



‘THE POLLUTER PAYS PRINCIPLE’ AND THE SUPREME COURT OF INDIA

I Introduction

RAPID AND unprecedented industrial development has brought, in its wake myriad environmental and pernicious health problems. Though the industrial and technological advancements have helped to improve food product, raise living standards, solve time and space problems and control some health related problems; yet, they have adversely affected the natural environment and thereby disturbed ‘the balance of nature’. The capability of self-maintenance and self-regulation of our ecosystem has been disrupted by the continuous discharge of pollutants by the industries and their products. Moreover, improper treatment and discharge of the industrial waste and its unhygienic disposal has created a serious problem for biotic and abiotic components of the environment.

During the last 50 years, industries, especially manufacturing industries, nuclear industry and those using hazardous or ultra hazardous material are the major contributors to environmental pollution. Industrialists are by and large thriving on such pollution disseminating units. But, now it has been realised that industries are also social units with rights and duties towards the surrounding community and the consumer. They have a duty not to harm the health of the man and nature. It is recognised that pollution is a form of waste, and a symptom of inefficiency in industrial production. Therefore, it has been thought proper to devise various kinds of measures to curb or minimise industrial pollution. The World Commission on Environment and Development, in its report, has suggested that ‘environment cost’ of ‘economic activity’ ‘can be internalised-paid by the enterprises’.¹ It may be in the form of investment to prevent the damages, or to restore unavoidable damages e.g. afforestation, restocking fish, rehabilitation of man and land, etc., or compensating the victims of health and property damage. Thus, enterprises may be encouraged to invest in preventive, restorative or compensatory measures. But it was the Organisation of Economic Cooperation and Development (OECD), who for the first time, agreed to base their environmental policies on a ‘polluter pays principle’² (PPP) and it was recommended by

1. *Our common future* 220-221 (1987).

2. Guiding principles concerning international economic aspects of environmental policies *Council Recommendations C (72) 128* (1972).



the World Commission on Environment and Development in 1972 as an 'essentially economic efficiency measure-to internalise environmental costs'. 'Polluter Pays Principle' (PPP) which was initially recognised as one of the economic and administrative measures to restrain and contain the pollution problem, has recently been adopted as a strong legal measure to minimise environmental pollution.

The Supreme Court of India inexplicitly, applied the principle in the case of *M.C. Mehta v. Union of India*³ in the year 1986. It was declared by the court that 'we have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialised economy'.⁴ The significance of this judgement lies in the court's formulation of the principle of the measure of liability of industry engaged in 'hazardous or inherently dangerous activities'. Such measure must be correlated to the magnitude and capacity of the enterprise. Secondly, the court directed the industry either to shift from the present location or evolve a green belt around it as a condition precedent to restart the industry. Further, the industry was asked to deposit a sum of Rs. 3500000/- in a bank and a guarantee of rupees 1500000/- with the court for compensation to be paid to one who can prove before the court of law that he suffered because of the Oleum gas leakage from the Sri Ram Food and Fertiliser Corporation. Thus an innovative remedy was evolved by the Supreme Court of India in this case which was indirect recognition and application of the 'polluter pays principle'.

II Application of the polluter pays principle

The 'polluter pays principle' was for the first time, applied and defined in the case of *Indian Council for Enviro-Legal Action v. Union of India*.⁵ It was declared by the court that redemption of the damaged environment is a part of the process of sustainable development and as such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology. Thus the 'polluter pays principle' means the absolute liability for harm to environment extends not only to compensate the victims of pollution but also to the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of sustainable development.⁶

3. AIR 1986 SC 1086. In this case there was a leakage of Oleum gas from Sri Ram Food & Fertiliser Corporation of Delhi on 5th Dec. 1985 as a result of which one person died on the spot and several others were taken ill.

4. *Id.* at 1099 per Bhagwati, C.J.

5. (1996) 2 JT (SC) 196.

6. *Id.* Quoted with approval in *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715, 2721.



In this case, five chemical industries were producing H-acid (1-naphthol-8-amino, 6-disciphonic acid). An azo dye and untreated toxic sludge was discharged into the open compound which, in due course of time, flowed through a canal across entire area and the rain water washed the sludge deep into the bowels of earth. It caused pollution of river water and underground water upto 70 feet below the ground within a radius of seven miles of the village *Bichhari*. It further left the fields of this area infertile. As a result of which residents of *Bichhari* and of nearby villages had to migrate to other places. The case was taken up by the Supreme Court of India on a petition from the Indian Council for Enviro-legal Action of *Udaipur* as a public interest petition. The court while making a landmark judgement kept in mind that any principle adopted by it must be simple, practical and suited to the conditions prevailing in the country.

