

Study of Environment Principle With Reference to Rio Declaration

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ABSTRACT:

In India there has been rapid environmental degradation due to the over exploitation of natural resources triggered by urbanization, industrialization and population explosion. There is therefore, a great need for protecting the environment and ensuring development in a sustainable manner. To resolve the problem of environmental degradation, the experts worldwide have come up with a doctrine and principles like sustainable development and precautionary, polluter pay principle which essentially advocates harmony between development and environment protection.

It is to be emphasized that with the help of these environmental principles and standards that an effective environmental law could be evolved in India. There are various laws, principles, statues, rules and regulations are enacted for protection of environment. Still there is rapid environmental degradation therefore this paper specifically examines precautionary principle and polluter pays. Precautionary Principle and Polluter pays are important approaches in environmental law for protection of environment and to achieve sustainable development it is necessary to emphasize on the need to follow certain framework principles of environmental law.

This paper explores the concept and development of the principles through judiciary. The paper examines application of precautionary and polluter pays principles. Finally, the paper concludes that the principle plays an important role in protection of environment and to achieve sustainable development.

I. INTRODUCTION

As a step towards the achievement of sustainable development, different principles have evolved in international as well as municipal laws. Some of these principles are self-explanatory and applied as a preventive mechanism, while others are evolved as a compensatory one. It is to be noted, herein itself, that none of these principles are comprehensive enough to account for every sort of environmental pollution and degradation. Nevertheless, it is important to acknowledge these principles to achieve the ends of environmental jurisprudence.¹

II. ORIGIN OF PRINCIPLES

The United Nations Conference on Environment And Development (UNCED), popularly known as Earth Summit, was held in June, 1992 at Rio de Janeiro wherein more than 150 governments participated. This was the largest UN conference ever held and it put the world on a path of sustainable development which aims at meeting the needs of the present without compromising the ability of future generations to meet their own needs. The Earth Summit was inspired and guided by a remarkable document of 1987, i.e., Brundtland report. The Earth Summit forced the people worldwide to re-think how their lives affect natural environment and resources

¹ Inrajit Dube, *Environmental Jurisprudence*, 62 (1st ed., 2007)

and to confront a new environment that determines the surroundings in which they live. One of the major achievement of Earth Summit lie in the form of document which it produced :

- **The Rio Declaration on Environment and Development**

The Declaration consists of 27 principles which guide the behavior of nations towards more environmentally sustainable patterns of development. Some of the important principle that is precautionary principle and polluter pays plays an important role to achieve sustainable development and protection of environment.

- **The Precautionary Principle**

The “*precautionary principle*” has been incorporated in Principle 15² according to which where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.

The main purpose of the “precautionary principle” is to ensure that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage.³ The word “substance” and “activity” imply substances and activities introduced as a result of human intervention.

In the context of the municipal law, the “precautionary principle” means:-

- i) Environmental measures by the State Government and the local authorities must anticipate, prevent and attack the causes 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.
- iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.

In *Vellore Citizens Welfare Forum v. Union of India*⁴ and *Andhra Pradesh Pollution Control Board v. MV Nayudu*,⁵ the Supreme Court applied the precautionary principle directly to the facts of the cases. In Vellore Citizens Welfare case the Supreme Court was appraised of the pollution caused by the enormous discharge of untreated effluent by tanneries and other industries in the state of Tamil Nadu. The petitioner highlighted the evil on the strength of reports from Tamil Nadu Agricultural University Research Centre, an independent survey conducted by non-government organizations, and a study by two lawyers deputed by the Legal Aid and

² Rio Declaration on Environment and Development, June 1992

³ Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal, Vibhuti Jaswal, *Environmental Law*, 105, 106, 139 (4th ed., 2015)

⁴ *Vellore Citizens Welfare Forum v. Union of India* AIR 1996 SC 2715

⁵ *Andhra Pradesh Pollution Control Board v. MV Nayudu* AIR 1999 SC 812

Advice Board of Tamil Nadu. The main allegation was that the untreated effluents contaminated the underground water resulting in non-availability of potable water, thereby causing immense harm to agriculture. Despite the persuasion of the Tamil Nadu Government and the Board, and despite the Central Government's offer of subsidy to construct common treatment plant, most of the tanneries hardly take any steps to control the pollution. The court referred to its earlier orders. It also quoted extensively from the report of NEERI to bring to light the seriousness of the problem.

The court observed that the precautionary principle and polluter pays principle have been accepted as part of the law of the land. It quoted arts 21, 47, 48A and 51A(g) of the Constitution of India, and referred to Water Act, Air Act, and EPA. Even otherwise once these principles are accepted, as part of the customary international law, there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rule of customary international law which is not contrary to the municipal law shall be deemed to have been incorporated in the domestic law, and shall be allowed by the courts of law.⁶

*Indian Council for Enviro-Legal Action*⁷ case discussed above accepted this principle along with the 'polluter pays principle' as part of the legal system.

