ADOPTION OF POLLUTER PAYS PRINCIPLE BY THE INDIAN SUPREME COURT FOR DELIVERY OF ENVIRONMENTAL JUSTICE

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ABSTRACT

In India, there is no dearth of environmental legislations, for example, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, et cetera, enacted with objectives of addressing environmental pollution and protecting and preserving natural resources. Under these legislations, the polluting industry can be imposed with fine or with imprisonment or by both. However, the abovementioned legislations are silent in terms of fixing responsibility against the polluter or polluting industries for bearing the cost of compensation to the environmental victims and also to bear the cost for restoring the degraded environment. In 1991, the Public Liability Insurance Act was enacted to involve the third party to bear the cost of compensation to the victims on behalf of the owner of the hazardous industry which is producing and handling hazardous chemicals. But this Act was applicable only to hazardous chemical industries. In this regard, the Bhopal Gas Tragedy was an eye-opener for all of us that in spite of having a legislation to control the atmospheric pollution, there was no such provision under the Air Act, 1981 to fix responsibility against the polluting industry, so that such industry could have paid the cost of compensation to the victims. Although the Indian Supreme Court in 1986 categorically explained the scope of application of absolute liability against the hazardous industries, the application was limited because of the critical definition of liability regime. Polluter pays principle is the principle which applies against the polluter in a simple mechanism. In India, Supreme Court redefined the ambit of Article 21 of the Indian Constitution in 1991, classifying that the right to get pollution-free water and air is within the domain of Article 21. To redefine the polluting industries, it was the Indian Supreme Court, who, for the first time in 1996, brought the idea of polluter pays principle while exploring the concept of sustainable development. The present article discusses the struggle of the Supreme Court and successful implementation of the polluter pays principle for fixing appropriate liability against the polluter.

Keywords: Polluter Pays Principle, Absolute Liability, Supreme Court, Sustainable Development, Precautionary Principle, Right to Pollution Free Environment

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I. INTRODUCTION

The Indian Supreme Court1 [“The Court”] has played a major role in delivering environmental justice,2 not only by controlling the pollution3 to the environment, which could be directly related to the health issues4 of the people, but also provided relief by way of preserving and protecting various environmental resources of the country.5 India made its presence at the Stockholm Declaration, 19726 and also explained the position about the future activities that India will be taking to protect the human environment. India had two effective environmental legislations, such as the Wildlife (Protection) Act, 19727 and the Water (Prevention and Control of Pollution) Act, 1974,8 which were not influenced by the Stockholm Declaration. These environmental legislations were enacted under the provisions of Article 252 of the Indian Constitution.9 The Indian Parliament enacted a law to control the atmospheric pollution, for example, the Air (Prevention and Control of Pollution) Act, 1981,10 under the significant influence of the Stockholm Declaration, 1972. This legislation was made while following the mandates of Article 253 of Indian Constitution.11 The Stockholm Declaration, 1972 is one of the international environmental documents which provides the scope of protection regime of environmental resources, not only for present but also for future generations.12 Similarly, the Environment (Protection) Act, 198613 was also enacted by following the constitutional provisions under Article 253 of the Indian Constitution. It is also true that given the wider range of powers under Section 3 and Section 5 of the said Act, the Government of India is empowered to take any such measures, even not defined under the statute, for the purpose of

