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## Polluter Pays Principle in India: Law, Liability and the Hidden Transfer of Environmental Costs

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*The Polluter Pays Principle has emerged as one of the most significant doctrines in modern environmental jurisprudence, holding polluters financially and legally accountable for the environmental harm caused by their activities. The principle seeks not only to compensate victims of environmental damage but also to ensure the restoration of degraded ecosystems and the prevention of future harm. In India, this doctrine has received recognition through constitutional provisions, environmental statutes, and a series of landmark judicial pronouncements by the Supreme Court and various High Courts. It has become an integral part of the country's environmental governance framework and sustainable development policies. However, despite its strong legal foundation, several challenges continue to hinder its effective implementation. Issues such as inadequate enforcement mechanisms, difficulties in assessing environmental damage, regulatory inefficiencies, and limited accountability of major polluters remain prevalent. This article critically examines the evolution of the Polluter Pays Principle in India, analyses its practical limitations, compares its implementation with selected foreign jurisdictions, and proposes reforms aimed at strengthening environmental accountability, ecological restoration, and sustainable development.*

**Keywords:** *polluter pays principle, environmental jurisprudence, ecological harm, ecological restoration, sustainable development.*

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## INTRODUCTION

India is one of the fastest-growing countries in the world; its industrial and economic growth has transformed the landscape of the country, but in the race for development, the pressure on the environment has significantly increased. The rapid economic development has led India to an economic crisis. Major cities, like Delhi, suffer from one of the worst AQIs in the world;<sup>1</sup> rivers are suffering from the untreated waste of industries, and our forests and wildlife are suffering from the expansions of industries.

In the simplest words, the rapid economic growth of India has led us to severe environmental degradation, and it is not just an ecological issue, but it is also an economic and public health concern. It affects society disproportionately – the people who do not have the basic amenities, like access to healthcare and safe living conditions, suffer most from the effects of environmental degradation. After the growing concerns of environmental degradation, the world came up with many mechanisms to ensure liability for the ecological harms. One of these mechanisms is the ‘Polluter Pays Principle’.<sup>2</sup> It is a doctrine under which the polluter becomes liable for environmental damage, and he has to bear the cost of remedying the environmental damage. It emerged in the 1970s through the meetings of the OECD<sup>3</sup> and gained global recognition in 1992 through the Rio Declaration on Environment and Development.<sup>4</sup>

In India, it has become a part of our jurisprudence through the judicial activism of the Supreme Court. The Supreme Court extended the scope of Article 21, which includes the right to a healthy environment as a fundamental right.<sup>5</sup> Although the PPP is fully recognised by our judicial system, its effectiveness remains a concern. The environmental damage continues to rise; pollution by the industries is still ongoing, and the affected communities are suffering from this because of the weak enforcement, delayed litigation, and inadequate penalties. Sometimes, the environmental costs are indirectly transferred to society; when a citizen has to bear the cost of medication due to the polluted water and air, the crops of farmers are destroyed due to the

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<sup>1</sup> ‘National Air Quality Index’ (Central Pollution Control Board) <<https://cpcb.nic.in/National-Air-Quality-Index/>> accessed 15 April 2026

<sup>2</sup> *Recommendation of the Council on OECD Legal Instruments Guiding Principles concerning International Economic Aspects of Environmental Policies* (Organisation for Economic Co-operation and Development 1972)

<sup>3</sup> *THE POLLUTER PAYS PRINCIPLE: DEFINITION, ANALYSIS AND IMPLEMENTATION* (Organisation for Economic Co-operation and Development 1975)

<sup>4</sup> Rio Declaration on Environment and Development 1992, principle 16

<sup>5</sup> *Subhash Kumar v State of Bihar and Ors* (1991) 1 SCC 598

industrial contamination, and the loss of livelihood of people because of the pollution spread by the industries, which are meant to develop.

