage tanks were

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<sup>4</sup> 19 May, 2020

outdated and lacked temperature sensors, allowing the styrene vaporization to go undetected. With factory workers and the overall company inexperienced in storing tanks of such dangerous chemicals, the report blamed the incident on "gross human failure" and a lack of basic safety norms.

3) *Indian Council for Enviro-Legal Action vs. Union of India*<sup>5</sup>

The Court held that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.

4) *Vellore Citizens' Welfare Forum vs. Union of India*<sup>6</sup>

The Court interpreted the meaning of the Polluter Pays Principle as the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

5) *M. C. Mehta vs Kamal Nath & Ors*<sup>7</sup>

The Court held that pollution is a civil wrong and is a tort committed against the community as a whole. Thus, any person guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. Under the Polluter Pays Principle, it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.

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<sup>5</sup> 1996(3) SCC 212

<sup>6</sup> 1996(5) SCC 647

<sup>7</sup> (1997)1SCC388

## CONCLUSION

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The need of this polluter pay principle arose when the world sees how important is the environment to us , this principle if talked about in positive sense then it is very helpful as it not only warns the polluter but also charges him with the damage caused to the environment. This principle make people care, not to pollute the environment and prevent them from making any activity which directly or indirectly causing harm to the society. This became a legal concept and every culprit will be charged under this. The authorities will not be responsible for the restoration of the environment which the polluter caused but now the polluter himself shall be liable for the damages and each and every damage cost shall be borne by the polluter himself. The operator of a plant or a polluter should avoid wasting of damages to the environment and put an end to these activities which are causing harm to the environment. If we look closely this principle has a problem also in respect of imposing damages and implementation , if we look into one of the cases where polluter pay principle was applied , where span motels were charged with only 10 lakhs rupees for these big corporations who polluted at huge level should be charged with much more than 10 lakhs. And at last this principle really needs a strict implementation of this principle for the proper development of the country and for the saving of the environment from the polluters. If we see in our Indian constitution under fundamental duties Article 51-A (g)<sup>8</sup> of the Constitution of India imposes one of the fundamental duties to protect and improve the natural environment by stating “It shall be the duty of every citizens to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

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<sup>8</sup> Indian constitution , Article 51 A(g) “protect and improve natural environment”.