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THE FOUR CORNERS OF POLLUTER PAYS PRINCIPLE IN INDIA

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ABSTRACT

The study shows that polluter is responsible for the damages and expenses incurred for the up gradation of an environment and to improve the position of the affected persons or victims. As the said polluter pays principle is the principal which can be used after the incident has taken place. It means that, the polluter having more than sufficient means can make pollution and thereafter indemnify the victims. On the other hand another principle is the precautionary principle in which the polluter is obstructed in first instance from making pollution. This polluter pays principle is not more effective than the precautionary principle. There are many incidents in which it can be seen that, the polluter who makes pollution, indemnify to the victims for said pollution and again ready to make pollution. Therefore this polluter pays principle is not very much effective to eradicate the environmental pollution in India. Indirectly this principle has given license to the person or the polluter having more than sufficient means to make pollution because such type of the polluter initially calculate the total amount of damage which will be caused by their pollution and also calculate the amount of their future income. Where the amount of total damages due to pollution is very less than the amount of their future income than without any hesitation polluter start their activity. Till today due to the said principle we have tried to manage or control the activity of the polluters. Even though this principle is in force the incidents of the pollution are taken place. Therefore this principle is not very much effective to eradicate the monster of environment pollution in India.

KEYWORDS

polluter pays principle, environment protection.

INTRODUCTION

The polluter pays principle is the very much essential principle as like the heart of an environment. The concept of polluter pays principle is important to eradication of environmental pollution. In simple terms that, the polluter is the solely liable to indemnify to the victim of the said pollution done by the polluter. This principle remove the economical overburden of the concerned government or authority which is made for the management of all the losses to the persons and environment.

The interpretation of the principle is that, the polluter has to make a payment towards the damages which arises by using any product or availing the process of production and consumption which adversely affected to the person or environment. The term of polluter covered not only the human being but the legal personality also. The polluter should make a payment or indemnify the person to whom the damage has been caused, equally to the said damage affected. It is not that, the only person who by his own activity in connection with the property or the product of the others harm to the person or environment, but the person or the polluter by simply using his own product or the resources, cause a damage to the other person and environment. In case the polluter by performing his own act by using his own resources damages to an environment only than the polluter is liable to pay the damages equally to the damages caused to an environment to the concerned Government.

The great political thinker, Plato states regarding this polluter pays principle, "if anyone intentionally spoil the water of another, let him not only pay damages but purify the stream or cistern which contains the water"¹. After considering the wording of the Plato it reveals that, according to the Plato, the polluter is liable to the pollution which he has done, and the said polluter is liable to pay damages for the loss caused due to the said pollution, but Plato did not stop on this only, he further stated that, the said polluter compel to make the environment in that situation where it was before the said pollution. This principle is the economical based principle because only the polluter is liable to eradicate the pollution made by him and the concerned government is not liable to the same, hence the economical burden is on the polluter and not on the government.

HISTORICAL BACKGROUND

At the time of discussing the historical background of the polluter pay principle we have to start from the Organization for Economic Co-operation and Development (OECD). The Organization for Economic Co-operation and Development (OECD) recommended the polluter pays principle as the "Guiding principle concerning the International Economic Aspects of Environmental Policies" in 26th May, 1972². Thereafter the United nation conference were took place in Stockholm in 16th June 1972 in which the Polluter Pays principle were discussed. "National authorities should endeavor to promote the internalization 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 public interest and without distorting international trade and investment"³. According to the said principle the undertaking or the person under the term of polluter is liable for the loss caused to an environment by his action or by the effect of his product. This principle has also accepted by the European community in treaty. "Community policy on the environment [...] shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay"⁴. The Polluter Pays Principle has become basic principle to eradicate the environmental pollution. At the International level the Kyoto protocol is the evidence for application of the said principle in which it has been stated that, parties have obligations to reduce their greenhouse gas release must bear the costs of reducing (prevention and control) such polluting.

