

# The Polluter Pays Principle in Effect at the National Green Tribunal in India

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# Principle 16, Rio Declaration, 1992

- “National authorities should endeavour 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 the public interest and without distorting international trade and investment.”

# Supreme Court of India

- **Vellore Citizens Welfare Forum AIR 1996 SC 2715.** the Supreme Court applied “Polluter Pays” principle rigorously and directed polluting tanneries for payment of compensation to the affected persons and also for payment of cost for restoring the damaged ecology.

- **M.C. Mehta v. Kamal Nath (1997) 1 SCC 388.** Polluter Pays was applied to compensate for restoration of damaged environment along with exemplary damages for constructing in the riverbed of the River Beas.
- Pollution as a civil wrong: a tort committed against the community as a whole.

# National Green Tribunal Act, 2010

- Jurisdiction over all civil cases where a substantial question relating to environment is involved. (Section 14)
- The Tribunal shall be guided by the principles of natural justice and have the power to regulate its own procedure. (Section 19)

# Section 20

- Section 20 states “ The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development , the precautionary principle and the **polluter pays principle.**”

# Jan Chetna v. MoEF

## APPEAL NO. 22 of 2011(T) 9/02/2012

- “some of the salient principles of 'sustainable development' as culled-out from the Brundtland Report and other international documents are inter-generational equity, use and conservation of natural resources, environmental protection, the precautionary principle, 'polluter pays' principle, obligation to assist and cooperate, eradication of poverty and financial assistance to the developing countries. The precautionary and 'polluter pays' principles are essential features of sustainable development and are part of the environment law of the country.

# Durga Dutt and Ors. v. State of HP

APPLICATION NO. 237 (THC)/2013, 6/2/2014

“If one analyses the above principles esemplastic in their correct perspective, what emerges from sustainable development is that environmental protection cannot be prescind from the balanced approach. Development may be permitted but with enforcement of appropriate environmental conditions and safeguards. **The Polluter Pays principle**, the Precautionary Principle and the Principle of Proportionality could be applied as facets of the said balanced approach. Irretrievable damage to the environment is not acceptable.”



# Hindustan Coca Cola Beverages Pvt Ltd. v West Bengal Pollution Control Board 19/3/12

- the Tribunal stated “it is no more res-integra, with regard to the legal proposition that a polluter is bound to pay and eradicate the damage caused by him and restore the environment. He is also responsible to pay for the damages caused due to the pollution caused by him.”

# Notable Awards

- **Vanashakti & Anr. Vs. MPCB and Ors.**

76 crores of damages as “restitution and restoration amount” by different publicly owned CETPs (Common Effluent Treatment Plants) and industrial establishments for polluting the rivers Ulhas and Waldhuni.

- **Ranipet Effluents Case**

75 lakh penalty on the the Central Effluent Treatment Plant in Ranipet where 10 workers drowned when an unauthorised holding tank collapsed releasing tannery effluents, levied the penalty on the basis of polluter pays principle.

- **Yamuna Sewage Case**

- Every household in Delhi will have to pay a minimum environment compensation of Rs 100 for generating sewage that merges in the Yamuna; compensation would be directly proportional to the property tax or water bill.
- Individuals, including municipal corporation employees, will be slapped with a fine of Rs 5,000 for throwing or dumping waste into drains.
- Based on Polluter Pays Principle, irrespective of whether it was seweraged or not.

# Environmental Compensation Charge

- From November 1, 2015 the Supreme Court upheld an NGT order imposing an environmental compensation charge of Rs. 700 for light commercial vehicles and Rs. 1300 for 3-axle vehicles entering Delhi, for an experimental basis of 4 months, because emissions from automobile were responsible for polluting the ambient air.

**CASE STUDIES AT THE  
WESTERN ZONE BENCH OF  
THE NGT AT PUNE**



# Sandip Kayastha v Alandi Municipality and Ors.

- Massive dumping of MSW and industry effluent into the river Indrayani.
- The NGT ordered that as opposed to actions like forfeiture of Bank Guarantee and giving mere directions, the Municipal authorities were directed instead to initiate “complete closure by sealing of machinery of the industry and taking over the industry by putting locks and shutting down everything.”
- The industries which are found discharging effluents and contaminate water of River ‘Indrayani’, be directed to pay amount of Rs.5Lakhs each.

# Mr. Vitthal Gopichand Bhungase v. Gangakhed Sugar and Energy Ltd.

- A group of marginalised fishermen, depending on Lake Mannath, for fishing; livelihoods destroyed due to pollution in the lake by the sugar factory by releasing molasses and chemicals.
- Respondents hired goons to physically intimidate and beat up the applicants.
- NGT ordered that “it would be appropriate to direct the Respondent Nos. 1 and 2, to deposit an amount of Rs.50,00,000/- (Rs. Fifty Lac) with the office of the Collector, Parbhani, so that such amount will be available for disbursement” .



# Ashok Kajale and Ors v. Godavari BioRefineries and Ors.

- The Respondent was a chemical manufacturing industry, and were releasing the trade effluent generated from spent into the river banks. Led to contamination of river water and of groundwater in the wells.
- Massive impact on the health and crops of residents.
- NGT ordered the Respondent to pay Rs. 55 lakh as cost of remediation of ground water and land, and Rs. 2 lakh toward each polluted well.

# Ravindra Bhusari

- The NGT directed civic bodies to levy Rs. 3,000 as 'green tax' from sellers. The corpus collected from the tax will be used to clean solid waste generated from firecrackers at public places. Part of the money is to be used exclusively for environmental activities such as planting trees and constructing toilets for women.

# Sub Judice Cases

- 1) A unit "Indian Rayon" located at Gir Somnath is involved in manufacturing and polluting the Devaka River. A \$ 4.75 billion business, which is part of a \$ 42 billion Indian multinational group Aditya Birla Group.
- 2) Opposing environmental clearance, against Tata Power, for a proposed change of fuel of the Tata Thermal Power Plant at Chembur area from the current LSHS/LSFO (Low sulphur Heavy Stock/ Low Sulphur Fuel Oil) to coal for "modernisation of the plant".

# Advantages

- Helps fight against the concept of pollution havens in FDI centric emerging economies.
- Offers monetary relief to victims in terse financial conditions.
- Is a severe deterrent against faulty environmental practices, especially for small businesses.
- Government authorities are held accountable as their election gets affected by bad press of paying fines through PPP

# Drawbacks

- Under domestic law, reducing health and environmental harms to monetary compensation goes against the principle of intergenerational equity
- By trading harm for money, companies account for pollution payments as sunk costs in their revenue model.
- Obligation on government bodies to compensate for environmental harm, subverting the principle in terms of its logic. Compensation versus Penalty/Restoration.

# Need for Criminal Jurisdiction

- PPP works on Strict Liability
- Intention+ Action attracts criminal sanctions
- NGT has civil jurisdiction, and PPP fails in addressing the need for criminal sanction, although lockdowns are a borderline remedy.