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1 J. Mijn Cha, A Critical Examination of the Environmental Jurisprudence of the Courts of India, 10 ALB. L. ENVTL. OUTLOOK 197 (2005) [hereinafter Cha].
2 Deepa Badrinarayana, The "Right" Right to Environmental Protection: What we can discern from the American and Indian Constitutional experience, 43 BROOKLYN J. INT’L L. 75 (2017) [hereinafter Deepa Badrinarayana].
8 Kelly D Alley, Legal Activism and River Pollution in India, 21 GEO. INT'L ENVTL. L. REV. 793 (2009).
10 Rosencranz & Jackson, supra note 3.
13 Cha, supra note 1, at 200-1.
protecting and preserving the natural environment.\textsuperscript{14} At the same time, this declaration also promotes the avenues under which environmental liability regime can be appropriately fixed against the polluter.\textsuperscript{15} At that time, the environmental legislations as mentioned above were sufficient to fix responsibility against the polluter in a punitive form, such as, either imposing fine to the polluter or sending the person behind the bar responsible for such pollution by way of imprisonment.\textsuperscript{16} Therefore, those environmental legislations, as mentioned above became the part of criminal minor Act.\textsuperscript{17} The massive environmental accident, such as the Bhopal Gas Tragedy,\textsuperscript{18} revealed the extreme weakness\textsuperscript{19} in the environmental legislations which were prevailing at that time, to the extent that no law had any specific provision under which compensation amount could be imposed against the polluter, not only to be paid to the victims of such massive environmental accidents,\textsuperscript{20} but also to award the amount of compensation to the polluter for the purpose of restoring the degraded environment.\textsuperscript{21} The Court in the M.C. Mehta (Absolute Liability) case\textsuperscript{22} discussed the ambit of strict liability and brought forward the concept of absolute liability having no exceptions to be enjoyed by the polluter.\textsuperscript{23} However, the discussion went to cover only the hazardous industries against which the absolute liability can be applied.\textsuperscript{24} Meanwhile, it was also revealed by the Court that the right to pollution-free environment is not a fundamental right nor a part of statutory right, ever explained expressly under any environmental legislation.\textsuperscript{25} Subsequently, the Court in the year 1991 in the case of Subhash Kumar v. State of Bihar,\textsuperscript{26} while rejecting the public interest litigation, categorically explained that under Article 21 of Indian Constitution, the expression right to life also includes right to get pollution free water.


\textsuperscript{19} Id.


\textsuperscript{22} M.C. Mehta v. Union of India, AIR 1987 SC 1086 [hereinafter M.C. Mehta].


\textsuperscript{24} David Dodds, \textit{Breaking Up is Hard to Do: Environmental Effects of Shipwrecking and Possible Solutions Under India’s Environmental Regime}, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 207 (2007) [hereinafter Dodds].


\textsuperscript{26} Subhash Kumar v. State of Bihar, AIR 1991 SC 420.
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and air. An environmental report developed by the National Environmental Engineering Research Institute (NEERI), was seriously considered by the Supreme Court in India in Indian Council (Bichhri) case and redefined the concept of liability regime against the polluting industries in a new look with greater responsibility and proactive stand for the preservation of environment and protection of environmental rights to the people in India. In India, because of drastic but reasonable venture made by the Supreme Court introduced the polluter pays principle in the year 1996. However, historically, its origin dates back to 1970s.

II. ORIGIN OF THE CONCEPT OF POLLUTER PAYS PRINCIPLE

The presence of the concept of polluter pays principle can be traced back from 1960 when for the first time Paris Convention effectively channelised the scheme of compensation to be borne by those who would be responsible for environmental harm and it is to be paid to the environmental victims. Similarly, the Convention on Civil Liability for Nuclear Damage, otherwise known as the Vienna Convention 1963, also brought forward the environmental liability regime and also stated that compensation to the environmental victims will be paid by those who would be responsible for causing such environmental damage. The absolute form of liability for bearing the cost of compensation was relaxed under the International Convention on Civil Liability for Oil Pollution Damage of 1969. It was further stated that unless there is a real fault of the shipowner, responsibility on environmental damage cannot be fixed. The polluter pays principle can be traced from the documents of Organisation for Economic Cooperation and Development (OECD).

(A) CONTRIBUTION BY OECD

27 Deepa Badrinarayana, supra note 2.
30 Id., at 354.
In the year 1972, the first official mentioning of polluter pays principle can be witnessed from the resolution of OECD.\textsuperscript{36} The resolution became a matter of guideline that whoever will be using environmental resources for developmental purpose and for one’s economic benefit the same developer shall have the responsibility for pollution control and prevention keeping in mind that every environmental resource has an economic value and the developer will have to use wisely the environmental resources for developmental purpose.\textsuperscript{37} In case, there is environmental harm because of such developmental process, the cost of pollution control and prevention will rest upon the developer/polluter.\textsuperscript{38} This guideline was accepted as anti-trade distortion under international trade and investment regime.\textsuperscript{39} In the year 1974, there was another guideline adopted by the OECD Council that finance to develop a new technology for pollution control and scientific development of pollution control devices are to be considered as an integral part of polluter pays principle.\textsuperscript{40} Regarding the application of the polluter pays principle to the installer of hazardous items, in 1989, the OECD Council resolved that any environmental harm witnessed from the company which is installing hazardous items should bear the cost of reasonable measures for pollution control and prevention.\textsuperscript{41} The cost which is required to eliminate the pollution in the environment to be borne by the polluter, can be found under European Union law as well.\textsuperscript{42}

