

# A Complete Perusal of Polluter Pays Principle “Incorporation and Application In India”

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## Abstract

Since long it's a common practice to pay for the destruction and management of destruction caused by one, may it be destruction to property, life, nature etc. However for each kind of destruction there are specific laws and regulations enacted by the parliament. Apart from the laws there are few fundamental truths that act as the base or foundation for a system or in other words some theorems that have numerous special applications across a widespread area which are otherwise known as principles. Polluter pays principle is one of such preventive and remedial theorem applied to people causing environmental damage. This research work focuses on how the polluter pays principle was incorporated in India and emphasizes on its judicial application in various perspectives in India only. This paper starts with the introduction of the principle by “OECD (Organization for Economic Cooperation and Development)” in 1972 and further tracing its movement through the extended version of the principle, being enshrined under principle 16 of the Rio Declaration (UNCED) in 1992, being adopted by the European Community, being adopted as an extension of the rule of Absolute Liability in Torts and finally coming to how it started being applied to, by the Indian Judiciary. This article analyses the judgments pronounced in various cases by the Indian Courts relating to Polluter pays principle.

**Keywords:** OECD, UNCED, Torts, Absolute Liability, Strict Liability, Sustainable Development, EAP (Environment Action Program).

## Sustainable Development and Polluter Pays Principle:

Today India has a variety of legislative measures, executive policies and programs to deal with environmental prevention and protection. In 1992, government of India adopted the well settled Polluter Pays Principle and the Doctrine of Sustainable Development as policy programs on matters relating to control of pollution. One of the major doctrine of sustainable development is the “Polluter Pays Principle, which recognizes that the polluter should pay all the environmental damage created and the burden of proof

in demonstrating that a technology or process or product is safe for environment should lie with the developer not the general public.” As culled out from the Bruntland report named “our common future” the major features of the sustainable development includes polluter pays principle.

### In Bruntland Commissions Report<sup>[1]</sup>:

The “World Commission on Environment and Development” or the “Bruntland Commission” in its report “Our Common Future” suggested that, the environmental costs of economic activity can be paid in an internalized manner by the enterprises. Which meant the payment may be in the form of investment made by the enterprises in order to prevent the damages caused or to restore the unavoidable damages like rehabilitation of man, afforestation, rehabilitation of land, or compensating the victims of the damage caused by such enterprises etc.

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**OECD (Organization for Economic Cooperation and Development) in 1972:** OECD introduced the Polluter Pays Principle in 1972 and “the Guiding Principles Concerning International Economic Aspects of Environmental Policies under OECD stated that the polluter is to be held responsible for the environmental damage and pollution caused by such polluter.”

**EXTENDED VERSION OF POLLUTER PAYS PRINCIPLE:**

- **OECD IN 1989:** OECD suggested to extend the polluter pays principle to include the costs of accident prevention and for internalizing the damages caused by such accidents.

- **OECD JOINT WORKING PARTY ON AGRICULTURE AND ENVIRONMENT:** The OECD, Joint Working Party on Agriculture and Environment stated, extended version of polluter pays principle as: “...the polluter should be held responsible for environmental damage caused and bear the expenses of carrying out the preventive measures or paying for damaging the environmental state where the consumptive and productive activities causing the environmental damage are not covered by property rights.”

**RIO DECLARATION (UNCED) IN 1992:** In 1992 the guidelines for sustainable development were laid down in the Rio Declaration which aimed at utilization of the resources by the present generation without compromising the needs of the future generations. In furtherance of such aim the Rio Declaration enshrined the polluter pays principle under “Principle 16 of the Rio Declaration” which stated that the polluter should bear the cost of pollution.

**EUROPEAN COMMUNITY IN 2002:** In 2002 the European Community adopted the first EAP (Environment Action Program), thus following the Polluter Pays Principle of Organization for Economic Cooperation and Development.

**POLLUTER PAYS PRINCIPLE IN TORTS:** In this case of *M.C.Mehta v. Kamal Nath and Ors*<sup>[2]</sup>, the court held that, “pollution is a civil wrong and thus it’s a tort committed against the community and any such person who is guilty of causing pollution has to bear

the damages or compensation in order to restore the environment.” In torts the principle of Strict Liability or the rule in *Rylands v. Fletcher*<sup>[3]</sup> stated that, “any person in the course of non natural use of land is deemed to be responsible for the accumulation on it of anything that is likely to cause harm if it escapes and is liable for the interference with the use of land of another which results from the use of such thing that escapes from his land. However this principle of strict liability is subject to exceptions (plaintiff’s fault, Act of God, Act of Third Party, Consent of the Plaintiff, Act done by Statutory Authority).” Whereas the principle of Absolute Liability is not subject to any exceptions and is thus considered to be the improvement of the principle of strict liability since in *M.C.Mehta v. Union of India*<sup>[4]</sup> the court held that “the rule in *Ryland v. Fletcher* laid down in 19<sup>th</sup> century did not meet the needs of the modern industrialized society therefore the need to recognize a new rule was necessary and the rule of absolute liability was laid. Under this rule of Absolute Liability the court pointed out the duty is absolute and non-delegateable and the enterprise cannot escape liability by stating that he has taken all reasonable care and that no negligence was there on his part. The polluter pays principle is said to be an extension of the principle of absolute liability since the rule of absolute liability is invoked regardless of whether or not reasonable care was taken in the dangerously inherent activity taking place due to the escape of the hazardous thing and such person is liable to compensate the victims of such dangerous activity, adding to it in polluter pays principle the polluter is also liable to pay the cost of repairing the damage caused to the environment.”