DEFINITION OF POLLUTION

The definition of pollution has been given in the statute such as the Water (Prevention and Control) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environmental Protection Act, 1986. There is similarity in the definition of the pollution under the above said legislations. "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms⁵. Under the the Air (Prevention and Control of Pollution) Act, 1981 the definition of Air pollution has been given which is similar to the definition of water pollution.

¹ The Laws, Vol. 4 book 8 section 485 (e), translated by Jowett B. Oxford : clarendon press (4th ed.) 1953.

² HISTORY AND EVOLUTION OF THE POLLUTER PAYS PRINCIPLE: HOW AN ECONOMIC IDEA BECAME A LEGAL PRINCIPLE? – by Muhammad Munir.

³ The Rio Declaration in 1992, - Principle 16.

⁴ Title XIX Environment, provides at article 174.2.

⁵ Definition under Section 2 (e) of The Water (Prevention and Control) Act, 1974.

POLLUTER PAYS PRINCIPLE

In simple words the polluter pays principle means were the pollution has been taken place due to the negligence of the person and if it caused damages to the environment and to the living being then said polluter is liable to pay for the cost for eradication of the said pollution. The said polluter is not only indemnify to the victims but also liable to make good the loss cause to an environment. The person who caused pollution is liable for his conduct of pollution and effect thereof.

THE EVALUATION OF THIS PRINCIPLE IN INDIA⁶

In India there was no any law regarding indemnify by the person who is liable for the environmental pollution. This Polluter Pays Principle were introduce in India by the land mark judgments given by the Hon'ble court in various cases⁷. The Hon'ble court has effectively interpret this PPP in another case of Vellore Citizens Welfare Forum v. Union of India⁸ in this case most of the industries and Tanneries in state of Tamilnadu were on a bank of river thus, the said industries and the tanneries were release untreated effluents in the rivers. This principle which has been discussed in said cases are governed by the constitutional authorization⁹. The said principle was effectively used in the economical arena of Indian.

This polluter pays principle is the weapon in the hands of the person who has been affected by the pollution. The said weapon can be used only after the incident of pollution has been occurred and not before that. Therefore the polluter pays principle is not the weapon to take precaution prior to happening the pollution in an environment, but the remedial principle. The nature of principle of absolute liability is also the remedial principle and not for the precaution for the pollution. If we take in to the consideration the concept of polluter pays principle we should not be forget the provisions given under Indian constitution under the fundament rights, directive principle of state police and the fundamental duty on the citizens.

Art. 21 states that, No person shall be deprived of his life and personal liberty except according to procedure establish by law.

Art. 47 of Indian constitution states that, Duty of the state to raise the level of nutrition and the standard of living and to improve public health. It is simply clear that, the duty has been cast upon the state to raised the level of nutrition and the living standard and improve public health. Thus to achieve the level of nutrition, living standard and the good public health it is necessary to have a good condition of an environment.

Art. 48 (A) Protection and improvement of environment and safeguarding of wild life of the country. Here also the duty has been cast upon the state for protection and improvement of environment.

Art. 51 A (g) It shall be the duty of every citizen of India to protect and improve the natural environment including forest lake river and wild life and to have compassion for living creature.

Considering the above said articles of the Indian constitution, it is come to know that, the polluter pays principle has not only introduce in Indian land by the judicial pronouncement given by the various Hon'ble courts but the roots of the said principle is imbedded in the land of the Indian constitution at above said articles. After considering these Article it reveals that, the constitution makers have a broad view in respect of up gradation of living slandered of the living being along with safeguarding of environment in India.

WHO PAYS DAMAGES

The damage is to be paid by the person who is the responsible for the same. The word person is also include the legal person. As a person have a duty to do certain thing and if the said person fails to do that and due to the said failure or the negligence any damage caused to the another than the person due to whose negligence said damage caused is liable to make good the same. In most of the case a person is liable to pay damages for the negligence of his servant, which is also called as payment of damages for the loss caused by the servant under vicarious liability.