(B) \textbf{Presence of Polluter Pays Principle under European Law}

In 1973, the European Union inculcated the polluter pays principle in the first programme of action on the environment.\textsuperscript{43} In 1975, the European Council made a recommendation on cost allocation and action to be taken by public authorities on environmental degradation matters and stated that the polluter pays principle should be applied by the European Union at the union level and the Member States should apply the principle in their national environmental legislation.\textsuperscript{44} The principle of polluter pays will not only be

\textsuperscript{40} Eric Thomas Larson, \textit{Why Environmental Liability Regimes in the United States, the European Community, and Japan have grown synonymous with the Polluter Pays Principle}, 38 VAND. J. TRANSNAT’L L. 541, 562 (2005) [hereinafter Larson].
\textsuperscript{44} Grossman, supra note 41, at 15.
applicable to natural persons, but also to artificial legal persons which are regulated by either private law or by public, provided that the pollution is caused by them.\(^45\) Therefore, the polluter will have to bear the cost of undertaking measures which will be essential to remove that pollution or reduce pollution to such an extent which will meet with the standards specified by public authorities.\(^46\) It is also clearly visible that recommendation relating to applicability of polluter pays principle is wider as stated by the European Council in comparison to that of the OECD recommendations.\(^47\)

In this regard, the European Council recommendations cannot be considered as legally binding.\(^48\) However, under the same recommendations, the public authority shall enjoy ample power to specify and identify standards for controlling pollution and can declare certain acts of the natural person and artificial legal person to be considered as not contrary to the polluter pays principle and also write down exceptions to such principle.\(^49\)

European Economic Commission (EEC) Treaty was amended in 1986 to make a provision for European Union that any action to be taken for the purpose of protection and preservation of the environment should be based on the principle of polluter pays.\(^50\) It is also interesting to note here that member countries of European Free Trade Association (EFTA) and European Union members agreed in 1992 that environmental action should be based on the principle that the polluter should pay.\(^51\) It is also found that occasionally, the European Court of Justice realised the practical applicability of the polluter pays principle.\(^52\) The state aid provided by the European Commission, there is also presence of polluter pays

\(^{45}\) Larson, supra note 40, at 550-1.


principle in its action.\textsuperscript{53} Finally, the secondary legislations\textsuperscript{54} of the European Union also incorporate the principle of polluter pays for better administration of environmental matters.\textsuperscript{55}

(C) OTHER INTERNATIONAL ENVIRONMENTAL INSTRUMENTS

The expression ‘polluter pays principle’ can be found in Rio Declaration of 1992, in which Principle 16 clearly mentions that the participating nation should devise an economic instrument which will ensure the internalization of environmental cost while fixing responsibility against the polluter to bear the cost of causing pollution.\textsuperscript{56} However, Principle 16 is particular about the scope that such fixing financial liability should be in public interest and under no circumstances should come in the way of international trade and investment.\textsuperscript{57} The other international environmental instruments, such as Stockholm Declaration, 1972,\textsuperscript{58} World Charter for Nature, 1981,\textsuperscript{59} World Commission on Environment and Development, 1987,\textsuperscript{60} et cetera, indirectly mention that polluter pays principle in a rather vague form.

In India the necessity of having the polluter pays principle was felt for the first time when there was a leakage of Methyl isocyanate gas at Bhopal, which took away several human lives and degrade the environment with the potency to cause a future birth defect in the concerned area.\textsuperscript{61}

III. BHOPAL GAS TRAGEDY AND NECESSITY OF POLLUTER PAYS PRINCIPLE

In India, the environmental liability regime was not very strong, because of the fact that at that time, no laws were available to fix the responsibility to the polluter for environmental damage and loss of human


life, in order to pay the compensation to the environmental victims and also award the amount to be expended for restoring the degraded environment.\(^{62}\)

The Government of India initiated the process with the Union Carbide Corporation to negotiate for compensation amounts to be paid to the environmental victims and families and this was merely a negotiation without the support of any internal law, as there was no law.\(^{63}\)