This article critically analyses the effectiveness of PPP in India beyond the theoretical and judicial aspects. It argues that the principle is fully incorporated in our environmental jurisprudence, but fails to ensure real environmental liability. Instead of making the polluters compensate for the damages, the cost is fully absorbed by the citizens. Through an analysis of constitutional provisions, judicial developments, institutional mechanisms, and significant environmental case studies, this article seeks to evaluate whether the Polluter Pays Principle in India truly fulfils its objective or merely operates as a symbolic doctrine within environmental law.

### **WHAT IS THE POLLUTER PAYS PRINCIPLE?**

The Polluter Pays Principle (PPP) is one of the most important doctrines in the field of environmental jurisprudence in the world. It means any person, industry, or entity that is responsible for causing environmental harm must bear the financial burden for that harm, instead of giving the burden to the citizens and government. In simpler terms, one who causes environmental degradation must bear the responsibilities.

The PPP was formulated based on the recommendations of the Organisation for Economic Co-operation and Development (OECD) in 1972. Before this principle, industries were generating profits by damaging the environment and creating problems, and citizens were suffering from the environmental and health-related consequences. Pollution-related diseases, contaminated water sources and the decline of agricultural productivity became the social burden instead of corporate liability. The OECD had introduced it as an economic policy tool to avoid situations in which citizens and the government are taking the burden of pollution control and to mandate the environmental cost on the industries.

It was recognised internationally in 1992 during the Rio Earth Summit. “Principle 16 of the Rio Declaration on Environment and Development” recognised that national authorities should promote the internalisation of environmental costs and ensure that polluters bear the expenses associated with pollution. After that summit, the PPP has become an important part of

international environmental governance, and several countries have adopted the principle in their domestic legislation, judicial decisions and environmental legislation.

The Polluter Pays Principle consists of two important dimensions: prevention and compensation.

**Preventive Dimension of the PPP:** This dimension focuses on preventing environmental damage before it occurs. Under this, industries were mandated to adopt pollution control mechanisms, such as a proper waste treatment plant. There is a very simple reason behind adopting prevention first. Preventing pollution is less costly and more effective than compensating for the damage because sometimes the impact of environmental harm, such as toxic contamination, biodiversity loss, groundwater pollution, and deforestation, becomes irreversible, and no one can predict the adequate amount of compensation for these harms.

**Compensatory Dimension of the PPP:** This dimension comes into action when the environmental damage has already happened. Under this, polluters were mandated to compensate the affected individual and bear the liability for ecological restoration. It recognises that those industries that were gaining profit from ecological harm should bear the responsibility for the victims and fund their restoration.

The PPP has some features that make it very important for modern environmental governance. One of the important features is economic deterrence. When companies know that pollution or non-adherence to rules can cause financial liability, they are more likely to adopt safer environmental practices. This principle promotes the idea of environmental justice. It ensures that the communities affected by pollution receive compensation and restoration support. Another feature is sustainable development. It encourages the industries to maintain a balance between economic growth and ecological protection. It creates environmental accountability among the polluters. The Polluter Pays Principle is one of the most important doctrines for environmental governance. Still, its effectiveness depends upon the strict enforcement of the doctrine, valuable environmental assessments, strong judicial intervention and a government that can make the polluters liable for the ecological harm.

## HOW DID INDIA ADOPT IT?

The evolution of the Polluter Pays Principle in India represents a significant transformation in the environmental jurisprudence of the country. The principle originated as international environmental legislation, but over time, this doctrine has been incorporated into the domestic jurisprudence of several countries. In India, it has been incorporated due to the judicial activism of the Supreme Court. The evolution of PPP can be understood through the three major dimensions: constitutional basis, judicial development and statutory framework.

**Constitutional Basis:** Article 21 is a fundamental right which recognises the right to live in a healthy and safe environment as a right to life.<sup>6</sup> The judiciary has recognised that environmental damage is affecting the human health and quality of life of citizens, which is why environmental protection has become an important part of fundamental rights. Articles 48A and 51A(g) direct the state and citizens to protect and restore the natural environment.<sup>7</sup> Although these are not enforceable in the courts, these articles make a significant impact on the environmental policy-making and court judgments in India.

