Green Justice and the Application of Polluter- Pays Principle: A Study of India's National Green Tribunal

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Abstract: The Green Tribunal of India has been applying Polluter -Pays Principle in innumerable cases with the result that PPP has emerged as a powerful legal instrument to restore the damaged environment and compensate the pollution-victims. For instance, recently, in March, 2019, the Green Tribunal has imposed a fine of, as much as Rs. 500 crore (5 billion) on Volkswagen for creating air pollution and hiding it by adopting a "cheat device" in its diesel vehicles in India. The Green Tribunal has been valiantly applying the Polluter-Pays Principle not only to big corporate giants, but also to Pollution Control Boards as well as the Government, and has earned the reputation of staunch protector of wholesome environment giving a new dimension to the environmental jurisprudence in India. The paper identifies and discusses various methods adopted by Green Tribunal to implement Polluter-Pays Principle. The substance of Polluter-Pays Principle, in any jurisdiction, needs to answer four questions: i)what does pollution consists of? ii)Who can be called' polluters'? iii) To whom polluters should make the payment? iv)How much the polluters should pay? While analysing various judgments and orders of the Green Tribunal of India, this paper endeavours to find answers to the above questions. Given the fact that India is a fast developing economy and is likely to have many developmental projects, the paper argues for the broader and stricter application of the Polluter-Pays Principle by the Green Tribunal of India. At the same time, it suggests that, to maintain its hard earned credibility, the Green Tribunal needs to evolve or adapt a principle of law contributing to a normative framework for computation of compensation.

Keywords: The Polluter-Pays Principle, OECD, Green Tribunal, Restoration of Environment, Compensation, Civil Penalty

Introduction

The term "Green Justice", in this paper, has been used with reference to the judgments and orders passed by the National Green Tribunal (hereinafter referred as Green Tribunal) of India. The serious concerns of the pro-active Supreme Court of India to protect and enhance the quality of environment, on the one hand; and the difficulties experienced by it, in late 1980's, in handling the complex techno-legal environmental cases, on the other hand, advocated for the setting up of specialised environmental courts having both the judicial as well as technical expertise[1]. As a result, the National Green Tribunal Act of 2010[2] (hereinafter referred as Green Act) was passed in June 2010, and the National Green Tribunal was, ultimately, established by the Government of India in October 2010 that started functioning from May, 2011 to dispense green justice by expeditiously adjudicating cases relating to protection of environment and conservation of natural resources. The Green Tribunal has its Principal Bench in Delhi and four regional benches at Chennai, Calcutta, Pune and Bhopal.

Before delving into the Green Judgments, the paper starts with a brief discussion on the economic base of Polluter-Pays Principle (hereinafter refereed as PPP) that has later been evolved as a legal principle in Environmental Law. After giving a short historical development of PPP at the International level as a soft guiding law, the paper highlights its mandatory application by Green Tribunal in India. It, then proceeds to compile, classify and analyse the landmark judgments of the Green Tribunal to identify the methods adopted by the Green Tribunal to implement PPP. While doing so, it attempts to critically analyse the unique method- 'Guess work', adopted by the Tribunal for the application and development of Polluter Pays Principle.

Materials and Methods

Various judgments and orders from the Green Tribunal right from its inception in May 2011 to April 2019, having a bearing on PPP, have been identified, categorised and analysed to understand the meaning and scope of PPP. The number of judgments and orders of the Green Tribunal serve as the primary quantitative data for this research. Various United Nation documents and OECD legal instruments have been read to find the historical evolution of PPP. The Law Journals, Reviews, Books, Websites, E-resources such as JStor, Hein Online etc. form the basis of secondary material. This material provides the basis of qualitative research to form the theoretical explanation of PPP. Thus the methods used in writing this paper are legalistic, analytical, qualitative and quantitative methods of research.

Results and Discussion

Evolution of PPP- Major International Instruments

In the history of mankind when pollution became a concern, the economists of the day were the first who came forward finding its solution. Though the Polluter-Pays Principle originated as a principle of economics in Pigou"s theory[3],but now it has been well recognised as a principle of international environmental law[4].
At the international level lead was taken by the Organization for Economic Co-operation and Development (OECD).In 1970,the Organisation for Economic Co-operation and Development (OECD) set up the Environment Committee in response to the growing problem of pollution and environmental degradation. In 1971, **OECD** organised a seminar, in Paris ,on "Problems of Environmental Economics" wherein the PPP was thoroughly discussed.[5]