It was the need of the situation that India should have adopted the polluter pays principle immediately after the Stockholm Declaration, 1972, so that this kind of massive environmental accidents could have been controlled and mitigated with the help of the same principle.\(^{64}\) As I have already discussed earlier, simple meaning of the polluter pays principle was that the polluter will have to bear the economic cost for any environmental damage, which happened because of the polluter's action and also will have to bear the economic cost for the amount of compensation that is to be paid to the victims of such environmental degradation.\(^{65}\)

In this regard, it is to be mentioned that the amount which was negotiated by the Government of India was only meant for compensation amount for environmental victims and their families, though there was aspersion that whether the amount so collected was sufficient to meet with the compensation amount as required by the situation, but there was no negotiation regarding collecting the amount for restoring the degraded environment.\(^{66}\) Hence, there was an extreme necessity for adopting the principle of polluter pays by India to avoid this kind of environmental hazard and subsequent repercussion.\(^{67}\)

### IV. Polluter Pays Principle and Liability Regime

It is true that the polluter pays principle became the best example of fixing environmental liability against the polluter at the international level, however, in India, the environmental liability is best understood as per the provisions of the core environmental legislations, such as, the Water (Prevention and Control of

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\(^{63}\) Faure *supra* note 17, at 688.


\(^{65}\) Lauren Sanchez-Murphy, *supra* note 58.


Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Wildlife (Protection) Act
1972, the Biological Diversity Act, 2002, et cetera. The authorities constituted under these environmental legislations, such as, Pollution Control Board, Chief Wildlife Warden and National Biodiversity Authority are responsible for fixing the liability against the polluter or to the person who degrades the environment, but fixing liability in comparison to that of polluter pays principle under these laws will be negligible, because of the fact that under these environmental legislations either the polluter will be directed to pay the fine, irrespective of the turnover of the company and proportionate compensation or the polluter would be responsible to be sent to jail or both.

Therefore, it is clear from the above paragraph that the fixation of environmental liability regime by way of awarding the amount of compensation keeping in mind about the turnover of the company/polluter as specified under the principle of polluter pays is magnificent and serves the purpose of economic responsibility of the polluter against the environmental victims and resources. Whereas, the environmental legislations are specific against the polluter to take punitive action against the polluter, there is no such provision under these legislations by which the environmental victims and the restoration environmental resources can be possible by way of fixing compensation.

The third party involvement in order to bear the amount of compensation on behalf of the owner of the hazardous chemical industries, was for the first time noticed under the Public Liability Insurance Act, 1991, which was enacted for the purpose of fixing responsibility to the owner of any hazardous industries, producing and handling hazardous chemicals to bear the compensation to the victims for any accident, even if the owner is at no fault. The Supreme Court in Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd. and Ors. mentioned the importance of section 15 of the National Green Tribunal Act, 2010 and stated that the Tribunal will have all necessary powers to award for compensation to the victims.

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72 Deepa Badrinarayana 2017, supra note 23.
73 Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd. & Ors., 2019(3) SCALE 721.
and can even award the compensation for restoration of the degraded environment in addition to the 

After 2010, under the Environment (Protection) Act, 1986 many rules were framed, particularly, 
Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016, Solid Waste 
Management Rules, 2016, E-Waste (Management) Rules, 2016, Biomedical Waste Management Rules, 
2016, et cetera, which are also concerned with the fixing of liability to the polluter by awarding 
compensation.\textsuperscript{74}

In India, the environmental liability regime of the polluter for compensation and for restoration started by 
protecting the principle of polluter pays by the Supreme Court of India in the year 1996.\textsuperscript{75} Therefore, in 
India, not only the environmental legislations would be applicable for providing punitive action to the 
polluter, but also the polluter can be held economically responsible to bear the cost of compensation and 
restoration. In environmental history, it can be clearly recognised that the concept of absolute liability was 
brought forward to give a new dimension of environmental liability regime.\textsuperscript{76}

\textbf{(A) A Journey of Liability Regime from Absolute Liability to Polluter Pays Principle}

