

The Expanding Scope of the Polluter Pays Principle: Insights from Recent Indian Judicial Decisions

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Abstract

The Polluter Pays Principle has surfaced as a foundational principle of environmental law, aimed at ensuring that the costs of environmental damage are borne by those responsible for pollution. This paper examines the expanding scope of the Polluter Pays Principle in Indian environmental jurisprudence, with a focus on recent judicial decisions. The study adopts a doctrinal and analytical approach, examining international environmental instruments and landmark judgments of the Supreme Court and the National Green Tribunal. The paper argues that Indian courts have converted the Polluter Pays Principle from a compensatory concept into a robust liability doctrine encompassing ecosystem restoration, deterrent penalties, and state accountability. Judicial reliance on international environmental conventions has further strengthened the constitutional status of the principle. The paper concludes that while judicial innovation has significantly advanced environmental accountability, effective implementation requires stronger regulatory mechanisms and uniform standards for assessing environmental damage.

Keywords: Polluter Pays Principle, Judicial Decisions, International Conventions, Global Development, Indian Perspective.

INTRODUCTION

The Polluter Pays Principle (PPP) is a core environmental concept stating that the party responsible for pollution must bear the costs of managing it to cover human health and the environment, promoting accountability, inhibiting damage, and funding remediation efforts. The PPP is crucial for environmental protection because it makes polluters financially responsible for pollution damage, internalizing costs, and incentivizing cleaner practices, thus reducing overall environmental harm, guarding public health, promoting sustainable development by shifting burdens from taxpayers, and freezing funds for restoration through mechanisms like eco-taxes and fines. It promotes accountability, reduces emissions, and funds clean-up efforts, aligning economic activity with ecological preservation. The PPP is a key concept in environmental law, stating that those who beget pollution are responsible for the costs of managing it to prevent harm to human health or the environment. It began as an economic idea to make polluters bear environmental costs but has emerged as legal principle ensuring accountability and compensation for ecological damage. International environmental conventions provide frameworks for collaboration and integrate PPP into broader global environmental governance, impacting policies from emissions trading to waste management. The Indian judiciary views PPP as integral to "sustainable development". Key

Supreme Court cases have shaped its application. Enforcing the Polluter Pays Principle (PPP) faces challenges leads to delayed compensation and continued pollution, despite PPP's goal of cost internalization and accountability.

HISTORICAL EVOLUTION OF THE POLLUTER PAYS PRINCIPLE: GLOBAL DEVELOPMENTS AND THE INDIAN PERSPECTIVE.

The Polluter Pays Principle (PPP) began with the Organization for Economic Corporation and Development (OECD) in 1972 as a profitable policy, stating polluters should bear costs for pollution control to help taxpayers, latterly homogenized in 1972 Stockholm Declaration and the 1992 Rio Declaration, expanding to cover damage restoration, and incorporated into public international law and public courts, like India's, to guarantee environmental responsibility.

The “Polluter Pays Principle” is one of the abecedarian principles of ultramodern environmental schemes, both nationally and internationally. In simple terms it means that the cost of pollution abatement should be paid by the polluters and not by their governments.¹

The Organization for Economic Corporation and Development forum held in 1971 about the “Problems of Environmental Economics” paved the way for the formal relinquishment of the Polluter Pay Principle by this association. The Council of the Organization for Economic Cooperation and Development formally recommended on 26 May 1972 the PPP to be the “Guiding Principle Concerning the International Economic Aspects of Environmental Schemes”.²

The significance of the PPP can be understood from the fact that it has got the status of an endless principle in the Environmental legislation since it was espoused by the community in 1973.³ In 1987 the PPP was raised to an indigenous principle within the European Community by the new composition of Article 130r of the Single European Act.⁴ It was reaffirmed in 1992 by the Treaty on European Union. Article 130 r (2) of the Act outlines the Community policy on the nature according to which it “shall be predicted on the precautionary principle and the principles that the polluter should pay”⁵

In India, the polluter pay principle extends to environmental costs and compensating individuals affected by pollution. The bar emphasized that the polluter pay principle is a pivotal part of India's environmental laws. In addition, the creed was reaffirmed by India Constitution as citizens' right to life and right to personal liberty, elevated in Article 21, includes "right to live in a healthy environment." The polluter pay principle furthers the fulfilment of the right in the constitution.