Looking at the widespread ramification of the hazardous or inherently dangerous activities, persons or the institutions would be held 'liable absolutely', though they have taken all reasonable care while carrying out such activity. The liability to compensate is two fold; one, to compensate the victims of pollution for inconvenience and health loss; and the other, to restore the environmental degradation *viz.*, of the soil, underground water and the vegetation cover of that area. Such remediation of damaged environment is part of the process of 'sustainable development'. It is also to be noted that all this does not absolve a person from criminal liability. It was also ordered by the court that the Central Government must determine the amount required for carrying out remedial measures and the status report submitted by the National Environmental & Engineering Research Institute (NEERI) in the year 1994 be made a basis to compute it. NEERI in its report, had stated that rupees 4,00,00,000/- would be needed to reverse the power of soil and water contamination.

Sincerity of the Supreme Court came to the fore when it was pronounced that the Ministry of Environment and Forest must recover the money from the units and the recovered money be used to repair the damage caused to the land and water in the area. As a result of which the plant and factories have been sold by the State Government. The collector of the area has started assessing the damage caused to the twenty affected villages.⁷ With the help of the NGO and research institutes the work of reversing the ecology of the area has commenced.

7. As per report of NEERI (1994) the water in 60 wells spread over an area of 350 hectares in Bichhari was found red in colour and unfit for human consumption. The people of the area developed skin problems and their livestock died. The effluents affected the fertility of the soil and caused extensive damage to standing crops. Fodder in area was also found unfit for use. The milk production from cattle had gone down drastically. Report to this effect was also given by the Centre for Science and Environment of the Roorkee University in 1990.



The court, however, offered no compensation to the victims of *Bichhari* village. Applications are still pending with the Supreme Court for compensation. It is also to be noted that the illiterate villagers were unable to articulate their woes and claim rightful compensation. One activist Mr. Manna Ram Dangi collected the applications from the villagers for compensation and filed before the court.

The Supreme Court in *Vellore Citizens Welfare Forum v. Union of India*⁸ reiterated and declared in unequivocal terms that 'the precautionary principle'⁹ and the 'polluter pays principle' are part of the environmental jurisprudence of this country. These principles have been accepted as a part of the law of the land as article 21 of the Constitution of India guarantees protection of life and personal liberty. There is also a constitutional mandate to protect and improve the environment under articles 48-A and 51-A(g)¹⁰. These are also supported by other statutory provisions.¹¹ The court also observed that this principle has also been accepted as part of the customary International Law, therefore, it automatically becomes a part of the basic jurisprudence of the land.¹² The Supreme Court has also, recently declared that these principles have become 'a part of the environmental law of the country.'¹³

In *Vellore Citizens Forum* case, more than 550 tannery units were discharging untreated effluent, thereby, causing water pollution and land pollution in 59 villages of three districts. 467 wells of two districts, which were used for drinking and irrigation purposes, were polluted. This created acute shortage of potable water. Looking to such a grave state of affairs the court ordered for the closure of industries involved in the

8. AIR 1996 SC 2715.

9. 'Precautionary Principle' means: i. Environmental measures—by the State Government and the statutory authorities—must anticipate, prevent and attack the cause of environmental degradation. ii. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

10. Art. 48-A states : 'The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.' Article 51 A (g) states 'All the citizens of India shall have a duty to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

11. E.g. The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986.

12. Justice Kuldeep Singh in *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715, at 2722. The same has been quoted with approval in *M.C. Mehta v. Union of India*, AIR 1997 SC 734, at 761.

13. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, AIR 1999 SCW 434. The J&K High Court has also quoted it with approval in *Majra Singh v. Indian Oil Corp.* AIR 1999 J.K. 81.



tannery business. It was suggested by the court that the Central Government should constitute an 'authority' under section 3(3) of the Environment (Protection) Act, 1986 and such authority, shall, with the help of the expert opinion assess the loss to the ecology/environment in the affected area. After making proper assessment, such an authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment, after giving the polluter an opportunity of being heard.