Immediately after the Bhopal Gas Tragedy, there was another oleum gas leakage which occurred at New 
Delhi in 1985, because of which the Supreme Court had to intervene to provide a better and unique way of 
fixing environmental liability against the polluter in the year 1986.\textsuperscript{77} The Supreme Court explored the idea 
of ‘Absolute Liability’ against the polluter and stated that although India is influenced by the common law, 
the situation regarding the environment and its degradation is different from other European countries, 
where common laws are applicable, hence, the application of ‘Strict Liability’ as per Rylands\textsuperscript{78} case will not 
be possible here in India, because the polluter will make excuses under the exceptions\textsuperscript{79} available to it.\textsuperscript{80}

\textsuperscript{74} Ministry of Environment, Forest and Climate Change, \textit{Hazardous Substance Management}, http://moef.gov.in/rules-and-
regulations/environment-protection/hazardous-substances-management/ (last visited Aug. 06, 2019).
\textsuperscript{75} Jona Razzaque, \textit{Linking Human Rights, Development, And Environment: Experiences from Litigation in South Asia}, 18 FORDHAM 
\textsuperscript{77} Anjali D. Nanda, \textit{India’s Environmental Trump Card: How Reducing Black Carbon Through Common but Differentiated Responsibilities Can 
\textsuperscript{78} Rylands v. Fletcher, (1868) LR 3 HL 330.
\textsuperscript{79} For example, plaintiff’s own fault, consent given by the plaintiff, act of third-party, act of God, common benefit to plaintiff 
and defendant and statutory authority.
The Supreme Court in *M.C. Mehta* (absolute liability) case clearly stated that it is the absolute liability of the hazardous industries to bear the economic responsibility for remedying the damage caused to the environment because of its own action. The apex court further stated that the quantum of economic responsibility for environmental damage will be dynamic to the extent that bigger the corporation and its turnover, larger the compensation amount. But, the principle of absolute liability will be applicable to only those industries which are hazardous in nature.

Therefore, as per the principle of absolute liability, every polluter will not fall under the clutches of this principle and fixing economic responsibility against every polluter will be considered as myth but not a reality. The Supreme Court had to explore a unique mechanism, which would give best reply to environmental protection against any polluting entity and ultimately the struggle ended when the apex court adopted the international sound principle ‘Polluter Pays Principle’ while deciding the *Sludge* case.

It is also important to note here that unless the polluting industries are affecting the people’s right to pollution-free environment by their activities, the application of principles, such as, absolute liability, precautionary principle, intergenerational equity, polluter pays principle, et cetera may not come in real picture for their operation.

V. **RIGHT TO POLLUTION-FREE ENVIRONMENT AND POLLUTER PAYS PRINCIPLE**

Right to a pollution-free environment was not established under any statutory provisions of environmental legislations in India even until today. The Indian Constitution was amended in the year 1976 and at the time two important Articles were inserted, for example, Article 48A and Article 51(a)g, which not only bestowed obligatory duties upon the state to preserve and protect the environment and resources, but also

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81 M.C. Mehta, *supra* note 22.
86 Nemesio, *supra* note 16 at 338.
imposed a fundamental duty to citizens of India to take all necessary measures for the purpose of protecting and preserving the natural environment.\(^{87}\)

When the Supreme Court decided the *Absolute Liability*\(^ {88}\) case in India, there was no declaration of the right to pollution-free environment under Article 21 of Indian Constitution. However, the right to receive pollution-free water and air, got declared by the Supreme Court while deciding the *Subhash Kumar*\(^ {89}\) case in the 1991.\(^ {90}\) This decision and its finding got mileage for fixing economic responsibility against the polluter.\(^ {91}\) Now, if the polluter pollutes the environment and thereby affects the fundamental right of the Indian citizen, then the polluter shall not only be absolutely liable for paying the amount of compensation but also to bear the cost of restoring the degraded environment.\(^ {92}\)

Therefore, the violation of fundamental rights by the polluting industries because of its rough action will attract the liability which is absolute in nature and in the name of polluter pays principle.\(^ {93}\) The Supreme Court while discussing the larger ambit of Article 21 of Indian Constitution mechanised the procedure for bringing out a very sensitive principle of polluter pays in India.\(^ {94}\)

### VI. **Significant Role of Indian Supreme Court to Mechanise the Polluter Pays Principle**

As I have discussed in the previous part of this article that the Supreme Court was making all possible efforts to fix the financial responsibility against the polluting industries for damaging human life and environment and in this regard the first innovative step was taken by the apex court in *M.C. Mehta*\(^ {95}\) case, and developed the principle of absolute liability to be applicable against hazardous industries.\(^ {96}\) But, in that case, the principle of absolute liability was not invoked, because the petitioner did not mention anything in the petition about fixing responsibility against the polluting industry. In this regard, one of the important