In India, the principle is also prognosticated by constitutional obligations such as Article 48A, it is the responsibility of the State to preserve the nature, Article 47, it's the duty of the State to promote and surpass public health and Article 39(b), distribution of wealth among people, which connects the principle to the larger consideration of environmental rights and environmental justice. It also enjoys statutory support through supervisory institutions like CPCB, SPCBs, and the National Green Tribunal (NGT), alongside legislative instruments like the Environment Protection Act, 1986.⁶

The precautionary principle and the polluter-pays principle are recognized as part of the land law. The

¹ Westone, Gregory & Rosencranz, A, “Transboundary Air Pollution: The Search for an International Response”, The Harvard Environmental Law Review, 8, 1984, p. 97

² OECD, Guiding Principles Concerning International Economic Aspects of Environmental Policies, C (72) 128.

³ EC First Programme of Action on the Environment, OJ C 112, 20 Dec.1973, point 5

⁴ Single European Act 1987, OJ L 069, 26/6/1987

⁵ Treaty on European Union (Maastricht, Feb. 1992).

⁶ <https://testbook.com/ias-preparation/polluters-pay>

security of life and individual freedom is laid down in Constitutional right of India.⁷

The Polluter Pays Principle imposes liability on a person who pollutes the nature to compensate for the damage caused and return the nature to its original state anyhow of the intent. The Indian Judiciary has incorporated the Polluter Pays Principle as being a part of the Environmental Law governance is apparent from the judgments passed.

- The Oleum Gas Leak case (M.C. Mehta vs. Union of India)⁸ The Court laid down that an enterprise engaged in an unsafe or inherently dangerous manufacturing unit which poses a implicit trouble to the health and safety of persons working in the factory and to those located in the girding areas, owes an absolute and non-delegable duty to the community to guarantee that no detriment results to anybody on account of dangerous or innately dangerous nature of the process which it has accepted. The enterprise is absolutely liable to compensate for similar detriment and irrespective of all reasonable care taken on his account. The larger and further prosperous the enterprise, considerable must be the quantum of the compensation outstanding for the detriment caused on account of an accident in the carrying on of the dangerous or inherently dangerous process by the enterprise.
- M. C. Mehta vs Kamal Nath & Ors⁹ The Court held that pollution is a civil wrong and is a tort committed against the community as a whole. Therefore, any person at fault of causing pollution has to pay damages for restoration of the environment and ecology.

The Polluter Pays Principle is executed in India through a combination of administrative bodies, legal frameworks, and judicial oversight. These mechanisms guarantee that polluters are held responsible for the environmental damage they root, fostering sustainable practices. Regulatory Bodies are - Central Pollution Control Board, State Pollution Control Board, National Green Tribunal. Legislative frameworks are- Environmental Protection Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1974, Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.¹⁰

ROLE OF INTERNATIONAL ENVIRONMENTAL CONVENTIONS IN SHAPING THE POLLUTER PAYS PRINCIPLE.

When the Rio Earth Summit came in 1992, the agreements at Rio were not lawfully binding, the principles it articulated sustainable development, precautionary action, the polluter pays became the foundation monuments of environmental theory of law across the globe. Indian courts were among the first to adopt them, not through convention enforcement, but by bedding them into legal methodology of courts.