In 1972, a book on Problems of Environmental Economics published by OECD examining the complex issues in environmental economics propounded the theory for the efficient allocation of environmental costs and gave birth to PPP.[6] Then, in May 1972 itself, a number of recommendations on international economic aspects of environmental policies were issued by the Organisation for Economic Co-operation and Development (OECD). According to the OECD Recommendations[7], the polluter pays principle is an "economic policy and principle used for allocating or internalizing 'economic costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment' by subsidizing the environmental costs."[8]

Again, in June 1972, at UNs Stockholm Conference on the Human Environment, though PPP was also discussed but it was not included in the principles of Stockholm Declaration, 1972[9]. In 1992,at the UN Conference on the Environment and Development (UNCED), held in Rio de Janeiro, Agenda 21 was adopted. Principle 16 of the 1992 Rio Declaration on Environment and Development provides that "[n]ational authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."[10]

Since 1990s, the PPP has been recognised in a number of international instruments as a binding principle or a guiding principle viz. The "Convention for the Protection of the Marine Environment of the North-East Atlantic" OSPAR Convention (1992); the Stockholm Convention on Persistent Organic Pollutants (2001); United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa UNCCD (1994); Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention) (1974, Convention on the Protection of the Alps (1991); Johannesburg Declaration on Sustainable Development WSSD, (2002) etc. (A/CONF.199/20) (paras. 15(b), 19(b)).

In 2012, UN Conference on Sustainable Development (Rio + 20) came out with the document 'The Future We Want', reaffirming all the principles of the Rio Declaration, including the Polluter Pays Principles[11]. Though PPP has been accepted as the general principle of international environmental law, it has not been defined by any international instrument. "The lack of definition could be justified on the ground that the implementation of this principle across a wide range of policies is rather contextual"[12]. The scholars differ on its exact meaning agreeing to that it can only be explained on the specific context[13].

The Indian Green Tribunal and PPP

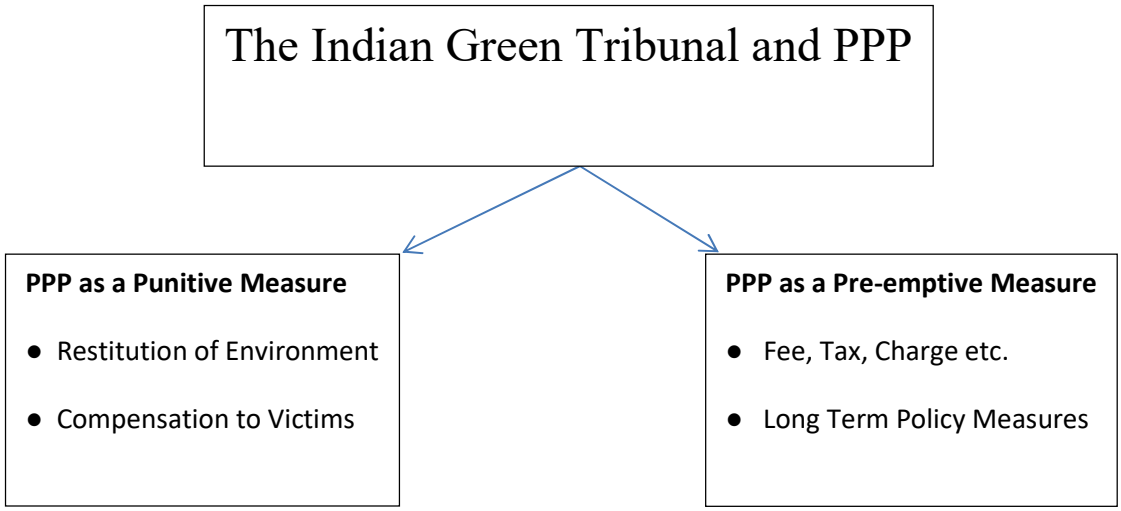
Since the 1992 Rio Declaration, there has been a general trend for domestic legal jurisdictions to implement PPP in one form or another[14]. Indian, major Environmental legislations such as Water Act[15], Air Act[16], Environmental Protection Act[17], Public Liability Act[18], Bio-diversity Act[19] etc. do not expressly mention PPP in the statutes. The pro-active Judiciary, especially the Supreme Court of India, however, applied this principle, taking power from the Constitution, in numerous judgments as the general principle of International environmental law[20].

