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AN ANALYSIS OF THE POLLUTER PAYS PRINCIPLE IN THE INDIAN FRAMEWORK

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INTRODUCTION

According to the polluter pays principle, persons responsible for causing pollution or environmental harm should pay for the costs associated with sweeping up after themselves or reducing their harmful effects on the environment. In other words, the polluter should be held responsible for the harm they produce rather than society as a whole.

The polluter pays concept is founded on the notion of internalizing the externalities of economic activity, which states that the costs of environmental harm brought due to these actions should be accounted for in the cost of production or consumption. As a result, there is a financial incentive for people and companies to reduce their environmental effect and embrace cleaner industrial techniques. The polluter pays idea is frequently mentioned as a crucial component of sustainable development and has been included into several national and international environmental laws and regulations. It is regarded as a means of fostering economic expansion while simultaneously advancing social fairness and environmental preservation.

A key environmental philosophy known as the Polluter Pays Principle (PPP) states that individuals who pollute or harm the environment should pay for the necessary repairs or compensation. Since the early 1970s, the PPP has been acknowledged as an environmental policy guiding concept in India.

The Water (Prevention and Control of Pollution) Act, 1974, which gave state pollution control boards the authority to charge polluting companies fees in order to pay for pollution control measures, was where the PPP was first implemented. In order to establish a central pollution control board and to make pollution control measures more strictly enforced, this legislation was later revised in 1988.

The Environmental Protection Act of 1986 strengthened the PPP further by requiring businesses to get environmental approvals before beginning operations and to adhere to

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environmental standards. The law also allowed for financial fines and compensation for environmental harm brought on by businesses.

In the landmark decision of *M.C. Mehta v. Union of India*, “the Supreme Court of India affirmed the PPP and ordered the government to take action to ensure that polluting businesses pay the full cost of the environmental harm they had created. Also, the court-mandated the shutdown of polluting companies that disregarded environmental regulations”².

POLLUTER PAY PRINCIPLE, HISTORY AND EVOLUTION

According to the polluter pay principle (PPP), individuals that harm the environment should pay for the costs of that harm and any resulting environmental damage. In contrast to society as a whole or the environment, the PPP focuses the blame for the harmful impacts of pollution on the organizations or people that generate it.

The PPP is predicated on the notion that by making polluters financially accountable, they will be motivated to lower their pollution levels or look for alternative, less hazardous production or consumption techniques. By making it more expensive for businesses to pollute and internalizing the costs of pollution, this strategy hopes to motivate them to create and adopt more eco-friendly products and procedures.

Many international environmental accords, including as the Rio Declaration on Environment and Development and the Kyoto Protocol³, include the PPP as a guiding concept for environmental policy. In several nations across the world, it is also included into the domestic laws and regulations.

Environmental degradation frequently has negative externalities that extend beyond only humans and affect some of the most disadvantaged groups in society. In literature, three different popular regimes are taken into account to attain the highest degree of environmental quality.

1. To begin with, given the real costs and benefits of pollution, a Coaseian bargain may be reached by mutual bargaining, property rights of natural resources can be specified, and the economic agents can choose the desired amount of pollution.

² AIR 1987 SC 1086.

³ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 37 I.L.M. 22 (1998).

2. A command and control (CAC) strategy is the next, in which the regulator can impose environmental standards based on the ideal amount of pollution.

3. To reduce pollution, the regulator uses market-based or economic instruments (MBIs). Indirect economic instruments like the law of responsibility for damages and the environmental information disclosure system are examples of MBIs. MBIs also include price-related instruments like pollution levies and permits.

The polluter-pays principle is a frequently used MBI to reduce pollution (PPP). PPP is a resource allocation and environmental justice economic paradigm that aims to absorb the public costs of private economic activity. It is a cost-allocation principle in economics because it demands environmental polluters to bear the entire cost of externalities.

