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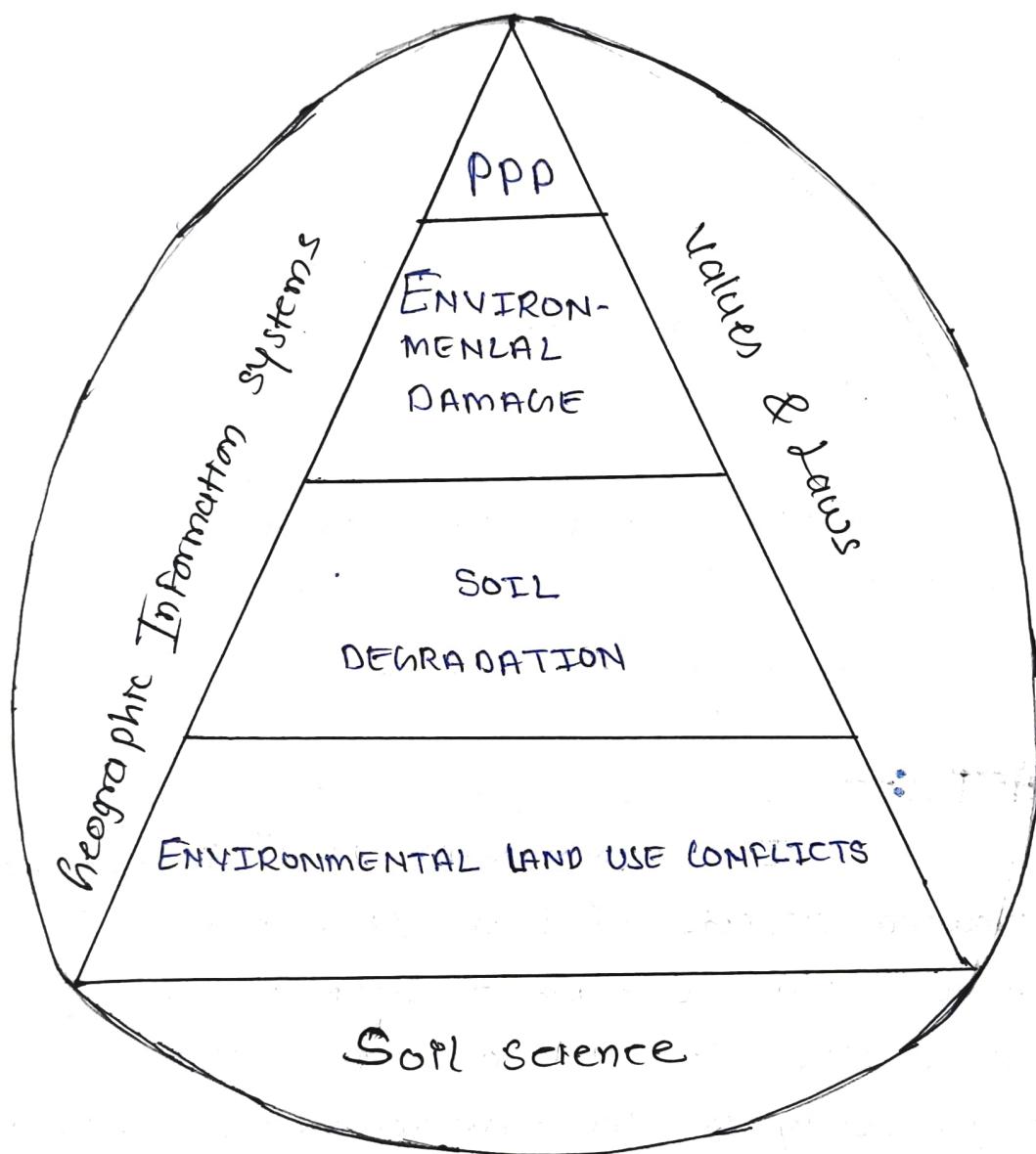
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# POLLUTER PAYS PRINCIPLE

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## I ABSTRACT :-

"ENVIRONMENTAL LAW" is one of the fastest growing aspects of law. It is commonly accepted that those who cause damage or harm should pay, in one way or another for such damage. Such damage can be to body, society or our environment. Due to absence of sanctions in environmental law, it became difficult to keep a check on harmful activities. The concept of polluter pays has been in existence even before the Organisation for Economic Co-operation & Development (OECD) adopted it as a recognised principle of environmental law.



FRAMEWORK MODEL FOR APPLYING THE POLLUTER PAYS PRINCIPLE (PPP) TO SOIL CONSERVATION

## [II] INTRODUCTION:-

most of us agree to that fact that those who cause damage or harm should pay, in one way or another for such damage- Such damage can be to body, society or our environment.

Environmental law is one of the fastest growing aspects of law. This has come about mainly due to the increasing destruction of the environment by humans as well as the growing concern for protection of the environment. Various laws have been enacted domestically & internationally prohibiting certain practices that harm the environment or ways to conduct activities that might potentially harm the environment in an environmentally friendly way. Thus to create a balance between development & environmental protection the concept of sustainable development was introduced. This required the introduction of a penalty to punish people who caused harm to the environment. This gave rise to what we know today as "Polluter Pays Principle". It is one of fundamental principle of modern environmental law. The concept of polluter pays has been in existence even before the Organisation for Economic Co-operation & Development (OECD) adopted it as a recognised principle of environmental law.

## [III] BACKGROUND OF THE PRINCIPLE:-

Polluter pays principle falls under

the umbrella of absolute liability. The principle of absolute liability is invoked regardless of whether or not the person took reasonable care & it makes him liable to compensate those who suffered on account of his inherently dangerous activity".