The PPP has been specifically incorporated in the Green Act of 2010. One of the statutory duties of the Green Tribunal, as prescribed under Section 20[21] of the Green Act, is to apply, *inter alia,* the Polluter-Pays Principle at the time of passing any order or award under the Act. Section 20 of the Green Act has to be read with two other provisions viz. Sections 15[22] and 17[23] of the Green Act. Section 15 empowers the Green Tribunal to pass any order for the "relief and compensation" to the victims of pollution and for the "restitution and restoration" of the degraded environment. The "person responsible" is made liable, under section 17 to pay relief or compensation for any death, injury to a person or any damage to the environment arising out of accident or harmful impact of any business activity. One more enactment entitled-Public Liability Insurance Act, 1991[24] is also relevant here. This Act has been enacted to provide immediate relief to the victims of accident arising out of handling any hazardous substance by applying the principle of "no-fault liability".[25]Thus the embodiment of PPP is not only in Section 20, but also in Sections 15 and 17 of the Green Act as well as the Act of 1991.

The Green Tribunal has evoked PPP and innovatively applied it on numerous occasions while deciding matters of pollution and environmental degradation. The application of PPP, as incorporated in the Green Act,is mandatory for the Green Tribunal. The cases in which PPP is being applied by the Green Tribunal can be broadly classified into two categories-(i) cases relating to industrial pollution, where a developmental project is carried out without obtaining the required environmental clearance or in violation of clearance conditions. (ii) cases relating to non-industrial pollution like vehicular pollution, construction pollution etc.

As a legal tool, PPP has been implemented in India as a way of civil liability. The various methods adopted by the Green Tribunal for the implementation of PPP include: restitution of environment, compensation to victims, penalty, fine etc. However whatever method has been adopted by the Green Tribunal for the application of PPP, it has primarily been used as a punitive measure. The Green Tribunal has also used the methods like tax; charge etc. as a pre-emptive measure to implement PPP.

Figure 1: The Indian Green Tribunal and PPP



PPP as a Punitive Measure

Restitution and Restoration of Environment

The Green Tribunal has emphasized that PPP is an integral component of sustainable development and clarified that "it is no more *res integra,* with regard to the legal proposition, that a polluter is bound to pay and eradicate the damage caused by him and restore the environment".[26]While explaining the scope of PPP, The Green Tribunal, observed that PPP takes within its ambit the cost of restitution and restoration of environment. Explaining it further, it said "The 'Restitution' is an act of making good or giving the equivalent for any loss, damage or injury while 'restoration' is the act of restoring, renovating or re-establishing something close to its original condition, like restoring a damaged habitat."[27]

Below mentioned cases, illustrate, not only, the extent of the amount of compensation paid by the defaulters, but also answer (in italics) the questions as to what the pollution is, who the polluter is and to whom the amount of compensation has to be paid.

In *Mr. Naim Sharif Hasware* v. *M/s Das Offshore Co*[28], the illegalities had been committed by the project proponent, an Offshore Engineering Company ,while executing the project in question involving excavation of land and blasting work. The project *caused destruction to mudflats, mangroves, flora& fauna, fishing activities, and aquatic life*[29].At the time, when the matter came before the Green Tribunal for decision, the development work was complete and much expenditure had already been incurred by the project proponent. The Green Tribunal opined that the demolition of existing structures would cause more environmental damage. It held that it would be appropriate to impose heavy penalty on the *project proponent* for restoration of environmental damage caused due to project activities in question. It ruled "The penalty of *Rs 25 crores(250 million)*payable for mangrove plantation programme in the project area and Rs*20 crores(200 million)to be paid to the Environment Department* for development of environment in the State would be just and proper"[30]

In *Hazira Macchimar Samiti*v.*UOI*[31], the project proponents, Port Company and Infrastructure Company, owned by same person, proceeded with the expansion of port activities without obtaining Environmental Clearance (EC) and Coastal Regulation Zone (CRZ) clearance from the competent authorities. The environmental degradation and *damage included substantial destruction of mangroves vegetation, hindrance to the access to sea water for traditional fishing*[32]. Deprecating such irresponsible attitude, the Green Tribunal made the *project proponents* deposit an amount *of Rs.25Crore (250 million)*, *with the Collector* of the State, as an amount of penalty for restoration[33]

A Sugar and Distillery Unit in the state of Uttar Pradesh had been a source of continuous *pollution, particularly surface and ground water*[34]. It also failed to comply with directions issued by the State Pollution Control Board from time to time.[35] .The Green Tribunal *directed the Unit to* pay a *compensation of Rs 5 Crores (50 million*) "for restoration and restitution of the degraded and damaged environment and for causing pollution of different water bodies, particularly River Ganga, directly or indirectly, resulting from its business activities carried on for a long period in the past"[36]. This compensation *was required to be paid to UP Pollution Control Board within* one month from the date of passing of the order. The Green Tribunal highlighted that "such direction is completely substantiated and is based on the Polluter Pays Principle, in the facts and circumstances of the present case." [37]