**Judicial Development:** The Polluter Pays Principle gets recognition due to the judicial activism of the Indian judiciary. There is a series of judgments that lead to the incorporation of the PPP in our environmental jurisprudence. One of the earliest was *MC Mehta v Union of India* (1987), also known as the 'oleum gas leak case'. From this case, the Supreme Court established the doctrine of absolute liability for the industries that were dealing with hazardous substances.<sup>8</sup> The court established that the industries would get no exception if the hazardous material escaped from the property of the industries. The PPP was formerly recognised by the judgement of the *Indian Council for Enviro-Legal Action v Union of India* (1996);<sup>9</sup> the court held that industries responsible for the ecological harm should not only compensate the victims of the damage but also bear the cost of environmental restoration. Another important judgement was *Vellore Citizens Welfare Forum v Union of India* (1996). In this judgment, the court held that

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<sup>6</sup> *M C Mehta and Anr v Union of India and Ors* (1987) 1 SCC 395

<sup>7</sup> Constitution of India, 1950, arts 48A and 51A(g)

<sup>8</sup> *M C Mehta and Anr v Union of India and Ors* (1987) 1 SCC 395

<sup>9</sup> *Indian Council for Enviro-Legal Action Etc v Union of India and Ors* (1996) 3 SCC 212

the polluter pays principle and the precautionary principle are an integral part of our Indian environmental jurisprudence.<sup>10</sup>

**Statutory framework:** The Polluter Pays Principle is further strengthened by various statutory frameworks and the establishment of institutions. One of the most important frameworks is the Environment (Protection) Act, 1986.<sup>11</sup> This is broad legislation because of the wide powers it provides to the government. This act empowers the government to regulate pollution, prescribe standards, and take preventive measures against environmental hazards. Other important acts were the Water (Prevention and Control of Pollution) Act, 1974,<sup>12</sup> and the Air (Prevention and Control of Pollution) Act, 1981.<sup>13</sup> These laws introduced mandatory licensing for industries, leading to legal actions against the violators. Under the Water (Prevention and Control of Pollution) Act, 1974, the Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCBs) were formed. They are key regulatory bodies to enforce environmental compliance and monitor the emission standards. There is another important institutional development, the National Green Tribunal (NGT). It is formed under the National Green Tribunal Act, 2010.<sup>14</sup> It was created to ensure a dedicated court that deals with environmental concerns and delivers speedy justice.

## **THE HIDDEN FAILURE OF THE POLLUTER PAYS PRINCIPLE IN INDIA**

The Polluter Pays Principle is widely recognised as a simple but powerful idea. Indian courts have recognised this doctrine as an essential part of environmental governance. In theory, this principle appears to make the polluting industry accountable for its acts, but the ground-based reality is completely different. Despite the legal recognition of this doctrine, the actual burden of the pollution fell upon the ordinary citizen and their future generation. The concerns that led to the failure of the PPP are as follows:

**Public Health Consequences:** It is one of the most common concerns that led to the PPP's failure in practice. The byproducts produced by factories have caused the release of hazardous fumes and the outflow of toxins, which influence countless people in India. In urban locales such

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<sup>10</sup> *Vellore Citizens Welfare Forum v Union of India and Ors* (1996) 5 SCC 647

<sup>11</sup> Environment (Protection) Act 1986

<sup>12</sup> Water (Prevention and Control of Pollution) Act 1974

<sup>13</sup> Air (Prevention and Control of Pollution) Act 1981

<sup>14</sup> National Green Tribunal Act 2010

as Delhi and Faridabad, the cleanliness of the air remains perpetually hazardous, bringing about life-threatening diseases.<sup>15</sup> At Tajola in Maharashtra, the textile and chemical sectors were constantly releasing their toxic byproducts into the Kasadi River, thereby dirtying the river. The residents do not possess an alternative cost-effective water solution, so they persist in utilising the water for everyday activities, which results in chronic health hazards. In the mining and industrial regions, the health of the people in the close villages is also at risk, namely, in Jaduguda and the Jaintia Hills. Prolonged health hazards can lead to the health of the people in the nearby village being similarly vulnerable; for example, in Jaduguda and across the Jaintia Hills. Chronic health threats may cause healthcare providers to be under the burden of their ecological harm, but the general public is also affected in many ways that a polluter cannot compensate for.