From at least 19705, the Organization for Economic Co-operation and Development (OECD) has used the PPP concept as a legal foundation for its proposals. The PPP concept was legally approved by the European Union as a legal basis in the Single European Act of 19876 and was acknowledged by delegates to the United Nations Conference on the Environment and Development in 1992 in what became known as RIO DECLARATION⁴

In the 1996 case of Indian Council of Enviro-Legal Action vs. Union of India,⁵ the "polluter pays principle" was first used and articulated in India. In this case, "Justice Dalveer Bhandari determined that reversing the imbalance caused to the ecology is the part and parcel of the industrial process. Thus, the financial responsibility of taking prevention and controlling measures for the pollution caused should rest upon the industry which caused pollution. The financial burden cannot be shifted to the shoulders of the government neither in preventing nor in correcting the dent. Multiple interlocutory and interim applications were filed in this case after the dismissal of the writ petition, the review petition and the curative petition by the court. The judge, in this case, Justice Dalveer Bhandari considered that it is easier for men with power and authority to disobey or non-comply with the judicial pronouncements." PPP, meanwhile, combines an administrative tool with an economic theory to make sure inefficiencies are taken into account, defined, assessed, and covered for.

⁴ Rio Declaration on Environment and Development, U.N. Conference on Environment and Development, June 3-14, 1992, U.N. Doc. A/CONF.151/26 (Vol. I), 31 I.L.M. 874 (1992).

⁵ 1996 SCC (3) 212.

The polluter pay's principle was justified through Article 21 as a constitutional mandate in the case of Vellore Citizens Welfare Forum V Union of India⁶.

IMPLEMENTATION OF THE POLLUTER PAYS PRINCIPLE IN THE INDIAN FRAMEWORK

The PPP has been implemented into a number of environmental laws and regulations in India, including the National Green Tribunal Act, the Water (Prevention and Control of Pollution) Act, and the Air (Prevention and Control of Pollution) Act.

Yet, there is disagreement about how well the PPP has been implemented in India. Although the notion is acknowledged by Indian law, enforcement has been patchy, and some polluters have evaded punishment. Polluters have occasionally been penalized, but the penalties were frequently insufficient to discourage such offenses in the future.

“The apex court issued a direction to restore environment and ecology when it found that the flow of the river was diverted for ecotourism.”⁷

Moreover, India's convoluted governmental structure, which sometimes involves several agencies with conflicting missions and overlapping jurisdictions, makes it difficult to execute the PPP. Industry associations and certain governments have also expressed worry that the PPP may stifle economic growth by putting an undue burden on enterprises. While these worries are reasonable, it's crucial to remember that environmental degradation may also have expensive effects on the economy, such as harm to productivity, loss of human health, and damage to natural resources.

Ultimately, despite considerable success in India's PPP implementation, more work has to be done before polluters are held accountable and the principle is properly implemented. More public involvement and understanding of environmental concerns will be necessary for this, as well as improved coordination and collaboration across government agencies.

“The polluter is responsible for compensating and repairing the damage caused by his omission. This is the Quintances of the polluter pays principle. Absolute liability of hazardous and inherently dangerous industry is the high water. Mark of the development of polluter pays

⁶ AIR 1996 SC 2715.

⁷ M.C. Mehta V Kamal Nath (1997) 1 SCC 388 at 415.

principle. Despite its deterrent impact on pollute does the doctrine is limited in the sense that it can be applied only at the remedial stage, that is after pollution has taken place”⁸

LEGAL AND REGULATORY MECHANISMS RELATING TO PPP

India has several legal and regulatory mechanisms in place to enforce the polluter pays principle. Here are some of them:

- The Water (Prevention and Control of Pollution) Act, 1974⁹: This act empowers the central and state pollution control boards to take measures to prevent and control water pollution. It also provides for penalties to be imposed on polluters.
- The Air (Prevention and Control of Pollution) Act, 1981¹⁰: This act empowers the central and state pollution control boards to take measures to prevent and control air pollution. It also provides for penalties to be imposed on polluters.
- The Environmental Protection Act, 1986¹¹: This act provides for the protection and improvement of the environment. It also provides for penalties to be imposed on polluters.
- National Green Tribunal: The National Green Tribunal is a specialized court that was established in 2010 to handle cases related to environmental issues. It has the power to impose penalties on polluters and to direct them to pay compensation.
- Hazardous Waste Management Rules, 2016¹²: These rules provide for the safe handling, storage, and disposal of hazardous waste. They also impose obligations on the generators of hazardous waste to take responsibility for its safe disposal.
- Extended Producer Responsibility: The concept of Extended Producer Responsibility (EPR) has been introduced in India, which makes producers responsible for the end-of- life disposal of their products. This encourages producers to design products that are easier to recycle or dispose of safely.
- Corporate Social Responsibility: The Companies Act, 2013, mandates that certain companies spend 2% of their profits on social causes, including environmental issues. This has led to companies investing in environmental protection and conservation activities. Overall,

⁸ P Leelakrishnan, *Environmental Law in India*, 223, 4 ed., Lexis Nexis, 2017.