In Vellore Citizens Welfare Forum v. Union of India (1996), the Supreme Court held that the precautionary principle and polluter pays principle are part of the law of the land. The Court did not hang back to treat these international principles as binding under the shade of Article 21, despite the absence of specific domestic legislation. This readiness to blend fundamental freedoms and rights with globally accepted behavior is a hallmark of Indian judicial activism.¹¹

Stockholm Declaration, 1972

⁷ Anjali Choudhary, Analysis of the Effectiveness of the Polluter Pays Principle in India, 2019 JETIR April 2019, Volume 6, Issue 4 www.jetir.org (ISSN-2349-5162), p.883

⁸ AIR 1987 SC 1086

⁹ (1997)1SCC388

¹⁰ Aishwarya Agrawal, Polluter Pays Principle in India, January 21, 2025@ <https://lawbhoomi.com/polluter-pays-principle-in-india/>

¹¹ <https://www.pahujalawacademy.com/the-role-of-international-conventions-in-shaping-indian-environmental-law>

Although the Stockholm Declaration on the Human Environment (1972) did not explicitly use the term “Polluter Pays Principle,” it emphasized State responsibility for environmental damage and the need for compensation. Principles relating to liability and environmental protection incidentally supported the idea that those causing pollution must be responsible, therefore accelerating the normative basis of PPP.¹²

Rio Declaration on Environment and Development, 1992

The Rio Declaration marked a significant milestone by explicitly recognizing the Polluter Pays Principle. Principle 16 provides that national authorities should endeavor to promote the internalization of environmental costs, taking into account the approach that the polluter should, in principle, bear the cost of pollution. This explicit endorsement elevated PPP to a widely accepted principle of international environmental law.¹³

Sector-Specific Environmental Conventions

Several international environmental conventions have incorporated PPP either directly or indirectly through liability and compensation mechanisms:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (1989) imposes responsibility on generators and exporters of hazardous waste for safe disposal and damage caused.¹⁴
- International Convention on Oil Pollution Preparedness, Response and Co-operation (1990)¹⁵ and the Civil Liability Convention (CLC) establish strict liability regimes for oil pollution damage.¹⁶
- Convention on Biological Diversity (1992) promotes restoration and compensation for damage to biodiversity, reflecting PPP principles.¹⁷

These conventions operationalize PPP by imposing financial and legal responsibility on polluters.

JUDICIAL INTERPRETATION AND EMERGING TRENDS OF THE POLLUTER PAYS PRINCIPLE IN INDIA

Indian Judiciary has played a tremendous role in the protection of environment through various orders and directions. An important aspect to be noted here is that the Courts have been using Continuous Mandamus as an effective tool in order to curb pollution as can be witnessed in numerous cases like T.N. Godavarman v. Union of India, Bichri Case, M.C. Mehta v. Union of India, Almira H. Patel v. Union of India, Research Foundation for Science, Technology and Natural Resource Policy v. Union of India¹⁸. Let us look at some of the important judgments that have helped in the evolution of Polluter Pays Principle.

In Indian Council for Enviro-Legal Action v. Union of India¹⁹, the Supreme Court for the first time applied Polluter Pays Principle in India. The Supreme Court explicitly held that the industries responsible for pollution are absolutely liable to compensate for the damage caused to the villagers, to the underground water, to the soil and therefore must take necessary measures to remove the pollutants.

¹² Declaration of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc. A/CONF.48/14.

¹³ Rio Declaration on Environment and Development, June 14, 1992, U.N. Doc. A/CONF.151/26 (Vol. I).

¹⁴ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 57.

¹⁵ International Convention on Oil Pollution Preparedness, Response and Co-operation, Nov. 30, 1990, 1891 U.N.T.S. 77.

¹⁶ International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, 973 U.N.T.S. 3, amended by Protocol of 1992.

¹⁷ Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79.

¹⁸ Debaditya Sinha, Dhvani Mehta, Isha Rana, Shyama Kuriakose, *Courting the Environment – Implementation of Environmental Judgments*, Research Findings Published by VIDHI Centre for Legal Policy, (Jan. 11, 2026, 10.30AM), <https://vidhilegalpolicy.in/wp-content/uploads/2021/04/Courting-the-Environment-Full-Report.pdf>.

¹⁹ Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212 (India).