**Delay in Court Proceedings and Compensation:** It is another concern related to the Polluter Pays Principle. The delay in the litigation of the environmental dispute leads to inefficiency of the principle. The litigation in the environmental dispute is slow, lengthy, and full of complex procedures. During the period of dispute, the industries continue their actions, and when the judgment comes, the damage done by them has become irreversible. Delayed compensation affects the communities, who have been struggling for a long time for financial relief and rehabilitation. Companies often see the compensation fines as an operational cost of their project. They are making huge amounts of profit at the expense of our environment and paying a fine that is insignificant in front of that profit. This may create dangerous situations in the future, in which the polluter will see this principle just as a symbolic measure with limited impact.

**The damage is difficult to reverse:** Some forms of environmental damage cannot be restored through monetary compensation. It often has long-term consequences. Loss of forest and biodiversity, pollution of rivers and destruction of ecological systems may take decades to restore. It is a very difficult and time-consuming process that has nothing to do with monetary compensation. The issue becomes more severe when it affects the lives of tribal communities. Their livelihood, culture and identity are deeply connected with the ecosystem. In many cases, due to the mining projects and industrial expansion, the tribal communities have been displaced

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<sup>15</sup> ‘Ambient (outdoor) air pollution’ (*World Health Organization*, 24 October 2024) <[https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health)> accessed 15 April 2026

from their cultural ecosystem.<sup>16</sup> These events led to the cultural loss of a community, which can never be compensated for with money. The Polluter Pays Principle works better in the matter of giving compensation than genuine ecological restoration.

**Who Actually Pays:** When we are discussing the concerns of the PPP in the above paragraphs, we can conclude who is actually paying or facing consequences due to the environmental degradation – the marginalised communities. They are the ones who are inhabitants near the industrial belts and mining belts. They are the ones who are facing hazardous working conditions in the factories. They are the ones who are exposed to higher environmental risk despite contributing the least to the pollution. The rural and tribal communities near the mining areas often face the issue of displacement. The question is not only about who bears the cost of the consequences, but also who suffers from the consequences. It is not just that the contemporaries of environmental pollution will suffer, but the burden will ultimately fall upon future generations. After visiting all the concerns, we can state that the Polluter Pays Principle is strongly recognised by our Indian judiciary, but in reality, it is flawed. This principle fails to ensure that the burden of the pollution falls upon the polluter rather than society. We need strong environmental governance systems. After that, the principles became stricter, faster and socially inclusive.

## COMPARATIVE PERSPECTIVE

With the help of a comparative analysis with other countries, we can gain a better understanding of enforcing environmental accountability. Several countries have even stricter frameworks for ensuring environmental liability; by comparing with other nations, we can highlight both strengths and limitations of Indian environmental governance.

**European Union:** The EU has also recognised the polluter pays principle under Article 191 of the Treaty on the Functioning of the European Union (TFEU).<sup>17</sup> Another important law is the Environmental Liability Directive, 2004.<sup>18</sup> They do not focus only on the compensation but also on the preventive measures. Industries are mandated to take preventive measures before any environmental threat arises, and if it occurs, then the operator of the industries is liable for the

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<sup>16</sup> *Samatha v State of Andhra Pradesh and Ors* (1997) 8 SCC 191

<sup>17</sup> Treaty on the Functioning of the European Union [2012] OJ C326/47, art 191

<sup>18</sup> Directive 2004/35/CE on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage [2004] OJ L143/56

restoration of the damage. They also have a strict regulatory and compliance mechanism, and ignoring regulations brings heavy fines. Actually, operations might face suspension. However, the framework within the European Union is also not free from criticism; the delay in the damage assessment and the different standards among member nations create problems.