Samir Mehta v. *Ministry of Environment, Forests & Climate Change &ors*[38] raised important questions of environmental protection in relation to marine pollution caused by oil spill due to ship-sinking. The oil spills*, badly destroyed the marine ecology of the Bombay coast, particularly the mangroves, wildlife habitats and their breeding grounds*[39]. An application was filed in the Green Tribunal for the joint and several liabilities of 3 Respondents for the restitution of environment based on PPP. Having examined various reports, Green Tribunal in its comprehensive judgment running into 223 pages, concluded that the impugned "ship was not seaworthy at the time of commencement and continuance of the voyage"[40]. It observed "It is sufficient to say that the Principle of Strict Liability or No Fault Liability would place onus on Respondents no. 5, 7 and 11 in relation to the oil spill and pollution caused by sinking of the ship."[41]"They have a liability to pay for their default, negligence and the pollution that they have already caused on the basis of the Polluter Pays Principle"[42]. The Green Tribunal directed the amount of *Rs. 100 crores (1 billion)* to be paid by the three *Respondents jointly and severely* to the *Ministry of Shipping of the Government of India*, as environmental compensation. Another Respondent was made liable to pay Rs 5 crores(50 million), as environmental compensation for dumping huge amount of coal in the Contiguous zone of Indian waters.[43]The Green Tribunal clarified that the amount collected from compensation shall be utilised only for the restitution and restoration of the damaged ecology.[44]

Indiscriminate dumping of construction material and debris by the Project Proponent of the Hydroelectric Power project, into Uttrakhand's River Alaknanda resulting in *massive water pollution* was brought before the Green Tribunal[45]. One of the reliefs of the Applicant related to seeking an order imposing heavy fine on Respondent as environmental compensation for polluting the Alaknanda River.[46] The Green Tribunal emphasized that PPP is an important principal of environmental law and imposed environmental compensation of *Rs. 50 Lakh* upon the *project proponent* to be *paid to the Uttarakhand Pollution Control Board and the Central Pollution Control Board in equal shares.*[47]

Construction activities for the commercial and residential complex, in Pune, of the project proponent- real estate developer-, without requisite environmental clearance, *damaging the public health, property and environment*, were brought to the notice of Green Tribunal[48]. While upholding the application of the principles of Sustainable Development and Polluter pays Principle, it cautioned "We are conscious of the fact that Polluter pays Principle shall not be construed as 'pay and pollute principle', and the payment has therefore to be exemplary and deterrent in order to pass a clear message that environmental compliance is supreme and the party which is non-complying the environmental standards shall be at economic disadvantage."[49] It *ordered the Respondent to* pay environmental compensation of *Rs.100 crores (1 billion) or "5 % of the total cost of project* to be assessed by State Expert Appraisal Committee (SEAC) whichever is less"[50] for restoration and restitution of damaged environment. *An*

*additional cost of Rs. 5 crores (50 million)*was also imposed on the Respondent for "contravening mandatory provision of several Environment Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board".[51]

In a high-profile case[52] relating to Art of Living Foundation, where during its World Culture Festival on the floodplains of river Yamuna in Delhi, *the fragile ecosystem of Yamuna floodplains had been massively damaged*, the Green Tribunal imposed a fine *of Rs 5 crore(50million)[53]on the Artof Living Foundation* for restoration of the flood plains of river Yamuna. The amount had to be deposited *with Delhi Development Authority*. Emphasizing on the principle of no-fault liability, it observed "Unlike, the laws of other countries, where the Courts or the Tribunals dealing with environmental issues are to determine first whether they could apply the principle of absolute liability or not and, if so, to what extent, in India, the Tribunal is mandated under Section 17(3) of the National Green Tribunal Act, 2010 to apply the principles of no fault. Thus, application of this principle is inescapable. This doctrine imposes an obligation upon the project proponent or body intending to carry on an activity to bear the consequences of its actions."[54]

An application has been filed in the Green Tribunal for the ban of Volkswagen vehicles in India, alleging the violation of Indian emission norms. A*fine of Rs. 500 crore(5 billion)* has been slapped by the Green Tribunal on *Volkswagen* for creating *air pollution* . It came heavily on the company for using a "cheat device" for nitrogen oxide emission tests, in its diesel vehicles in India.[55]

