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Notes

GENERAL PRINCIPLES OF ENVIRONMENTAL LAW

The protection of environment is a global issue as it concerns all countries irrespective of their size, stage, development or ideology. With the development of science and technology and with the increase in population, tremendous changes in the environment have taken place and this ultimately changes the eco system of the world.

In order to balance ecology and economy and its sustainability, two main international conferences on the development of environmental law have been held. The first was Stockholm Conference, 1972 which is known as 'Earth Summit' and the Second International Conference was 'R10 Conference' on sustainable development popularly known as 'R10 Declaration' was held in the year 1992. The main object of 'R10 Conference' was to strike a balance between ecology and economy and its sustainability.

In India, laws have been enacted to check water and air pollution and also for the safety and protection of forests and wild life. These Law are to prevent and control Water Pollution, Air pollution and the Environment Protection.

Global environmental crisis has questioned the modernity and its values. The very existence and survival of man and other forms of life have become a matter of deep concern. The basic environmental principle that follow is "the blessings of the environment should be enjoyed by the present generation and succeeded to the future generations, a sustainable society should be created where environmental pressure by human activities are minimized.



OBJECTIVES

After completing this lesson you will be able to:

- know the meaning of 'Environment';
- understand the meaning of 'Pollution';
- describe the the 'Polluter Pays Principle';



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- list the main provisions of the (Prevention and control of Water Pollution) Act, 1974
- list the main provisions of the (Prevention and control Air Pollution) Act, 1981
- list the main provisions of the Environment (Protection) Act, 1986;
- understand the meaning of the term ‘Two-Fold Liability’;
- define the ‘Precautionary Principle’;
- describe the concept of Public Trust Principle’; and
- explain the ‘Public Trust Doctrine’

26.1 ENVIRONMENT

The term ‘Environment’ is a sum total of water, air and land and the interrelationships that exist among them with the human beings, other living organisms and materials. The dictionary defines ‘Environment’ as “*anything, everything surrounding us*”.

Pollution

Pollution is the introduction of contaminants into the natural environment that cause adverse changes. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances or naturally occurring contaminants.

According to the Supreme Court, in the case of *M.C. Mehta v. Union of India*, pollution is a civil wrong, by its very nature it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to compensate for the restoration of damage caused to the environment and ecology.



INTEXT QUESTIONS 26.1

1. Define the term ‘Environment’.
2. What do you understand by the term ‘Pollution’?

26.3 THE POLLUTER PAYS PRINCIPLE

In environmental law, ‘the Polluter Pays Principle’ has been enacted to make the party responsible for producing ‘pollution’ to pay for the damage done to the natural environment. In simple words “The Polluter Pays Principle is the commonly accepted practice that those who produce pollution should bear the

costs of managing it to prevent damage to human health or the environment.” For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal.

‘Polluter Pays Principle’ is also known as ‘Extended Producer Responsibility’ (EPR). This is a concept that was described by *Thomas Lindqvist* for the Swedish Government in 1990.

The credit for popularizing the ‘Polluter Pays Principle’ for the first time goes to **Organisation for Economic Co-operation and Development** (OECD). The OECD defines EPR as “a concept where manufacturers and importers of products should bear a significant degree of responsibility for the environmental impacts of their products throughout the product life-cycle, including upstream impacts inherent in the selection of materials for the products, impacts from manufacturers’ production processes itself, and downstream impacts from the use and disposal of the products.”

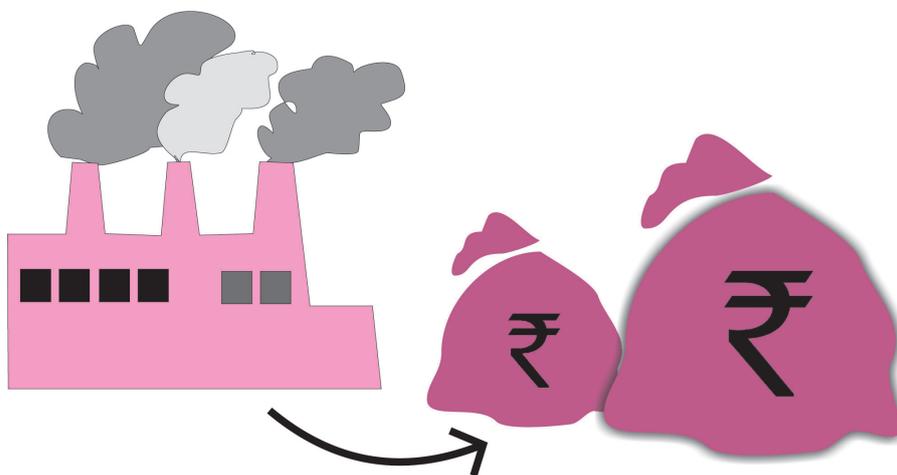


Figure 26.1: Polluter to pay

The Supreme Court of India interpreted ‘**Polluter Pays principle**’ as the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

The **Environment Protection Act, 1986** expressly empowers the government “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment”.