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88 M.C. Mehta, *supra* note 22.
92 Faure *supra* note 17, at 332-333.
93 Shubhankar Dam, *Green Laws for Better Health: The Past that was and the Future that may be – Reflections from the Indian Experience*, 16 GEO. INT’L ENVTL. L. REV. 593 (2004).
95 M.C. Mehta v. Union of India, AIR 1987 SC 1086.
legislations were enacted by the Government of India in the name of Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 to facilitate the scope of claiming compensation\(^\text{97}\) for the victims of the environmental accident, which happened because of the leakage of Methyl isocyanate gas.\(^\text{98}\)

The major development regarding the acceptability of the principle of polluter pays can be witnessed from the decision of the Supreme Court while deciding the Indian Council case\(^\text{99}\) of 1996. Few villages in the Udaipur district of the State of Rajasthan got seriously affected by the remnants of the sludge industry, manufacturing hazardous acids. In this case, it was found that because of the stringent application of environmental laws in the developed countries, the manufacturing industries of those countries depend on the developing countries to collect the by-product and import the same to the respective abroad countries for business purposes. Though India is a developing country, there is no dearth of strict environmental legislations. However, implementation of the effective provisions always became a matter of controversy in India. This kind of manufacturing, which has huge potency to degrade the environment with the magnitude of affecting the rights of the future generation as well.\(^\text{100}\)

The Supreme Court in this Indian Council case relied heavily on the report submitted by the National Environmental Engineering Research Institute (NEERI), not only to ensure the quantum of environmental damage that has happened because of the running of the chemical industries in the area, but also looked into the feasible option of awarding compensation to victims. The Court took notice of the general rule of negligence that has been proved against the chemical industries, but in order to be sure before fixing the financial liability against the chemical industries working in the State of Rajasthan, the court relied on two important judgements from the common law countries.\(^\text{101}\)

First, in Cambridge water company’s case\(^\text{102}\) the simple rule of negligence was not approved. In this case, the tanneries industry located near the Cambridge water company stored harmful chemicals in the concrete tank constructed below the surface of the earth. When the Cambridge Water Company realized that the water of the borewell is contaminated with such harmful chemicals, they filed the case against the tanneries industry on the ground of negligence, nuisance and the rule of Ryland. The court clarified its position...


\(^{100}\) Deepa Badrinarayana, supra note 2.

\(^{101}\) Oren Perez, supra note 25.

regarding common resources and stated that one cannot degrade the quality of the common resource, because the resources not belonging to him exclusively for exploitation. Any degradation of the quality of the common resource done by one person will affect the rights of many others who are depending on the same common resource and the degradation of the quality of such common resource property will violate the rights of the commons. The court relied on this principle from the *Ballard* case and made a very clear point that in order to prove the action of the tanneries industry is negligent one, the prior requirement is that the plaintiff will have to prove that there was established reasonable foreseeability of the defendant that because of storing such harmful chemical might be leaked and could contaminate groundwater. Since, the same was not proved, the court did not award the amount of compensation against the tanneries industry. The court also mentioned the reason for lack of reasonable foreseeability on the ground that the tanneries industry had stored the harmful item 1.3 miles away from the Cambridge water company in underground place.

The Supreme Court of India also relied on *Burnie Port authority’s case* and observed that the rule of *Ryland* cannot be applicable to prove the general rule of negligence, because there are more exceptions than the application of the principle of strict liability. In the present case, the general rule of negligence was proved against the port authority. It was held that even if the authority has hired an independent contractor for extension of the building, but since has allowed the defendant company ‘General Jones Private Limited’ to store the frozen vegetables within its building in the rented part, therefore, the reasonable foreseeability of certain damage to the property of another can be expected very well when the independent contractor is using highly inflammable insulating material for extension of the port authority's building. It is not the responsibility of the independent contractor to have the reasonable foreseeability, but the real owner of the port authority will have the foreseeability test to qualify.

Thus, even in common law countries, the reliance on the *Ryland* principle is not meticulous because of its various exceptions and accordingly, the general rule of negligence is examined in determining the amount of compensation to the victims.