The precautionary principle and the New Burden of Proof –

The "uncertainty" of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992. In *Vellore Citizen's Welfare Forum v. Union of India*, a three judge Bench of the Supreme Court referred to these changes, to the "precautionary principle" and the new concept of "burden of proof" in environmental matters. The learned judges also observed that the new concept, which places the burden of proof on the developer or industrialist who is proposing to alter the status quo, has also become part of our environmental law.⁸

The Precautionary Principle and Difficulty in its Application :

The application of precautionary principle is not always very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreversible or irreparable damage to the environment and if it is stopped, there may be irreparable damage to the economic interests. In case of doubt, however, **protection of environment would have precedence over the economic interest.** Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment. It must, however, be remembered that development

⁶ AIR 1996 SC 2715, pp 2721, 2722

⁷ (1996) 3 SCC 212

⁸ Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal, Vibhuti Jaswal, *Environmental Law*, 140 (4th ed., 2015)

and protection of environment are not enemies. If without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity by applying the principle of sustainable development, in that eventuality, development has to go on.⁹

The Precautionary Principle was applied in the Supreme Court in *M.C. Mehta v. Union of India*¹⁰ for protecting the Taj Mahal from air pollution. Expert studies proved that emissions from coke/coal based industries in the Taj Trapezium Zone (TTZ) had damaging effect on the Taj Mahal. The Court observed that “the atmospheric pollution in TTZ has to be eliminated at any cost. Not even 1% change can be taken when human life apart-the preservation of a prestigious monument like the Taj is involved”. The Court held that the industries, identified by the Pollution Control Board as potential polluters, had to change over to natural gas as an industrial fuel and those who were not in a position to obtain gas connections should stop functioning in TTZ.¹¹

III. POLLUTER PAYS PRINCIPLE

The “*Polluter pays Principle*” has been incorporated in Principle 16¹² which provides that national authorities should endeavour to promote the internationalization of environmental costs and the 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.¹³

The “Polluter Pays Principle” (PPP), as interpreted by the Supreme Court of India, means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Thus, it includes environmental costs as well as direct costs to people or property. 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.¹⁴ Under this 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 tax payer.¹⁵

In 1972, the member countries of Organisation for Economic Co-operation and Development (OECD) agreed

⁹ See *M.C. Mehta v. Union of India*, (2004) 12 SCC 118 at 167-168

¹⁰ *M.C. Mehta v. Union of India* (1997) 2 SCC 353

¹¹ S Shanthakumar’s, *Introduction to Environmental Law*, 107 (2nd ed., 2005)

¹² Rio Declaration on Environment and Development, June 1992

¹³ Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal, Vibhuti Jaswal, *Environmental Law*, 106 (4 ed., 2015)

¹⁴ See *Vellore Citizens’ Welfare Forum v. Union of India*, (1996) 5 SCC 647 at 659. See also *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 at 247; *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371.

¹⁵ Carolyn Shelbourn, “Historic Pollution – Does the Polluter Pay”, *Journal of Planning and Environmental Law* (1974)

to base their environmental policies on a polluter pays principle (PPP).¹⁶ In the case of OECD, the guidelines on PPP were intended to discourage subsidies that could lead to distortions in trade. They promoted the principle when there was great public interest in environmental issues. At that time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modernized industrialized society. Since then there has been considerable discussion on the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past or potentially polluting activities have never been satisfactorily agreed.¹⁷ There has frequently been dispute over its exact scope, especially over the limits on payment for damage caused. It is essentially a guide to a desirable course of action, but it is fairly clear that it has rarely been fully satisfied in either European Community or British environmental legislation.¹⁸ However, there is a very strong link between the principle and the idea that prevention is better than cure. Further, the cost should include the full environmental costs, not just those which are immediately tangible. Sometimes it is suggested that producers may pollute as long as they pay for it but that is a complete misunderstanding of the principle's true meaning and scope.¹⁹

Despite the difficulties inherent in defining the principle, the European Community has accepted it as a fundamental part of its strategy on environmental matters. The Action Programme on the Environment have laid down certain basic principles of European Community environmental policy. The most important are set out in Article 130R(2). They are that :

- (a) Preventive action is to be preferred to remedial measures;
- (b) Environmental damage should be rectified at source;
- (c) The polluter should pay for the costs of the measures taken to protect the environment; and
- (d) Environmental policies should form a component of the European Community's other policies.

Thus, according to the "polluter pays principle", the responsibility to repair the environmental damage is that of the polluter. .

In *Research Foundation for Science v. Union of India*,²⁰ the Supreme Court has explained that the "Polluter Pays Principle" basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as

¹⁶ Our Common Future – The World Commission on Environmental and Development, 221 (1987).