Thus, it includes environmental costs as well as direct costs to the people or property. So, it means that polluter should bear the cost of pollution as the polluter is responsible for it.



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The 'Polluter Pays Principle' has been incorporated into the **European Community Treaty**. Article 102 Rule 2 of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles:

- i. The need for preventive action;
- ii. The need for environmental damage to be rectified at source; and
- iii. That the polluter should pay

The 'Polluter Pays Principle' finds prominent place in the '**Rio Declaration of 1992**'. Principle 16 of the Declaration proclaims that national authorities should endeavour to promote the internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.



INTEXT QUESTIONS 26.2

1. Explain the 'Polluter Pays Principle'?
2. Discuss Principle 16 of 'RIO Declaration of 1992'.

26.3 TWO-FOLD LIABILITY

The 'Polluter Pays Principle' exposes the polluter to two fold liability namely:

- (i) Compensation to the victims of pollution; and
- (ii) Ecological restoration

But despite its different impact on pollution, the doctrine of Polluter Pays Principle is limited in the sense that it can be applied only at the remedial stage i.e. after the pollution has already taken place. It means one may "pay and pollute".



INTEXT QUESTIONS 26.3

1. The 'Polluter Pays Principle' exposes the polluter to two fold liability. (True/False)
2. 'The Polluter Pays Principle' can be applied only after the pollution has already taken place. (True/False)

26.4 THE PRECAUTIONARY PRINCIPLE

'Precautionary Principle' plays a significant role in determining whether the development process is sustainable or not. Precautionary Principle underlies

sustainable development which requires that the developmental activity must be stopped and prevented if it causes serious and irreversible environmental damage.



ENVIRONMENT PROTECTION

Figure 26.2: Protect Environment

The Precautionary Principle ensures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof linking that particular substance or activity to the environmental damage.

Inadequacies of science are the real basis that has led to the emergence of Precautionary Principle. The Principle is based on the theory that it is better to be on the side of caution and prevent environmental harm which may indeed become irreversible.

The Precautionary Principle has been given utmost importance in the **United Nation's Conference on Environment and Development** held at Rio in 1992. Principle 15 of the '**Rio Declaration**' states:

"In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities, where there are threats as serious as of irreversible environmental degradation."

The Supreme Court of India in case of *Vellore Citizens' Forum v. Union of India*, held that the Precautionary Principle is a part of the environmental law of the country.

Precautionary Principle

The essential ingredients of Precautionary Principle are:

- Environmental measures by the State Government & the statutory authorities like state pollution boards must anticipate, prevent and attack the causes of environment degradation.



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- Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.



INTEXT QUESTIONS 26.4

1. Define 'The Precautionary Principle'.
2. Identify the two essential ingredients of the Precautionary Principle.

26.5 THE PUBLIC TRUST DOCTRINE

The 'Public Trust Doctrine' is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the reasonable use of the public.

The ancient Roman Empire developed a legal theory known as '**The Doctrine of Public Trust**', which was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by government in trusteeship for the free and unrestricted use of the general public.

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being gifts of nature, they should be made freely available to everyone, irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or for commercial purposes.

The State is the 'Trustee' of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The State as 'Trustee' is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. As rivers, forests, minerals and such other resources constitute a nation's natural wealth, these resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nations in the best possible way. This is in the interest of the nation as well as in the interest of the mankind. Thus, the Public Trust Doctrine is a part of the law of the land. The court also ruled that there is no any justifiable reason to rule out the application of the Public Trust Doctrine to all eco systems in India.

The Doctrine was first mentioned by the Honourable Supreme Court applied the 'Doctrine of Public Trust' with regard to the protection and preservation

of natural resources. The Supreme Court stated that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such great importance to the people as a whole that it would not be justified to make these resources a subject of private ownership .