TO WHOM THE DAMAGE IS TO BE PAID

The amount of damages is to be paid to the person to whom loss has been caused. This category of indemnified has enhance its border by including an environment because as the polluter is liable to pay the damages not only to the natural, legal person but also an environment is entitled to get the damages from the wrong doer. As per this principle it is the duty of the polluter to indemnify the loss caused to an environment. Where the person by his own act or the ancillary action with the help of the other article, animal or other things make any pollution and due to the said pollution the serious effect has been caused to the human being and an environment then the polluter is liable to compensate to the human being by way of payment of appropriate damages towards the effect of the said pollution, and polluter who has given birth to the pollution is also liable to pay damages to make good the degradation of an environment done by the said pollution.

The compensation which is to be payable shall be appropriate so as to satisfy the victim. Where the effect of damage is very dangerous the compensatory cost shall be in appropriate manner so as to eradicate the damage happen with the living being or to eradicate the degradation of an environment. As per the said principle the polluter in the Bhopal tragedy liable to pay damages to the affected living being. The boundary of this principle has become enlarge because not only the living being indemnified by the polluter but also the person who has not directly affected by the said pollution can be indemnified by the polluter.

POLLUTER PAYS PRINCIPLE AND ABSOLUTE LIABILITY

The scope of the Absolute liability principle is enhanced by the Polluter pays principle. The Absolute liability principle is that, the person by whose negligence any other person suffer from damages than the person whose duty was to take reasonable care is liable to make payment to that other person who suffer the loses. Under the Polluter pays principle the person by whose negligence cause damages to an environment than the said person is liable to pay the cost to eradicate the said damage to the environment. One well known case in which it has been stated that, "The Polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology"¹⁰. Under this polluter pays principle the polluter is compel to pay or make good any damage or loss made to an environment. Where the ecological balance of the environment disturbed by the negligence of the polluter then said polluter is liable to pay the total expenses which incurred for the development, reformation and up gradation of the disturbed ecological balance.

JUDICIAL PRONOUNCEMENT ON THE PRINCIPLE

Indian Judiciary has performed significant roll to develop the polluter pays principle in India. To achieve healthy environment and good condition of the living being in India, the judicial pronouncement has taken effective active part in India.

This polluter pays principle has been effectively used in the case¹¹ in which the Hon'ble court has ordered that, the hazardous activity which is dangerous to the living being and an environment has been carried out by anyone then said person who is the creator of the said pollution or polluter is liable to indemnify to the victims or to make good the loss and it is immaterial that the said polluter has taken sufficient care for his action. The judicial pronouncement of this case is impliedly stated about the absolute liability principle of the polluters. This was a land mark case in Indian judiciary to protect and improvement of the healthy

⁶ The Polluter Pays Principle – Vol. 10 p. 68 by *Shyel Trehan and Shuva Mandal**

⁷ Indian Council for Enviro-Legal Action and others v. Union of India (1996) 3 see 212, Vellore Citizens Welfare Forum v. Union of India (1996) 5 see 647, M. C. Mehta v. Union of India (1997) 2 see 353, M. C. Mehta v. Union of India (1997) 2 see 411 and M. C> Mehta v. Kamal Nath (1997) 1 see 388.

⁸ (1996) 5 see 647.

⁹ Article 21, Article 47 and under Article 48-A impose duty on the state to protect or improve the environment, and Article 51 A (g) states the protection of the natural environment.

¹⁰ Indian Council for Enviro-Legal Action and others v. Union of India (1996) 3 see 212 at 215.

¹¹ Enviro - Legal Action v. Union of India, 1996 AIR 1446.

life of the peoples and improvement in the conditions of an environment. Therefore the industries which are making pollution are liable to give compensation for the loss caused by the air pollution and the water pollution by them. Those industries are also liable to compensate the local areas which are covered under the peripheral area of the pollution of the said industry. As per this decision the polluter is liable to repair the total losses caused to an environment.