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103 Ballard v. Tomlinson, (1885) 29 Ch D 115.
Similarly, the Supreme Court of India in the Indian Council case did not rely on Ryland’s case and with the findings of NEERI’s report, finally, the apex court held the chemical industry in a particular district in Rajasthan as absolutely liable to pay the compensation amount to the victims and also bear the cost of restoration of the degraded environment and clean-up cost. The apex court further added that the polluter pays principle is a sound principle which makes the polluter absolutely liable to bear the cost of compensation and cost required for restoration of the degraded environment. The Supreme Court in this case accepted the principle of polluter pays as part of the law of the land, particularly under Article 21 of Indian Constitution. Which has another dimension also that if the polluter while polluting the environment violates the fundamental rights of the citizens in India, will be absolutely liable to pay the compensation to victims of such pollution for such violation.

Subsequently, the Supreme Court of India decided a number of environmental cases, applied the polluter pays principle not only to restore the lost environmental resources, but also for delivering environmental Justice to the victims, consequence of such environmental degradation.

VII. FEW SELECT CASES DECIDED BY INDIAN SUPREME COURT ON DIFFERENT DIMENSION OF POLLUTER PAYS PRINCIPLE

In India, from the year 1996 the principle of polluter pays has been accepted as the law of the land and thereafter many environmental cases have been decided by the Supreme Court imposing polluter pays principle as the main guideline for fixing liability of the polluter in its absolute form. Few select cases would be worth mentioning below, to look into the different dimensions of the polluter pays principle as decided by the Supreme Court.

\[109\] Dodds, supra note 24, at 226.
\[110\] Naznen Rahman, supra note 4, at 157.
\[111\] Janelle P. Eurick, supra note 91, at 445.
\[113\] Fata, supra note 68, at 235-236.
\[114\] Erin Daly, supra note 90, at 606-607.
In *Calcutta Tanneries case*, the Supreme Court not only imposed the pollution fine based on the principle of polluter pays, but also imposed the financial liability against the tanneries industries to deposit the fund, which will be required for reversing the degraded environment. Such fund shall be deposited to environment protection fund.

In *Research Foundation for Science, Technology and Natural Resource Policy vs. Union of India (UOI) and Ors.*, the Supreme Court analysed the situation of hazardous waste oil which was imported to India by the sea and based on the recommendation of the monitoring committee the court directed for disposal of waste oil by selecting the method of incineration as required under the polluter pays principle. The apex court also mentioned that as soon as there is a violation of any provisions of Basel Convention and Hazardous Waste (Management and Handling), Rules, 1989, the principle of polluter pays will come into operation to rescue the environment from the exposer of such hazardous activity.

In *M.C. Mehta v. Kamal Nath and Ors.*, not only the Supreme Court mentioned the essentialities of the public trust doctrine, but also stated that if the developer/polluter changes the course of the river by some construction work or otherwise, for its own benefit, then such action be considered as degradation of the environment and thereby the court as per the requirement of the principles of polluter pays will impose on the developer/polluter financial liability, which will be required for reversing the damaged environment.

In *Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and Ors.*, the Supreme Court categorically mentioned that the polluter pays principle and the precautionary principle are to be read along with the doctrine of sustainable development. The apex court directed to the appellate industry under the principle of polluter pays that as per this principle the industrial activity cannot lead to pollution of the River water. If any such pollution occurs by such industrial activity, then as per the requirement of the principle of polluter pays the concerned industry would be financially liable to bear the cost for reversing the damaged environment.

In *Deepak Nitrite Ltd. v. State of Gujarat and Ors.*, the Supreme Court made an interesting link between the turnover of the company and the imposition of financial liability under the principle of polluter pays. The

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apex court stated that for fixing compensation against the polluting industries the practical application of the polluter pays principle would be to look into the turnover of the company.

In *M.C. Mehta vs. Union of India (Aravalli Hills)*,\(^{120}\) the Supreme Court clarified the position of polluter pays principle and stated that the principle of polluter pays is a wholesome principle and is universally accepted. However, in the present case the damage that was caused to Aravalli Hills, some are reversible and some are irreversible, therefore, the apex court directed that the polluting industry should bear the cost for reversing the damaged environment in the Aravalli Hills region.