A.V. Kneese & J.H. Dales were the first person to discuss this principle. They spoke about the ways & means, especially economic to reduce pollution in the 1960s. J.H. Dales proposed in 1988, tradable discharge permits, considered to be the best economic instruments for reducing pollution". Further the "polluter pays principle" was hinted at by the committee of minister of the council of Europe issued a Draft Declaration of principle on Air Pollution Control. Article '6' of the Declaration state.

"The cost incurred in preventing or abating pollution should be borne by whoever causes the pollution. This does not preclude aid from public authorities. The organisation for Economic Co-operation and Development held a seminar in 1971, in Paris on environmental economics where polluter pays principle was the primary topic of discussion. This was the first instance of polluter pays principle being discussed on international forum. In 1972, the Organisation for Economic Co-operation & Development formally recommended on 26th May 1972 the polluter pays principle to be the "Gilding Principle" concerning the International Economic Aspects of Environmental Policies."

## [IV] THE PRINCIPLE AS AN ASPECT OF CUSTOMARY INTERNATIONAL LAW

After the Organisation for Economic Co-operation & Development recommendation in the 1970s, there was a boom in public interest in environmental issue which resulted in pressure on the various governments & other institutions to introduce to protect the environment. This led to various international level discussions & conferences where nations got together to find solutions to environmental degradation.

The polluter pays principle as we know today was first incorporated in "Principle 21 & 22 of the Stockholm Declaration in 1972". Thereafter various documents like the "Rio Declaration" in its Principle 15 provided for the application of the "Polluter Pays Principle".

The International Court of Justice in the landmark decision in the case concerning the continental shelf between Libya & Malta determined as to when a particular rule or provision acquired the status of being a part of customary international law. The Court held that the provision in question is "Opinio Juriis" i.e. a subjective obligation, a sense on behalf of a state that it is bound to the provision in question. The Court in the same paragraph, further goes on to say those multilateral conventions also play an important role in developing & defining rule of customary International law.

## [V] POLLUTER PAYS PRINCIPLE IN INDIA:- Despite the existence of this principle

Since 1960s, the concept was introduced in Indian law as late 1996 in the "Indian Council for Enviro-legal vs Union of India" case. In this case the court confirmed the principle of absolute liability as stated in the "M.C. Mehta vs Union of India" also known as "Oleum Gas leak" case & extended it. The court state that,

"The 'Polluter Pays Principle' demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertaking which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer"

The principle was further re-affirmed again in 1996 in "Vellore citizens welfare forum vs Union of India". In this case the polluter pays principle has been justified through the Constitutional mandate under Article 21 & Article 47 of the Constitution of India, statutory provision and international customary law.

## [VI] THE ROLE OF MARKET BASED INSTRUMENT IN SHAPING THE POLLUTER PAYS PRINCIPLE :-

The application and implementation of the polluter pays principle must include a framework to safeguard against its potentially harmful effect while reducing uncertainties about its economic impact

The 'polluter pays principle' is closely tied to policies usually grouped under "market based" or "economic" instrument. These instruments are further divided into two classes, namely taxes and tradable permits.

The taxation approach is most direct. The tax would be paid either in the form of an emissions fee or excise tax on the sales of products that are associated with pollution. The tradable permit approach would first then ~~des~~ the government establish an overall acceptable level of emission for an industry & would then distribute permit for the level of emission to companies within the industry.

### [VII] LEGAL PROVISION RELATED TO POLLUTER PAYS PRINCIPLE

#### IN INDIA [a] The provision from Environment

(Protection) Act 1986 -

Section 5 (1), whoever, a person fails to comply with or contravenes any of the provision of EPA, is liable for fine 1,00,000/- or with 5 year imprisonment or both.

The offence is continued an additional fine can be imposed against the offender which may be extended to 5,000/-

#### [b] The Provision from Air [Prevention & Control of Pollution]

Act 1981 - Sec. 31(A), person who ever fails to comply with the provision of the act, are punished with the fine & imprisonment such fine can be extended to 5000/- for every day.

Sec. 38 provide for the punishment with the imprisonment or with fine 10000/- IF he destroy any property.

Sec. 39 IF the contravention continued, the fine may extended Rs. 5000/- per day.

[C]

The provision from water (Prevention & Control of Pollution) Act 1974— Sec. 32 (c)(i) If a person held guilty under Sec. 20(2) & (3) of water (Prevention & Control of pollution) Act 1974, is punishable with imprisonment & fine upto 10,000/- or both.

If any person disposes any polluting matter into any stream or well, then he is punishable with imprisonment upto 6 month & fine.

[III]

**LIMITATION OF POLLUTER PAYS PRINCIPLE** :- Though there

are certain provision for controlling the pollution in India legislation 'Polluter Pays Principle' is accepted all over the world.

1. Ambiguity still exists in determining who is polluter.
2. Large number of poor households, informal sector, firms & subsistence farmers can not bear any additional charges for energy or waste charges.
3. Small or medium size firm from a formal sector, which mainly serves at home markets & find it difficult to pass on higher cost of domestic endusers of their product.

4. Exporters in developing countries usually shift the burden of cost internalization to foreign consumers due elastic demands.
5. Sometimes, in the case of group of companies, it is failed to decide exactly who is polluter.

## CONCLUSION :-

The Polluter Pays Principle make economic sense. There will be most efficient solution only if cost & benefit margins are balanced. There may be a conflict between environmental policy, efficient waste treatment & trade. To avoid an inefficient use of the scarce resources of like water, the proper policy documents & their legal implementation is necessary. only then Polluter Pay principle will be used as Pollution controlling managing tool.