⁹ The Water (Prevention and Control of Pollution) Act, 1974, § 2, Act No. 6, 1974 (India).

¹⁰ The Air (Prevention and Control of Pollution) Act, 1981, § 2, Act No. 14, 1981 (India).

¹¹ The Environmental Protection Act, 1986, § 2, Act No. 29, 1986 (India).

¹² Hazardous Waste Management Rules, 2016, G.S.R. 338(E) (India).

India has several legal and regulatory mechanisms in place to enforce the polluter pays principle, although the effective implementation of these measures is an ongoing challenge.

CHALLENGES FACED BY INDIA IN IMPLEMENTING THE POLLUTER PAYS PRINCIPLE, AND SOLUTION

A core idea in environmental policy is the polluter pays principle (PPP), which makes individuals who pollute the environment accountable for the expenses of cleaning it up. Although India has included the PPP in its framework of environmental policy, there are still a number of obstacles that must be overcome for it to be properly implemented. Many of these difficulties include:

1. **Absence of enforcement:** The absence of enforcement procedures is one of the major obstacles to the PPP's implementation in India. The duties and responsibilities of various agencies are sometimes unclear, and regulatory authorities might not have the tools necessary to efficiently monitor and enforce compliance.
2. **Identification of polluters:** - It is a barrier that India has to overcome in order to hold them polluter accountable. This is especially true for dispersed sources of pollution where it is difficult to pinpoint specific polluters, such as home garbage and agricultural.
3. **Economic disparities:** The PPP may occasionally result in economic inequalities since smaller businesses and private people do not have the resources to pay for the remediation of their pollution. The impoverished and marginalized groups, who might already be struggling to achieve their basic requirements, may be burdened by this.
4. **Lack of public understanding:** The public may refuse or fail to comply with the PPP if they are not aware of it or don't comprehend it.

The following actions can be performed to deal with these difficulties:

1. **Improve enforcement procedures:** India has to improve its compliance monitoring and enforcement processes, which includes defining the roles and duties of various organizations and giving them more power and funding.
2. **Enhance pollution monitoring systems:** More effective PPP enforcement may be achieved by identifying offenders and tracking their emissions with the use of improved pollution monitoring systems.

3. **Guarantee equitable implementation:** By offering financial aid to smaller businesses and households that are unable to pay for the remediation of their pollution, India can make sure that the PPP is implemented fairly. This can lessen economic inequalities and guarantee that the PPP does not burden the underprivileged and marginalized communities.

4. **Raise public awareness:** By education and outreach initiatives, India may raise the general people's understanding of the PPP and boost compliance. This would serve to strengthen public support for the program.

POLLUTER PAYS PRINCIPLE (PPP) AS A FACET OF CUSTOMARY INTERNATIONAL LAW

After the OEC&D suggestions, there was an increase in public interest in environmental concerns, which ultimately forced legislatures and other groups to establish laws and regulations in favor of safeguarding the environment. This occurred in the 1970s. As a result, there have been countless conferences and talks at the international level where countries have come together to try to solve the problem of environmental destruction.

The Stockholm Declaration's¹³ Principles 21 and 22 were the first to include the polluter pays principle, and subsequent treaties like the Rio Declaration's¹⁴ Principle 15 provided guidance for its implementation. When a certain rule or provision achieved the cachet of being a part of conventional law, the International Court of Justice concluded in the precedent-setting Case Concerning the Continental Shelf between Libya and Malta.

The court ruled that the catering in question must follow state practice, which refers to general and consistent behavior on the part of the state, as well as opinion juris, which refers to an instinctive constraint, a sense on the part of the state that it is required to follow the catering in question. The court continues in the same line by mentioning that multilateral treaties are also very important for establishing and creating the laws of customary jurisprudence. The fundamental principle that a State should provide payment of sufficient and quick

¹³ 1972 Declaration of the United Nations Conference on the Human Environment.

¹⁴ UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT: RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT. (1992). *International Legal Materials*, 31(4), 874–880. <http://www.jstor.org/stable/20693717>.

compensation for damaging operations may be traced back to the Canada-United States Trail Smelter Arbitration dispute.