Vellore Citizen's Welfare Forum v. Union of India²⁰ is yet another judgment wherein the Hon'ble Supreme Court laid down that Polluter Pays Principle is an essential feature of the Sustainable Development and has become part of the law of the land. The Court emphasized that Polluter Pays Principle not only means providing compensation to the victims of pollution but also includes the cost of restoring the environment to its original state. The Court directed the Central Government to constitute an authority to ascertain the harm caused to the environment by the tanneries. As an aftermath of this case, the Central Government constituted an authority known as 'Loss of Ecology Authority'. The Authority was directed to assess the damages under two heads, i.e., for compensating the victims and for reversing the ecology.

In S. Jaganath v. Union of India²¹, the shrimp culture industry located around Chilka and Pulikat lakes, was causing the water to become saline and also affected the local flora and fauna. The Supreme Court not only ordered the closure of these industries but also ordered them to pay compensation to the persons affected by pollution and also the costs towards reversing the ecology. The compensation amount was directed to be deposited to 'Environment Relief Fund'.

In Ramji Patel v. Nagrik Upbokta Marg Darshak Manch²², the Supreme Court stated that Article 21 of the Indian Constitution is violated by polluting the environment, the Court can award damages not only for the restoration of ecology but may also award compensation to those who have suffered because of such ecological disturbance. The fundamental aspect of the Polluter Pays Principle is that the wrongdoer has the duty to make good the damage caused to the environment.

In T.N. Godavarman Thirumulpad v. Union of India & Ors²³, the NGT emphasized the twin purposes of Polluter Pays Principle, firstly it provides compensation to individuals affected by pollution, secondly it imposes punitive consequences on the individuals who cause pollution.

In Tanaji Balasaheb Gambhire v. Union of India²⁴, the NGT directed the defendant company M/s Goel Ganga Developers Indian Pvt. Ltd. to pay a penalty of Rs. 5 Crores in addition to other environmental compensation for undertaking construction activities by violating the provisions of environmental laws and for not obtaining the consent from the Board. The NGT highlighted that the Polluter Pays Principle can be used as an effective tool to saddle the polluters with 'exemplary and deterrent compensation'.

In Vendanta Limited v. State of Tamil Nadu²⁵, the Supreme Court ordered the complete shutdown of the plant due to its continued violations. The Court emphasized that industries are essential as they contribute towards revenue growth and employment generation. However, the Court has to bear in mind the principles of Polluter Pays, Sustainable Development, Public Trust Doctrine etc. The most widely accepted principle in both international and national environmental jurisprudence is the Polluter Pays Principle which implies that those who pollute the environment must be held accountable and hence shall bear the costs of restoring the environment and compensating the victims. The principle is a constant reminder of the fact that the economic activities should not be conducted at the cost of the environment.

The National Green Tribunal took suo moto action against LG Polymers India Pvt. Ltd. after the incident of gas leak in Vishakapatnam, which caused around 12 deaths and over 1,000 injuries. The LG Polymers were directed to pay a penalty of Rs. 50 Crore for the damage caused to the environment and public health²⁶.

²⁰ Vellore Citizen's Welfare Forum v. Union of India (1996) 5 SCC 647 (India).

²¹ S. Jaganath v. Union of India (1997) SC 811 (India).

²² Ramji Patel v. Nagrik Upbokta Marg Darshak Manch (2000) 3 SCC 29 (India).

²³ T.N. Godavarman Thirumulpad v. Union of India & Ors (2016) SCC OnLine NGT 1196 (India).

²⁴ Tanaji Balasaheb Gambhire v. Union of India (2016) SCC OnLine NGT 4213 (India).

²⁵ Vedanta Ltd. v. State of Tamil Nadu (2024) SCC OnLine SC 230 (India).

²⁶ LG Polymers Pvt. Ltd. v. Union of India (2020) SCC OnLine NGT 129 (India)

On appeal the penalty was reiterated by the Supreme Court, while the Hon'ble Court recognized the significance of Polluter Pays Principle for accidents caused due to negligence²⁷.