Even State and statutory authorities have been made liable to pay on the application of PPP. The Green Tribunal has cautioned that even though the "financial cost of remedying damage should be the liability of the polluter, however, for failure of Authority to take action, liability can be fastened, on the basis of PPP, on the Authority so that the victim and the environment can be protected."[56]. In a case involving *illegal burning of plastic* in New Delhi, the Green Tribunal made the *Delhi Government to forthwith deposit a sum of Rs. 25 Crores*(250 million) towards the cost of damage to the environment *with the Central Pollution Control Board* for restoration of the damage within one month. For any delay, interest @ 12% p.a. was ordered to be payable. The Delhi Government was also made liable to furnish a Performance Guarantee of Rs. 25 Crores(250 million) within one month to carry out the directions of this Tribunal.[57]

In 2003, The Applicant had drawn the attention of Madhya Pradesh High Court with regard to the *vehicular pollution,* during which period, in the city of Indore pollution levels was so high that it came within critically polluted city of India under the CEPI score. In spite of all these and matter having been considered before the High Court, for nearly decade, no effective steps were taken by the State. When, in 2013, matter was transferred to the Green Tribunal[58],it observed that "we are constrained to observe that this attitude of the State in not showing due regard to the adherence of law for the prevention of pollution makes the State liable on the 'Polluter Pays Principle'".[59] Having said that, the Green Tribunal directed "we would grant the State of MP a further period of 60 days to make the necessary compliance on the condition that the *State Government* give a security before the *Registrar of this Bench* for an amount o*f Rs. 25 Crores (250 million*)… failing which the security shall be liable to be attached and the amount deposited utilised for environmental needs under the National Green Tribunal Act, 2010".[60]

Similarly, in *Madhumangal Shukla*vs. *UOI[61], Deputy Commissioner of the city* of Vrindavan (temple town) in Uttar Pradesh, and *Nagar Palika Parishad* (Municipal Council) were made liable to pay environmental compensation of *Rs.5lakh each* for their *failure of dumping municipal waste* in proper and regulated manner. *Uttar Pradesh Pollution Control Board* (UPPCB) had also to pay additionalRs.1lakh for failing to discharge its statutory duty under Air (Protection and Prevention of Pollution) Act, 1981 and Municipal Solid Waste Rules, 20*10.* Furthermore, *a penalty of Rs.50 thousands was also imposed to be recovered from the salary of erring officers.[62]*

Compensation to victims

The residents of certain villages in the State of Maharashtra approached the Green Tribunal alleging that the hazardous activities of a chemical plant are *causing pollution and thereby affecting ground water quality*, and pollution of river Godavari[63]. They contended that ground water pollution is affecting the agricultural lands, by affecting the soil quality and reducing the yield resulting in loss of agriculture. The Applicants sought certain directions against the industry including compensation to victims for the agricultural losses and restitution of environment. The Green Tribunal noted that non-compliant effluent management practices of industry have resulted in the ground water contamination and also, the degradation of the land, and no proper remediation measures have been undertaken by the industry. The Green Tribunal highlighted the mandate of Green Act to apply PPP along with the principles of sustainable development and precautionary principle[64]. It ruled that *the hazardous industry* is also liable to pay the damages for the loss caused to *the land-owners*"[65], besides bearing the costs of remediation and to

ensure the zero discharge. Considering the pollution of well water, the Applicants were held entitled for compensation *of Rs. 2 lakhs towards each well*, besides the remediation and damages of Rs. 50 lakhs.[66]

Traditional fishermen living in district Raigad of the State of Maharashtra filed an application before the Green Tribunal alleging *marine pollution*[67]. They alleged destruction of mangroves resulting in loss to spawning and breeding grounds of fishes. The fishermen sought compensation for deprivation of their occupation due to project activities of the Respondents (CIDCO, JNPT & ONGC- all Government corporates), as well as rehabilitation of their families. They alleged that 1630 families of traditional fishermen had been affected due to the widening and deepening of the sea by the Respondents, and they have been deprived of their bread and butter due to deprivation of their traditional rights to catch fish from the sea[68]. While dealing with the issues of reasonable compensation to the victims, the Green Tribunal ordered *Rs 95 crores + (950 million+)* to be paid by *State project proponents* CIDCO, JNPT & ONGC "*in proportion of 10: 70:20% having regard to their contribution to loss of mangroves, loss of spawning grounds, loss of livelihood etc*."[69]. This amount was ordered to be distributed equally *to all affected fishermen's families* as identified by the Collector's Report[70]. This amount had been in addition to Rs.50 lakhs that Respondents had been ordered to pay as restoration cost for environmental damage.[71]