In *Hanuman Laxman Aroskar and Ors. vs. Union of India (UOI) and Ors.*,\(^ {121}\) the Supreme Court while indicating the importance of Section 20 of the National Green Tribunal (NGT) Act, 2010, clearly mentioned that it is a mandate for NGT that while passing the orders will consider the principle, such as the polluter pays principle.

In *State of Meghalaya and Ors. v. All Dimasa Students Union, Dima-Hasao District Committee and Ors.*,\(^ {122}\) the Supreme Court stated that NGT is empowered to fix the amount of compensation as per the requirement of polluter pays principle against the coal mining industries. In this case, the NGT apart from fixing loyalty also directed the State Government to collect extra 10% of the total market value of Coals and fund so collected is to be deposited in Meghalaya Environment Protection and Restoration Fund (MEPRF). On appeal, the Supreme Court did not quash this finding and stated that NGT is empowered to do so. However, the Supreme Court further clarified that the fund so deposited in MEPRF, from which rupees one hundred crore to be deposited in the main Environment Protection Fund.

**CONCLUSION**

It is clear from the above discussion that the concept of polluter pays principle was not available under any Indian environmental legislation, though, regarding imposing fine for causing pollution, such provisions were available in those legislations. It is also clear that the Environment (Protection) Act, 1986, empowers the Central Government to take any measures for improving the quality and for the preservation of the environmental resources. However, because of lack of express provision on the polluter pays principle

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\(^{120}\) M.C. Mehta v. Union of India (Aravalli Hills), 2018 (11) SCALE 50.

\(^{121}\) Hanuman Laxman Aroskar and Ors. v. Union of India (UOI) and Ors., 2019 (5) SCALE 484.

\(^{122}\) State of Meghalaya and Ors. v. All Dimasa Students Union, Dima-Hasao District Committee & Ors., MANU/SC/0877/2019.
under any environmental legislation in India, there was difficulty in fixing the amount of compensation to be paid to victims or for reversing the damaged environment.

The origin of the concept of polluter pays principle was also discussed in this article and can be traced back from Paris Convention of 1960 with Vienna Convention 1963 and through Convention on Civil Liability for Oil Pollution Damage of 1969. Though, the first official appearance of the principle of polluter pays can be found in the OECD document. The European Union documents also another set of examples, where the origin of the polluter pays principle can be found well mentioned. Few other international environmental documents, such as Stockholm declaration, 1972, World Charter for Nature, 1981, World Commission on Environment and Development, 1987, et cetera where the indirect mentioning of the polluter pays principle can be established. However, it is only the Rio declaration, 1992, which specifically mentions the importance of polluter pays principle expressly and so that participating nations can adopt this principle to their municipal laws.

Previously, India has felt the necessity of having principle in the line of polluter pays principle, during the Bhopal gas tragedy incident, for fixing the financial liability against the polluting industries not only for fixing compensation to the victims of the environmental accidents, but also to collect the money for reversing the damaged environment. Though, the legislature brought the statute in the name of Bhopal Gas leak Disaster (Processing of Claim) Act, 1985, but that was applicable to the Bhopal Gas Leak incident and was not an overall one.

The Supreme Court in India wanted to bring a liability in its absolute form and accordingly experimented the concept of absolute liability from the version of strict liability while deciding the M.C. Mehta (Absolute Liability) Case (1987), though, did not apply the principle of absolute liability in the present case. But, the apex court clarified the position that any hazardous industry polluting the environment should be held absolutely liable for good the loss and the amount of compensation shall be fixed by looking at the turnover of the company.

The first official acceptance of the polluter pays principle was possible because of the innovative steps taken by the Supreme Court of India while deciding the Indian council (Bichhri) case (1996), where the apex court clearly stated that polluter pays principle is the part of the law of the land. After awarding this principle as a sound principle for fixing the amount of compensation against the polluting industry, there was no looking back for fixing the polluter with absolute liability not only for fixing compensation to be paid to victims but also the raising the cost to be utilised for restoring the degraded environment. As I have
already discussed in the previous part of the article that there are a number of environmental cases decided by the Supreme Court covering this polluter pays principle for the award of appropriate compensation. This adoption of polluter pays principle by the Supreme Court of India became a very important tool for delivering appropriate environmental Justice in India.