Another interesting case in this regard is Radharaman Constructions vs. State of West Bengal & Ors²⁸, wherein the Calcutta High Court made certain remarks on illegal sand mining which can cause soil erosion. The Court while emphasizing the significance of Polluter Pays Principle, remarked that PPP is an effective tool that can be used by the Courts to prevent exploitation of the natural resources and individuals involved in illegal extraction must pay hefty penalties in addition to bearing costs for the restoration of the ecology. In Radhe Shyam Sehra vs. State of U.P.²⁹, the NGT took action against the Government of U.P. for illegal dumping of garbage waste on the Rapti River of Gorakhpur by invoking the Polluter Pays Principle. The NGT imposed a penalty of 120 Crores on State Government as well as Nagar Nigam as the waste resulted in severe water pollution causing Japanese Encephalitis (JE) and Acute Encephalitis Syndrome (AES). This case shows that the Judiciary has made both the private entities as well as the government accountable.

CHALLENGES IN THE EFFECTIVE IMPLEMENTATION OF THE POLLUTER PAYS PRINCIPLE

There are numerous factors that become hurdles in the effective implementation of this principle which may include opposition from the public/politicians, financial constraints of the petitioners, corruption related issues, conflicting viewpoints of the stakeholders etc. In the Ganga Pollution case, the order of the court was easily implemented as there was huge public support in favor of the decision but on the other hand, in Delhi Vehicular Pollution Case, one part of the order i.e., conversion of public transport vehicles to CNG was easily welcomed however, the other part of the order, being ban on burning of crops was completely opposed by the farmer groups³⁰.

The conflict between the Centre and states is yet another factor contributing towards the poor implementation of the principle. Since the pollution stems from various sources, the coordination between the administrative agencies of the Centre and the states becomes very crucial, failing which the implementation of the Court orders becomes extremely challenging³¹. Some of the main causes for the poor implementation of the principle has been discussed below.

1. Identification of the polluter is challenging:-

The identification of the polluter is a crucial obstacle. Polluter can be defined as individuals or entities that cause harm to the environment. However, this definition poses great difficulty as a particular industrial activity may include several processes like transportation, extraction process, production methods etc., and the pollution may be caused at different levels, so to identify the actual polluter and to make the polluter accountable is really challenging. Creating adequate legal mechanisms to identify the polluters at every level may resolve the issue³².

2. Lack of Uniform Standards to Compute the Compensation: -

Another difficulty in the implementation of this principle is the lack of uniform standards to assess the

²⁷ Shreya Dubey & Kaushiki, Polluter Pays Principle Revisited in the Context of recent SC Judgments, Neeti Niyaman Law, Regulatory & Policy, (Jan. 14, 2026, 11.35 AM), <https://neetiniyaman.com/polluter-pays-principle/>.

²⁸ Radharaman Constructions vs. State of West Bengal & Ors (2023) SCC OnLine Cal 4719 (India).

²⁹ Radhe Shyam Sehra v. State of U.P. (2023) SCC OnLine NGT 629 (India).

³⁰ Ibid at Supra 1

³¹ Ibid at Supra 1

³² Vaishnavi Deshpande, *Polluter Pays Principle: An Evolving Perspective in India*, 5. IJLR 176, 184 (2025).

damages³³. The Apex Court in coordination with NGT can devise a uniform mechanism to compute the damages in all the environmental pollution cases.

3. Limited Resources: -

Medium sized operations face similar challenges because of constraints of resources. These entities cannot recover higher costs from the consumers due to lower profit margins and high competition. According to a 2023 World Bank Report, due to low margins of profit and high competition, 70% of SMEs in Southeast Asia are unable to internalize environmental costs. Increased access to green capital and technology adoption incentives will, in turn, enable these companies to overcome resource limitations and meet environmental requirements³⁴.