While building a dam on Alaknanda river in the State of Uttrakhand, the project proponent, a hydropower company, *dumped a huge amount of muck generated* from the construction of dam, on the riverbed resulting in large scale devastation, due to floods causing huge losses to property and even life. The effected people came together and formed an association 'Srinagar Bandh Aapda Sangharsh Samiti' to take up the issue of the damage suffered by the citizens before the Green Tribunal[72]. The applicants asserted that the muck accumulated in their houses due to floods had come from the dumping zones of the project area. The applicants claimed damages to the tune of *Rs. 9crore + (900 million+)* suffered by its members and other residents of Srinagar on account of expenses incurred in removal of the muck and restoration of the property and general loss to the property . Invoking the principle of "No Fault Liability" along with PPP, it ordered that the *project proponent* would deposit the amount of compensation to *the victims* with the *Environmental Relief Fund Authority*.[73]

PPP as a Pre-emptive Measure

In cases of non-industrial pollution, such as vehicular pollution, construction pollution, sewage pollution, plastic pollution etc., the Green Tribunal has been resorting to pre-emptive measures like tax, charge, fee, spot fine .It has also been directing the State authorities to evolve long term policy measures to make the polluters pay on the basis of PPP.

Fee, Tax, Charge etc.

In large scale non-industrial pollution cases, the Green Tribunal has been applying PPP, making the polluters directly responsible to pay pollution charge, fines and taxes etc. for future inevitable acts of pollution as a pre-emptive measure. For instance in *VardhmanKaushik vs. Union of India &Ors.,*[74] the ambient air quality in Delhi and its surrounding areas touching the alarming situation, i.e. 'severe air pollution', adversely affecting the public health of all persons was brought before the Green Tribunal. Taking note of "environmental emergency', it imposed an 'environment compensation charge' on all vehicles entering Delhi over and above the toll tax[75]. Further to deal with the water pollution of river Yamuna in Delhi ,the Green Tribunal prohibited throwing of waste of *pooja*(worship) offerings or any other material into river, except at the designated sites and imposed a fine of Rs. 5 thousands on the erring person.[76]

In the tourist city of Shimla in the State of Himachal Pradesh, the problem of air and noise pollution was brought before the Green Tribunal[77].Applying PPP, it imposed Environmental Compensation of Rs. 500/- on the cars entering the famous Mall Road in Shimla. The Green Tribunal clarified that "This amount would be collected by the respective Corporations, Police Check Posts or any other Authority designated by the Secretary, Transport of State of Himachal Pradesh and would be utilised only for preventing and controlling air and noise pollution in Shimla"[78]

The Green Tribunal took *suomoto* cognizance of devastating impacts of unregulated and heavy tourism at the Himalayan range called Rohtang Pass, known as 'crown jewel' of the State of Himachal Pradesh[79]. Rohtang Pass, attracting a large number of tourists has become the cause for degradation of ecology and environment. The Green Tribunal made it clear that the tourists who are causing pollution in this tourist area must be required to compensate for restoration of the damaged environment. It ruled- "A large number of tourists and vehicles which are using the roads and are carrying on such other activities for their enjoyment, pleasure or commercial benefits must be made to pay on the strength of the 'Polluter Pays' principle. It will be entirely uncalled for and unjustified if the tax payers' money is spent on taking preventive and control measures to protect the environment. One who pollutes must pay".[80]The persons travelling to the glacier of Rohtang Pass were made to pay on the principle of 'Polluter Pays'. Thus, a vehicle of any kind which passes through the route ahead of Rohtang Pass was made liable to pay an amount of

Rs.100/- for heavy vehicles and Rs.50/- for light vehicles. The passengers travelling through buses to Rohtang Pass as tourists were made liable to pay an amount of Rs.20/- per head to be included in the ticket for the bus.[81] The Green Tribunal emphasized that the collected funds would be used by the State Government only for development of this area and could not be used for any other purpose whatsoever.[82]

Long Term Policy Measures

As a pre-emptive measure, the Green Tribunal has been directing the State authorities to evolve and establish the policy mechanism incorporating PPP in it. The Green Tribunal deliberated on the pollution of river Ganga in the stretch of Gomukh to Haridwar in the State of Uttarakhand, where the main source of pollution was untreated sewage, entering into the river, from hotels, Dharamsala (inn) and Ashram's (abode of devotees). Majority of these places neither had sewage treatment plant (STP) nor necessary permission, such as for the use of underground water from the concerned authority. The Green Tribunal asked the State authorities to design an appropriate policy mechanism to clean the river Ganga which could, very possibly, be based on the Polluter Pays Principle. It held that "the state governments, its instrumentalities, public authorities and bodies would be entitled to invoke the Polluter Pay Principle and requires the industries, hotels and Dharamsala and even a households to pay environment compensation and/or sewage charges, on the basis and directly proportionate to the discharge of the effluent from such premise".[83]