**United States:** The US has developed very strong legislation to govern environmental liability, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly known as the Superfund law.<sup>19</sup> Under this act, the parties are held liable for the cleanup of the contaminated areas. Under the Superfund mechanism, the Environmental Protection Agency was established.<sup>20</sup> Their work is to find contaminated sites and initiate the cleanup operation. This also creates a deterrence in the mind of the operators because of the high cleanup cost. The rapid governmental intervention also helps in the elimination of delays in the remediation process.

**India's Position:** Compared with the US and the EU, India has a strong judicial position but weaker practical implications in the matter of environmental governance. The litigation in India remains lengthy and complex, and compensation mechanisms are still inadequate. India also lacks a cleanup mechanism like the US Superfund system. The Indian government needs to work on areas like enforcement efficiency, preventive environmental governance, and ecological restoration to make environmental governance more effective.

## REFORMS AND SOLUTIONS

**Scientific evaluation of ecological damage:**<sup>21</sup> Environmental harm is difficult to quantify in terms of compensation. Thus, India requires a strategic framework to evaluate the damage within the ecosystem, which will include ecological restoration costs, healthcare impacts, livelihood losses, etc. This will determine the exact compensation amount.

**Fast Track Courts and High Compensation:** Delayed environmental justice is still one of the most important concerns for environmental governance. Dedicated benches for

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<sup>19</sup> Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 1980

<sup>20</sup> 'Superfund' (*United States Environmental Protection Agency*) <<https://www.epa.gov/superfund>> accessed 15 April 2026

<sup>21</sup> Robert Costanza et al., 'The value of the world's ecosystem services and natural capital' (1997) 387 *Nature* 253 <<https://doi.org/10.1038/387253a0>> accessed 15 April 2026

environmental disputes in courts and tribunals may reduce the issue of delay in judgments and ensure timely relief for the affected communities. Fast-track enforcement and a high compensation amount may cause a deterrence effect in the minds of polluters.

**Environmental Insurance:**<sup>22</sup> Industries often lack the funds to address the environmental disasters created by them. In that case, environmental insurance can be a great mechanism to make the arrangements of funds for the ecological restoration and victim compensation. It will also encourage the industries to adopt safer practices. It would also reduce the burden of the government and the taxpayers in the case of an environmental disaster. This mechanism already exists in several developed countries' regulatory frameworks.

**Localised Rehabilitation and Health Support:** Sometimes, solely the compensation fails to benefit the affected communities because of the impact of the disaster on the health of the nearby residents or communities. The distribution of the compensation amount among the affected people takes time, but until then, the communities constantly suffer from a toxic environment. So, there should be an instant rehabilitation and health support system that instantly gives them medical support and displaces them to a safer place if required.

**Intergenerational Accountability:**<sup>23</sup> The ecological destruction also affects upcoming generations, who have no part in polluting the environment. The PPP should have an intergenerational accountability clause as part of environmental governance, which may shift the focus of the governance from short-term compensation to long-term protection of the environment.

## CONCLUSION

The Polluter Pays Principle is one of the most important doctrines for environmental governance in India.<sup>24</sup> Through constitutional basis, judicial development and statutory frameworks, India has formally recognised the principle as the core of our environmental governance. Despite its strong recognition, its practical implications remain a concern. After critically analysing the PPP and comparing it with the governance mechanisms of other countries, it highlighted many grey

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<sup>22</sup> Public Liability Insurance Act 1991

<sup>23</sup> *State of Himachal Pradesh and Ors v Ganesh Wood Products and Ors* (1995) 6 SCC 363

<sup>24</sup> Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India: Cases and Materials* (3rd edn, OUP 2019)

areas that need to be worked on. The government needs to work on these grey areas if they want to make this principle a genuine environmental protection and sustainable governance act beyond the symbolic recognition.