4. Compliance Delayed: -

The polluters often escape and delay the compliance of the orders passed by the Courts.³⁵ As per an article published by Times of India on 27 May 2025, Haryana's Pollution Control Board reported to NGT that only a quarter of penalties imposed on polluters have been recovered in the preceding six years, urging the NGT to come up with measures to ensure the compliance by the polluters. The report also suggests that small-scale industries evade payment of compensation by changing their business locations after they receive the closure notices. The environmental compensation notice does not get delivered once these businesses vacate their establishments which is one of the main factors in non-implementation of the orders³⁶. A proper mechanism to track down the evaders and to impose heavier punishments on the defaulters would be a right step to solve this difficulty.

5. Insufficient monitoring of remediation and restoration activities³⁷:-

Even though in several judgments, the Courts have pointed out that restoration of ecology is necessary while applying Polluter Pays Principle, it is a sad reality that even after the environmental compensation is paid, there are no proper legal mechanisms to monitor the restoration of the environment. Lack of measures to ensure adequate remediation activities results in making this principle pointless.

6. Inadequate emphasis on preventive measures: -

Instead of focusing on what can be done after the degradation of the environment, the government can come up with various methodologies to curb the pollution. Authorities like the Central Pollution Control Board and State Pollution Control Boards have little funding and inefficient monitoring systems³⁸. The weak participation of the Local Governance in the environmental protection activities is also one of the drawbacks as Local Government can identify the problems and tackle them at grass root levels³⁹. Adopting strong preventive strategies is easier and more efficient than attempting to cure environmental damage after pollution.

7. Misuse of the EIA Mechanism: -

Most often, EIA studies are seriously defective or fudged and this is followed by post-facto clearances being given to a project even after its implementation has caused severe environmental damage, hence

³³ Amit Kumar, *Implementation of the Polluter Pays Principle in India: Gaps and Reforms*, 2. IJARMT 903, 908 (2025).

³⁴ Ibid at Supra Note 15.

³⁵ Ibid at Supra Note 16.

³⁶ Ipsita Pati, Just One-Fourth of Environmental Penalties Recovered in Six Years, Haryana Pollution Board to NGT, TOI, May 27, 2025, (Jan. 12, 2026, 4.30 PM) <https://timesofindia.indiatimes.com/city/gurgaon/just-one-fourth-of-environmental-penalties-recovered-in-6-years-haryana-pollution-board-to-ngt/articleshow/121421313.cms>.

³⁷ Ibid at Supra Note 16.

³⁸ Dr. Ramesh Kumar Singh, *Analytical Approach to the Polluter Pays Principle for the Protection of Environment in Environmental Law*, 12. IJERMT 99, 107 (2025).

³⁹ Ibid at Supra Note 16.

both Polluter Pays Principle and Precautionary Principle are undermined.

8. Poor incentives: -

Small businesses, firms, farmers etc. cannot afford to spend on effective management of waste or energy⁴⁰. The research conducted by the United Nations Environment Programme in the year 2022, reveals that nearly 40% of small businesses in most of the developing nations cannot afford to spend on eco-friendly practices. Lack of incentives and financial aids from the government makes it really difficult for these small-scale businesses to adopt to environment friendly practices. Subsidies, low-interest loans, etc. can essentially help these small businesses to transition to eco-friendly practices⁴¹.

CONCLUSION

Thus, Polluter Pays Principle revolves around the concept of accountability amongst the polluters by extending their liability not only towards compensating the victims of pollution but also in reversing the damage done to the ecology. It is evident that Polluter Pays Principle has been recognized as one of the core principles of environmental jurisprudence both internationally and nationally. The Indian Courts through its various judicial pronouncements have upheld this principle for the purpose of protecting the environment. However, various studies suggest that polluter pays principle is not being implemented effectively in India due to variety of factors. Therefore, proper implementation mechanisms must be evolved and adopted, the failure of which, would make the working of this principle meaningless.

⁴⁰ Id.

⁴¹ Ibid at Supra Note 15.