Since then, several treaties, important rulings, and extensive national law and practice have emerged, providing demands for atonement in relation to trans-frontier harm and pollution considerable weight. Some detractors believe that this is a requirement of conventional law. Even while the precautionary principle is now being preoccupied with in other regional accords, this principle has not gotten the same level of attention and support throughout the years as the principle of protective action or the emphasis lately put on it.

The compromise language endorsed by Principle 16 of the Rio Declaration, which reads: "National jurisdiction shall endeavor to advance the internationalization of environmental expenses and also the use of commercial instruments, taking under consideration the approach that the polluter shall in principle deal with the expense," makes clear the significant obstacles that some countries have in the way of this principle's continued expansion, especially for peaceful international relations. Overall, the polluter pays notion is becoming more widely accepted, which suggests that it won't be long until it is incorporated into common law.

SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PROTECTION IN RELATION TO PPP

According to the "polluter pays concept," individuals who damage the environment should be responsible for paying for its removal or for minimizing its negative consequences. According to this notion, polluters should be held accountable for any environmental harm they do rather than society as a whole.

The polluter pays idea is consistent with India's objectives for environmental preservation and sustainable development in a number of ways. India, a nation that is quickly industrializing, has several environmental issues, such as air and water pollution, deforestation, and climate change. The nation has put a lot of work into overcoming these obstacles and achieving its objectives for sustainable growth.

The polluter pays model is compatible with India's objectives in part because it encourages accountability and responsibility for environmental harm. India may encourage businesses to

adopt more environmentally friendly practices and lessen their environmental effect by holding polluters accountable for the harm they create. This might assist India in achieving its objectives of lowering pollution and safeguarding the environment.

By encouraging resource efficiency, the polluter pays approach also supports India's objectives. The idea can encourage businesses to adopt more efficient and sustainable practices that decrease waste and save resources by making polluters pay for the environmental harm they create. This might assist India in advancing a more circular economy and achieving its objective of sustainable development.

Ultimately, India's efforts to combat climate change may be aided by the polluter pays principle. The idea can assist India in lowering its carbon footprint and reducing the negative consequences of climate change by encouraging businesses to cut their greenhouse gas emissions and embrace more sustainable practices.

Overall, the polluter pays concept advances responsibility, resource efficiency, and climate change mitigation, all of which are in line with India's objectives for sustainable development and environmental preservation.

CONCLUSION AND SUGGESTIONS

It's good that India has included the Polluter Country Principle into its land policy (PPP). In truth, it assisted in harming the polluter as well, but the problem with this idea is that it was not adequately put into practice. When we examine the exemplary damages awarded to span hotels, we find that they are not serving their intended purpose. For large corporations, nothing like stretch hotels cost 10 lakh rupees. They must sustain at least 10 crores of rupees in exemplary harm. And once more, when we examine the punishment meted out for the Vellore People incident, I'm merely amazed at how 10,000 rupees may be used to excuse the tannery pollution in nearby areas.

Generally, the Indian framework acknowledges the value of PPPs in tackling environmental challenges, and the nation has several instances of PPPs that have been successfully implemented. Yet, there are obstacles to its efficient execution as well, such as limited public involvement, weak institutional capacity, and insufficient monitoring and enforcement.

In order to raise public knowledge and involvement, institutional capacity must be improved, enforcement mechanisms must be strengthened, and public awareness must also rise. To guarantee that the PPP is implemented successfully and efficiently and that polluters are held

accountable for the environmental harm they do, cooperation between the government, civic society, and the corporate sector would be necessary.

The polluter pays principle has been implemented into India's environmental laws and policies as a result of the country's recognition of its significance. The National Green Tribunal Act of 2010 established a specialized court to resolve environmental issues, for instance, and it embodies the notion.

However, there are obstacles to the polluter pays principle's application in India, including weak monitoring and enforcement systems, low levels of public engagement, and a lack of sufficient financing and resources for environmental protection.

India can take a number of actions to address these issues, such as enhancing its regulatory framework and enforcement mechanisms, raising public awareness and participation, encouraging sustainable production and consumption patterns, and giving polluters financial and technical support to adopt cleaner technologies.

India may also benefit from the mistakes made by other nations that have successfully applied the polluter pays concept, including the European Union and Japan, and modify these methods for its own circumstances.