Similarly while imposing penalty on land holders for stubble burning in the States of Punjab and Haryana, the Green Tribunal directed the state authorities to take steps to educate people about hazardous effects of stubble burnings and to evolve a policy mechanism for collection, transportation and utilisation of crop residues.[84]

Liability and Compensation Mechanism- A Critique

Though, PPP is being used as a powerful instrument, by Green Tribunal, for the restitution and restoration of degraded environment, it is facing problem in determining the exact amount of compensation payable on account of damage to environment . Though it is becoming extremely difficult to measure the quantum of compensation with exactitude, nonetheless, the Green Tribunal is resolute to ensure that defaulters don't escape liability for restitution and restoration of degraded environment. The Green Tribunal is trying to solve this problem in two ways: 1) by applying the General Principles of quantification of damages (tort), and 2) taking legitimacy from judicial precedents from Supreme Court of India. Since, in India the whole law of Tort has not been codified and is contained in judicial precedents, hence, both above mentioned ways are complementary and supplementary to each other.

While applying general principles, the Green Tribunal has also applied some kind of "guess work" as an innovative technique to determine the extent of liability of polluters. For instance, in *Gurpreet Singh Bagga* v. *MoEFCC&ors*,[85], a case involving indiscriminate illegal mining on the river bed of Yamuna resulting in massive destruction to river ecology and biodiversity, the Green Tribunal noticed that despite directions of the Court, the State Governments have failed to place on record any report which would define the damage with exactitude and the exact money that would be required for restoration, restitution and revitalization of the environment.[86] The Green Tribunal was convinced that the respondents were responsible for massive destruction to the environment which they must make good of. In such a situation, with the help of documentary evidence and reports on record, the Green Tribunal applied 'guesswork' while resolving this issue.[87]It noticed that the parties opted not to lead any evidence except the documents and affidavit that they had filed in support of their respective cases.[88] Holding that the respondents have carried on excessive unauthorised mining in a manner that has caused substantial damage and degradation of environment, a compensation of Rs. 50crores (500 million)was ordered to be paid by each of the private respondents who were carrying on the extraction of minor minerals and Rs. 2 crore (25 million) respectively by each of the stone crushers.[89]

Similarly in *Krishan Kant Singh* v. *M/s. Triveni Engg. Industries Ltd*., [90] the Green Tribunal noted that a sugar and distillery company in Uttar Pradesh polluted the ground water, breached the conditions of the consent order and failed to discharge its legal obligations. It observed that it is not possible to determine with certainty the extent of pollution of river Ganga,contributed by the industry, and therefore applying the "guesswork" directed the payment of Environmental Compensation fine of Rs 25 lakh on the company for restoration of river Ganga.

Coming to judicial precedents, the Supreme Court of India in *Goa Foundation* vs. *Union of India and Ors* (Supreme Court of India, 21 April 2014*)*directed the mine leaseholder to pay 10 per cent of their sale proceeds as fine for regularities and illegalities committed by it with respect to mining in Goa. Citing this precedent, the Green Tribunal in the *Forward Foundation* vs. *State of Karnatak*[91]considered the fine of 10 per cent as excessive adopted for 5 per cent as just and reasonable. As noted by the Green Tribunal, "We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for

their default at the rate of 5 per cent of the cost of the project." Accordingly, it imposed penalty of Rs.117.5 crore (I billion 17 million+) on one of the Respondents and Rs. 22.5 crore(220 million+) on another Respondent. While the Principal Bench of Green Tribunal was of the view that 10 per cent would be "somewhat on the higher side", however, the Southern Bench of the Green Tribunal in *Mathew Thomas* v *Kerala PCB &Ors*[92] following the Supreme Court ruling and not the parallel set by the Principal Bench of the Green Tribunal, imposed the penalty of 10 per cent of annual turnover of company in deciding a case of environmental clearance violations. Thus, divergent practice exists in determining the liability of the polluter in different Benches of the Green Tribunal that needs to be unified.