The judicial pronouncement of the said case has been referred in the case¹² in which the polluter was the tanneries in Calcutta. These tanneries were main polluter in Calcutta. Thus many villages were affected by the pollution of the said tanneries and it was also affected over the ecological balance of environment. The Hon'ble court ordered that, said tanneries has to relocate and should give compensation to the victims and also make good the adverse effect over an environment. After considering the said judgment it reveal that, the Hon'ble court has not only made an order of compensation but also ordered to the polluter to remove their business and reestablished at another place in which pollution may become less and which also less affected on the living being. This court has taken very much essential approach towards the industrialization and the balance of ecology. This Hon'ble court has taken view of sustainable development in this decision.

This principle as considering the milestone in the era of the protection of an environment were also implemented in Kamalnath's case¹³ that the polluter has to pay the compensation for the loss caused by the act of the said polluter. This principle also used in another case¹⁴ in which it has been stated that, an appellant was in dyeing and bleaching business at the area of Tirupur. These activity were given birth to the industrial effluents which was drain in to the Noyyal river it created water pollution which affected by degradation of an environment and tanks and other channels of the said river get polluted. The Hon'ble Supreme court has stated that, said industries were created pollution therefore the polluter cannot be escaped from the liability of making good of the said damages to the ecological balance and thus the polluter is liable to bare expenses up gradation the ecology. The polluter was not only liable for the expenses which was occurred for cleaning the rivers and the water of dams affected but also liable for compensation amount of the assessment which was made for the losses caused to the villagers because due to the said pollution the nearby land became uncultivated. The Hon'ble Supreme court by the said judgment make liable to the polluter for the pollution caused by his conduct and also make him indemnifier towards the expenses occurred for the cleaning of the affected dams and rivers.

This principle has also discussed under the Taj Trapezium case¹⁵ Hon'ble Justic Kuldip Singh and Faizanuddin passed order that, the polluter pays principle is the part of the environmental law of the country. Further the industries which were running with the aid of coke/coal and who are not in position to use the gas those industries shall stop functioning and relocated the various industries. It is necessary to issue show cause for why an amount which was spent on the laboratory test by the Ministry of Environment and forest shall not be recovered from the polluter¹⁶. In this case the Hon'ble Supreme Court has impliedly through light over the action to save the incredible monuments in India.

CONCLUSION

If we consider the polluter pays principle we come to know that, the polluter is liable to make good the wrong done by him. The polluter is responsible for the damages and expenses incurred for the up gradation of an environment and to improve the position of the affected persons or victims. As the said polluter pays principle is the principal which can be use after the incident has taken place. It means that, the polluter having more than sufficient means can make pollution and thereafter indemnify the victims. On the other hand another principle is the precautionary principle in which the polluter if obstructed in first instance from making pollution.

This polluter pays principal is not more effective than the precautionary principle. There are many incidents in which it can be seen that, the polluter who makes pollution, indemnify to the victims for said pollution and again ready to make pollution. Therefore this polluter pays principle is not very much effective to eradicate the environmental pollution in India. Indirectly this principle has given license to the person or the polluter having more than sufficient means to make pollution because such type of the polluter initially calculate the total amount of damage which will be caused by their pollution and also calculate the amount of their future income. Where the amount of total damages due to pollution is very less than the amount of their future income than without any hesitation polluter start their activity.

Till today due to the said principle we have tried to managed or control the activity of the polluters. Even though this principle is in force the incidents of the pollution are taken place. Therefore this principle is not very much effective to eradicate the monster of environment pollution in India.

¹² M. V. Mehata Vs. Union of India, Writ Petition 3727of 1985, 19 Dec. 1986.

¹³ (1997) 1 SCC 388.

¹⁴ Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association and Ors. Civil appeal No. 6777 of 2009.

¹⁵ M. C. Mehta Vs. Union of India, WP (c) No. 13381 of 1984

¹⁶ Research foundation for sciences Technology and Natural Resources Policy Vs. Union of india, WP No. 657 of 1995.

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