The environment protection funds

In the same case the court also ordered for imposing a fine of Rs. 10,000/- on each tannery of the area. The fine had to be paid to the collector of the district. The court proposed the fine plus the compensation amount so recovered from the polluters be deposited under the head 'Environment Protection Fund'. This fund could be utilised for compensating the affected persons identified by the 'authority' and also for 'restoring the damaged environment'.¹⁴

The 'authority' created by the government was directed by the court to frame a scheme for reversing the damage caused to the ecology and environment by pollution in the state of Tamil Nadu. Such scheme is proposed to be implemented by the state governments with the assistance of the central government. The expenditure for such schemes shall be met out of the 'Environment Protection Fund' and if needed finances could be provided by the state and the central government. To monitor the implementation of comprehensive directions by the authority and the government, the Supreme Court suggested the constituting of a special bench 'Green Bench', which in future will deal with environmental issues. Thus, it was really a landmark judgement in the history of environmental management in India.

Taj trapezium and the polluter pays principle

In *M.C. Mehta v. Union of India*¹⁵ the Supreme Court reiterated the 'polluter pays principle' and re-emphasised the need to apply it. It was a case of 'yellowing and decaying of the Taj Mahal'. As per reports of NEERI (1993) and Vardhajan Committee (1995), the foundaries, chemicals or hazardous industries and the Mathura refinery were the major sources of damage to the Taj Mahal, a priceless national monument. The court ordered the industries to shift away from the Taj Trapezium or to switch over to gas as fuel. The industries, which did not switch over

14. AIR 1996 SC 2715 at 2726.

15. AIR 1997 SC 734.



to gas, were ordered to be closed down unconditionally by December 31, 1997.

Justice Kuldeep Singh gave a new dimension to the 'polluter pays principle'. It was ordered by the court that the various kinds of industries, numbering 292, if they opted to shift to other states/sites, would have to give 'compensatory benefits' to their workers. The court directed that the rights and benefits which a worker of such an industry is entitled to includes (a) continuity of employment from closure to restart of the industry, for which they will get full wages; (b) one year wages as 'shifting bonus'; (c) workers not interested in shifting with the industry will get compensation as per section 25-F(b) of the Industrial Disputes Act, and six years wages as additional compensation; (d) gratuity shall be paid in addition to all this.¹⁶ Thus, this makes it amply clear that the workers of industries were also the victims of the polluting industries and they should not suffer on account of an action against the polluting industries. If the industry is closed or shifted for disseminating pollution or violations of statutory provisions, the workers shall not be thrown out of the industry without any economic/job security. They are also entitled to certain rights and benefits from the erring industries. Therefore, declaration of gratuity, compensation, additional compensation or shifting allowance by the Supreme Court has given a new dimension to environmental jurisprudence and it is true that this judgement has proved to be a watershed in the history of environmental management in India.

The court has made this clear time and again, in unequivocal terms, that the issue of pollution should not be resolved at the cost of the poor people's livelihood.¹⁷ But it would not be out of place to mention that justice in this sense, has not been fully secured to the displaced workers. A panel of six judges which presided the closure of the industries of the national capital, has suggested that the Supreme Court should demand periodic status report, with regard to these issues and that the government must set up a system to develop a mechanism to oversee and monitor implementation of the decision of the court.¹⁸ Therefore, it was suggested that sufficient compensation or guarantee of livelihood should always be a part of the entire order leading to the closure/shifting of an industry. Such a package must be a precondition to the closure of an industry.

16. *Id.* at 763.

17. *M.C. Mehta v. Union of India*, Judgement was pronounced on Dec. 6, 1996. The Supreme Court declared various kinds of relief to the workers of industries of Delhi, which were ordered to close or shift to other places. Such relief includes residential accommodation, compensation to retrenched workers who did not want to shift to alternative sites and employment by the states to such, retrenched/displaced workers.

18. "Judges' panel shocked at loss of jobs" *The Hindu*, December 19, 1998 at 3.



Absence of which would amount to denial of right to life and render such a beneficial pronouncement of the court infructuous leaving thousands of workers destitute.

Statutory regime and the polluter pays principle

There are certain statutes passed by the Indian Parliament, which directly or indirectly adhere to the polluter pays principle. The Public Liability Insurance Act of 1991 makes it a mandatory duty of all the industries, which have a capital value of Rs. two hundred thousand to get insured under the Act. The premium of such insurance shall be collected in the 'Environment Relief Fund' which shall be available with the collector of the district. The collector in case of industrial accident/disaster shall pay, by way of relief, immediately to the victims of the accident/disaster. This relief will not be a bar to file a case for compensation separately.