¹⁷ Carolyn Shelbourn, "Historic Pollution – Does the Polluter Pay", Journal of Planning and Environmental Law (1974)

¹⁸ Simon Ball and Stuart Bell, Environmental Law, 97-98 (1991)

¹⁹ Ibid

²⁰ (2005) 13 SCC 186. See also M.C. Mehta v. Union of India, (2006) 3 SCC 399; Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371.

direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. However, this principle does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.

Indian Council for Enviro-legal Action v. Union of India,²¹ is a classic example how by abuse of the process of law even the final judgment of the Apex Court can be circumvented for more than a decade-and-a-half even after dismissal of review and curative petitions thereagainst. This is a very unusual and extraordinary litigation where even after fifteen years of the final judgment of the Supreme Court in the case of *Indian Council for Enviro-Legal Action v. Union of India*,²² the litigation was deliberately kept alive by filing one interlocutory application or the other in order to avoid compliance with the judgment and the polluter unjustly enriched himself by abusing process of court and by adopting delaying tactics to avoid paying remedial environmental costs.

The Supreme Court applied the polluter pays principle and dismissed both the interim applications with costs of Rs. 10 lakhs and further imposed compound interest @12% p.a. on the remedial amount due of Rs. 37.385 crores on the polluter for 15 years delay in making payment of remediation costs imposed earlier.

In *Sterlite Industries (India) Ltd. v. Union of India*,²³ the Supreme Court again applied the polluter pays principle and considering the magnitude, capacity and prosperity of the appellant company directed it to pay compensation of Rs. 100 crores for failing to maintain emission and effluent standards and operating the plant without renewal permission and thereby causing air and water pollution which could have been averted.

That the polluter must pay for the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new specter- that of unprecedented pollution. The countries moving towards industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. In the post Bhopal Gas Leak case days, this question almost pushed the government and its institutions, including the judiciary, to the brink of a quagmire.

In *MC Mehta v. Union of India*,²⁴ a petition was filed under art 32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. One of the persons died. Applications were filed for award of compensation. Although the court avoided a decision on these applications by asking the parties to file suits

²¹ Indian Council for Enviro-legal Action v. Union of India (2011) 8 SCC 161.

²² Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212 (Date of Judgment 13-2-1996)

²³ Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575 at 605-606

²⁴ MC Mehta v. Union of India AIR 1987 SC 1086

before the subordinate courts the significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.²⁵

The Supreme Court applied the polluter pays principle in another landmark decision in the case of *S. Jaganath v. Union of India*²⁶. In this case, it was found that the shrimp culture industry in and around Chilka and Pulikat lakes, adjacent to the East Coast was causing salinity of the soil and the drinking water. This industry also caused detrimental effects on the local flora and fauna. Hence the Supreme Court ordered for the closure of the Shrimp Culture industries. It also directed the industries to compensate the individuals affected by these industries and also to contribute for reversing the damage caused to the ecology. It further directed that the compensation amount so recovered was to be deposited under 'Environment Relief Fund'.

In *M.C. Mehta v. Kamalnath*²⁷ the Supreme Court enumerated the various activities of Span Motels considered to be illegal and constituting 'callous interference with the natural flow of River Beas' resulting in the degradation of the environment and for that purpose indicted them with having "interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river". The Himachal Pradesh Government was also held to have committed patent breach of public trust by leasing the ecologically fragile land to the Motel. It is only on such findings, the "polluter-pays" principle with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged ecology was held applicable to the present case.

In *Vijay Singh Puniya v. State of Rajasthan*²⁸ the Court directed each industrial unit to pay 15% of its turnover to RIICO as damages on the principle of "polluter pays". The Court held that "for enforcing the rights under Article 21 of the Constitution and compelling the persons to discharge their fundamental duties under Article 51A(g) of the Constitution, the Court exercising extraordinary jurisdiction can impose damages on the polluters for the restoration of the ecological balance and also for the victims who may have suffered due to intrusion upon the environment and ecology by the farmer. This petition was filed against dyeing and printing units, which were discharging effluents and polluting the water sources used for agricultural and drinking purposes."²⁹

IV. CONCLUSION

The principles of environment attempts to maintain a balance between development and the environment. It promotes inter-generational equity, i.e. better quality of life for present and future generations. The benefit from

²⁵ P Leelakrishnan, *Environmental Law Case Book*, 354 (2nd ed., 2006)

²⁶ S. Jaganath v. Union of India AIR 1997 SC 811

²⁷ M.C. Mehta v. Kamalnath (2002) 3 SCC 653

²⁸ Vijay Singh Puniya v. State of Rajasthan AIR 2004 Raj 1

²⁹ S Shanthakumar's, *Introduction to Environmental Law*, 105,106 (2nd ed., 2005)

development ought to be equated with the impact on the environment for such development. While development is important or in fact necessary, the impact on the environment ought to be studied before undertaking such development. The basic concept of these principles to achieve sustainable development and aims to maintain a balance between economic advancement while protecting the environment in order to meet the needs of the present as well as future generations. Therefore the principles plays an important role in protection of environment and to achieve sustainable development.