Concerns are being raised for the absence of any formula or mechanism to compute the amount of compensation to be imposed on the erring stakeholders. Critics have started blaming the Green Tribunal for not mentioning parameters on the basis of which it calculated the compensation[93]. The critics have, however, been misled by the use of the expression "guess work" by the Green Tribunal. The study of orders of Green Tribunal reveals that it had considered various factors such as, enormity of the pollution, and profitability of the polluting industry etc. as the relevant factors to ascertain the scale of the liability for environmental degradation. The critics should not forget that it is the judicious "guess work" that the judgments have been referring to. For the precision, with which a penalty or compensation has to be calculated, the applicants approaching to Green Tribunal should make the proper assessment of the damages in their briefs. It is only with the help of technical reports from pollution control boards, affidavits, other documentary evidence and expert committee reports that the Green Tribunal arrive at some figure of compensation to be paid by the defaulters. The Green Tribunal should be applauded that once it is convinced that large scale pollution is caused, it does not find it handicap to compute the amount of compensation and applying PPP, makes the defaulters to pay heavy penalty. A separate study can be undertaken to find out whether any mechanism or formula is viable to compute the exact amount of compensation. Nonetheless, it needs to evolve or adapt certain principles of law to be applied to the facts of the case consistently and uniformly. One of such principles that could be adapted is the principle of "Deep Pocket Theory" of compensation evolved by Justice PN Bhagwati in *M.C.Mehta* v *U.O.I*.[94] according to which "The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused". This survey of various orders and judgments of the Green Tribunal reveals that the compensation in almost all cases happened to be punitive and not merely compensatory. This punitive approach of the Green Tribunal will be strengthened with the application of "Deep Pocket Theory". At the same time, the Green Tribunal should desist from using the expression "guess work", as it smells subjectivity and arbitrariness.

Conclusion

The above study of the landmark judgments and orders of Green Tribunal, demonstrates that the Green Tribunal of India, has, since its inception in 2011,been contributing significantly to the development of PPP as a principle of civil liability. The Green Tribunal has extensively applied PPP to different kind of cases, adopting a purposive interpretation and developed a new facet of the environmental jurisprudence in India. Though, no legal definition or explanation of PPP has been provided by the Green Act of 2010, it is made one of the mandatory principles of environmental law to be applied by the Green Tribunal. As one of the scholars opines, "Everyone knows the polluter pays principle, but the exact legal meaning of the principle is still not clear."[95] Furthermore, "[t]he more one attempts to refine its definition, the more elusive the principle becomes."[96]In Indian jurisdiction too, PPP does not define its constituent elements such as: meaning of polluter; elements of pollution, whom to make the payment and how much the polluter needs to pay. It is left to the wisdom of the Green Tribunal to be explained on the specific context. This paper has made an attempt to assess the contribution of Green Tribunal of India in dealing with these substantive questions. The analysis reveals that barring the fourth question, the first three questions have sufficiently been answered by India's Green Tribunal. The Green Tribunal has been valiantly applying the PPP not only to big corporate giants, but also to Pollution Control Boards as well as the Government Authorities and erring officers, as well as individuals using polluting devices such as vehicles. The PPP has successively been invoked to redress marine pollution, air pollution, water pollution, plastic pollution, soil pollution, destruction of biodiversity, deforestation etc.. The payment of compensation and fine has been directed to be paid to various authorities such as State Pollution Control Board, Central Pollution Control Board, Forest Department, District Collector and Registrar of Green Tribunal etc. However, as far as assessing the quantum of compensation is concerned, it can be said, that though PPP has been applied in the context of "no-fault liability", no normative framework has been developed, so far. Given the fact that India is a fast developing economy and is likely to have many developmental projects, the paper argues for the broader and stricter application of PPP by the Green Tribunal. At the same time, to sustain its hard earned credibility, the Green Tribunal needs to evolve or adapt a principle of law contributing to a normative framework for computing compensation. This paper suggests the adaptation, by Green Tribunal, of the principle of "Deep Pocket Theory" having deterrent effect on the industries polluting the environment.

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(2006) 3 SCC 399, has held that the "remediation of the damaged environment is a part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology."

[21] *Ibid*., Section 20 "Tribunal to Apply Certain Principles-The Tribunal shall , while passing any order or decision or award apply the principles of sustainable development, precautionary principle and the polluter pays principle".

[22]*Ibid.,* Section 15"Relief, Compensation and Restitution- (1) The Tribunal may, by an order, provide,
(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
(b) for restitution of property damaged;
(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.
(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991.
(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.
(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority".

[23] Ibid., Section 17 "Liability to Pat Relief and Compensation in Certain Cases-1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.
(2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.
(3) The Tribunal shall, in the case of an accident apply the principle of no fault".

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