Similarly, the National Environment Tribunal Act, 1995 provides that the tribunal can award compensation on ground of any damage to environment and such an amount shall be remitted to the authority specified under section 7-A(3) of the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Fund. The Act provides that if the owner of the unit/industry fails to pay or deposit such an amount of award within the specified period, it shall be recoverable from the owner as arrears of land.¹⁹ Even the appeal for such an award from the tribunal cannot be entertained by the Supreme Court unless the amount of award is deposited with the Supreme Court in advance.²⁰ Failing which he shall be punished with an imprisonment upto three years or with a fine upto rupees one million, or both. The schedule of the Act also enumerates the 'head' under which compensation for damage may be claimed. Some of these heads include compensation for environmental degradation and restoration of quality of environment, destruction to flora and fauna, and the cost of restoration for the damage to environment.²¹

19. The National Environment Tribunal Act, 1995, sec. 23(3).

20. *Id.* sec. 24(3).

21. Schedule of the Act: under sec. 3(1): Heads under which compensation for damages may be claimed:

(g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of quality of environment;(i) Claims on account of any harm, damage or destruction to flora and fauna including milch and draught animals and aquatic fauna;(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards; (l) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water and eco-system.



The Supreme Court applying the 'polluter pays principle', ordered compensation under the head for reversing the ecology/environment of the affected area around Chilka Lake affected by the aquaculture and shrimp culture industry.²² The compensation amount so recovered was to be deposited under 'Environment Relief Fund'. It was further directed that non compliance of such orders would attract the provision of the Contempt of Court Act in addition to the provisions of the other Acts.

III Conclusions

The above mentioned pronouncements of the Supreme Court has declared it in unequivocal terms that the 'polluter pays principle' is well established and has become a part of the Indian environmental jurisprudence without any statutory mandate or requirement. The apex court, the Supreme Court of India, in this respect has been very responsive, effective and innovative. The court has always come to the rescue of those who have suffered due to pollution—be it man or nature. The judiciary, by pronouncing landmark judgements and taking polluters to task, is acting under its constitutional obligation. Such a firm stand of the court has taken by surprise all those who used to manipulate the apathetic environmental agencies.

It makes amply clear that if a person carries on hazardous or ultra-hazardous activity, he has 'absolute liability' under civil law and criminal law. Under civil law he is liable to (a) pay compensation to individuals for their loss of man and material and personal discomfort, and (b) to pay the cost of restoring the damaged environment. He will also be prosecuted and punished under the Environment (Protection) Act, 1986 and other related criminal laws.²³

22. *S. Jagannath v. Union of India*, AIR 1997 SC 811. In this case, it was found that the shrimp culture industry in Chilka & Pulikat lakes (Orissa), adjacent to high sea, was causing salinity of soil and the drinking water, turbidity of water courses with detrimental implication on local fauna and flora. Therefore, the industry was ordered to close and compensate (a) the individuals, and (b) for reversing the ecology. Amount of compensation so collected was to be forwarded to the collector. The workmen employed in the shrimp culture industry were awarded compensation in terms of sec. 25 F(B) of the Industrial Disputes Act; and additional six year wages as additional compensation. The scheme to reverse the ecology of the areas was to be funded out of the 'Environment Protection Fund'. The court explicitly referred the 'polluter pays principle' in its pronouncement.

23. Section 15 of the Environment (Protection) Act, 1986 provides penalty for failure or contravening the provisions of the Act which includes imprisonment which may extend to five years or fine which may extend to rupees 1,00,000, or with both. Criminal liability has also been provided under sec. 268, 277, 278 and 290 of the Indian Penal Code, 1860.



It has been made clear that the old concept that development and ecology cannot go together is no longer tenable. The pollution created as a consequence of development must be commensurated with the carrying capacity of our eco-system. Therefore, 'precautionary principle' and 'polluter pays principle' have become essential features of 'sustainable development'. This indicates that we must do our best to protect and preserve our natural wealth by adopting a responsible attitude. Plundering or ravaging nature should not be permitted in the name of development. The timely judgements of the Supreme Court have responded to indiscriminate and illegal industrialisation by taking a hard stand against the polluters. The court, while applying the 'polluter pays principle', has also ordered to attach the property of the erring industries for recovering the amount for 'eco-restoration'. On the basis of the above discussion, it can safely be concluded that 'polluter pays principle' and 'precautionary principle' are inter-related and essential features of 'sustainable development'.

*Satish C. Shastri**

* Associate Professor, University of Rajasthan.