The Honourable Supreme Court held that the Mahapalika, as a ‘trustee’ for the proper management of the park, has to be more cautious in dealing with its properties. The maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose. If the true nature of the park, as it existed is destroyed, it would be violative of the ‘Doctrine of Public Trust’.

**Notes**

Restrictions imposed by the Public Trust Doctrine

This Doctrine imposes three kinds of restrictions on the State:

- the property must not only be used for a public purpose, it must be available for use by the general public;
- the property must not be sold, even for fair cash equivalent; and
- the property must be maintained for particular kind of uses, such as navigation, recreation, or fishery

Ultimately, under this Doctrine, the State has a duty as a ‘Trustee’ under Article 48A of the Constitution of India to protect and improve the environment and safeguard the forests and wildlife of the country. While applying Article 21 of the Constitution of India (right to life), the State is obliged to take account of Article 48A of Directive Principle of State Policy. The State’s trusteeship duties have been expanded to include a right to ‘a healthy environment’.



INTEXT QUESTIONS 26.5

1. Define the ‘Public Trust Doctrine/Principle’.
2. List the restrictions imposed on State by the Public Trust Doctrine.



WHAT YOU HAVE LEARNT

The protection of environment is a global issue as it concerns all countries irrespective of their size, stage, development or ideology. With the development of science and technology and with the increase in population, tremendous changes in the environment have taken place. The very existence and survival of human being and other forms of life have become a matter of deep concern.

**Notes**

Anything, everything surrounding us is 'Environment'. The 'Environment' is a sum total of water, air and land and the interrelationship that exists among them with the human beings, other living organisms and materials;

'Pollution' is the introduction of contaminants into the natural environment that cause adverse changes. 'Pollution' is a civil wrong. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances/energies or naturally occurring contaminants.

In environmental law, the 'Polluter Pays Principle' means that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. This for the damage done to the natural environment. 'Polluter Pays Principle' is also known as 'Extended Producer Responsibility (EPR)'.

The 'Polluter Pays Principle' exposes the polluter to 'two-fold liability' –(i) compensation to the victims of pollution, and (ii) ecological restoration. This is known as 'Two-fold Liability'.

The 'Precautionary Principle' insures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof linking that particular substance or activity to the environmental damage.

The 'Public Trust Doctrine' is the principle that certain resources are preserved for public use and that the government is required to maintain them for the reasonable use of the public. State is the 'Trustee' of all natural resources, which are by nature meant for public use and enjoyment.

**TERMINAL EXERCISES**

1. Define the following terms :
 - (a) Environment
 - (b) Pollution
2. Describe 'the' Polluter Pays Principle'.
3. Explain principle 16 of the 'R10 Declaration of 1992;.
4. Define 'The Precautionary Principle'.
5. What is the 'Two-Fold Liability' in the 'Polluter Pays Principle'?
6. Describe the essential ingredients of the Precautionary Principle.

7. Discuss the Public Trust Doctrine.
8. List the three kinds of restrictions imposed on State by the 'Doctrine of Public Trust'.



ANSWERS TO INTEXT QUESTIONS

26.1

1. The 'Environment' is the sum total of water, air and land and the interrelationships that exist among them with the human beings, other living organisms and materials.
2. 'Pollution' is a civil wrong, by its very nature it is a tort committed against the community as whole. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances or naturally occurring Contaminants

26.2

1. 'Polluter Pays Principle' makes the party responsible for producing pollution to pay for the damage done to the natural environment. In simple words the polluter pays principle is commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment.
2. Principle 16 of the RIO 'RIO Declaration' of 1992 proclaims that national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

26.3

1. True
2. True

26.4

1. The Precautionary Principle is that Principle which ensures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof linking that particular substance or activity to the environmental damage.
2. The two essential ingredients of Precautionary Principle are :



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- (i) Environmental measures by the State Environment and the Statutory authorities must anticipate, prevent and attack the causes of environmental degradation
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should may be used as a reason for postponing measures to prevent environmental degradation.

26.5

1. 'Public Trust Doctrine' is the principle that certain resources are preserved for public use, and that the Environment is required to maintain them for the reasonable use of the public. State is the 'Trustee' of all natural resources which are by nature meant for public use and enjoyment.
2. The 'Doctrine of Public Trust' imposes the following three kinds of restrictions on the state :
 - (a) The property must not only be used for a public purpose, it must be available for use by the general public;
 - (b) The property must not be sold, even for fair cash equivalent; and
 - (c) The property must be maintained for particular kind of uses, such as navigation, recreation, or fishery.