It can be said that the strict liability, absolute liability and polluter pays principle are interlinked with each other.

**FEW REMARKABLE DOCTRINES AND PRINCIPLES PROPOUNDED BY THE INDIAN JUDICIARY:** Below given are the list of the major doctrines and principles propounded by the Supreme Court of India and the corresponding case law in which it was propounded:

DOCTRINE AND PRINCIPLES:	CASE IN WHICH IT WAS PROPOUNDED:
1. DOCTRINE OF ABSOLUTE LIABILITY (laid down in M.C.Mehta Case)	BHOPAL GAS LEAK CASE (UNION CARBIDE CORPORATION V. U.O.I AIR 1990 SC 273)(1st applied here.)(laid down in M.C.Mehta Case)
2. POLLUTER PAYS PRINCIPLE	ENVIRO LEGAL ACTION V. U.O.I (1996)2 JT (SC)196.
3. PRECAUTIONARY PRINCIPLE	VELLORE CITIZENS WEFARE FORUM V. U.O.I AIR1996 SC 2715.
4. PUBLIC TRUST DOCTRINE	M.C.MEHTA V. KAMAL NATH & OTHERS (1997) 1 SCC 212.
5. DOCTRINE OF SUSTAINABLE DEVELOPEMENT	VELLORE CITIZENS WEFARE FORUM V. U.O.I AIR1996 SC 2715.

**Polluter Pays Principle and The Indian Judiciary:**

- **Indirect Recognition And Application of Polluter Pays Principle (M.C.Mehta v. Union of India)<sup>[5]</sup> (Oleum Gas Leak Case):** The Supreme Court of India declared that “we need to evolve new principles and lay new norms which could adequately deal with the new arising problems in a highly industrialized economy.” this case was also popularized because in this case the court formulated the principle to measure the liability of industries that are involved in hazardous or inherently dangerous activities. It was stated that in order to measure the liability in such cases “the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by the industry or enterprise.” In this case the industry (Shri Ram Food and Fertiliser Corporation of Delhi) was asked to deposit a sum of rupees 35 lakh in a bank and guarantee of rupees 15 lakh in the court so as to be paid as compensation to the persons who claim and prove to be the victims of the Oleum Gas Leak Case. Thus this innovative remedy evolved in this case which was considered to be the indirect recognition and application of the Polluter Pays Principle.

- **Case where the Polluter pays principle was first applied and defined (Indian Council for Enviro Legal Action v. Union of India)<sup>[6]</sup>:** In this case it was stated that, “the polluter is liable to pay the cost of the individual sufferers as well as the cost of redemption of the damaged environment which is considered to be a part of the sustainable development<sup>[7]</sup>. Thus here the polluter pays principle means the absolute liability for harming the environment which shall extend to compensating the victims of such pollution caused as well the costs incurred for restoration of the environmental degradation caused.”

- **Vellore Citizens Welfare Forum v. Union of India (AIR 1996 SC 2715):** Here the Supreme Court declared two principles as part of the environmental jurisprudence of India namely: The Precautionary Principle and The Polluter Pays Principle.

- **A.P.Pollution Control Board v. Prof. M.V. Nayadu (AIR 1999 SCW 434.)<sup>[8]</sup>:** In this case the Supreme Court declared that, “the polluter pays principle and the precautionary principle have become a part of the environmental law of the country.”

- **Taj Trapezium And Polluter Pays Principle, M.C.Mehta:** In this case “the court gave its order based

on the precautionary principle and the polluter pays principle as was defined in the vellore citizens welfare forum case and also stated that the polluter pays principle is an essential feature of Sustainable Development.”

### **Conclusion**

As we found that more and more principles are being created to mitigate the lacunas that remained unseen in the previous principles or doctrines, similarly the polluter pays principle came up to mitigate the damage being caused to the environment which wasn't compensated for in strict or absolute liability. However the measurement of the damage caused to the environment has no absoluteness due to lack of an imposed mechanism to measure such damages caused. Thus the amount of compensation charged for restoration of the environment remains inadequate at times and are in requirement of some more effective provisions to be beneficial in the long run.

**Ethical Clearance:** Not required, as the research article is based on environmental pollution and its protective principles. The research is doctrinally undertaken.

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