



Fixing Liability for Marine Plastic Pollution: Legal and Policy Challenges in the Indian Context

**MARINE PLASTIC
POLLUTION RULE
OF LAW**

**ASIA PACIFIC
WORKSHOP**

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109

US



65

Europe



38

China



32

Brazil



11

India

Per Capita Plastic Consumption
in 2014-2015 (in kg)

Global Average: **28**

There are
8 million
tonnes of
plastic waste
entering the
ocean every
year

The total plastic
in the ocean
amounts to
**150
million
tonnes**

Plastic packaging
accounts for
62% of all
items recovered
in coastal clean-
up efforts

In 2014, there was
**1 kg of plastic in the
ocean for every
5 kg of fish, and by
2050 there will
be more plastic
than fish**

RISE OF PLASTIC CONSUMPTION IN INDIA (Per Year)



Figure: Rise of Plastic Consumption in India

Status: Plastics Waste Generation (CPCB Report 2015-16)

- Estimated Plastic Waste Generation in India : 25940 TPD
(based on per capita)
- Recyclable-94%, Non-recyclable-6%
- some 60% is recycled, mainly by the informal sector, while the rest – averaging 9,400 tonnes – ends up in the environment
- Range: 3.10% (Chandigarh) & 12.47% (Surat) in MSW
- Average Plastic Waste (in MSW) : 6.92% (Approx. 7%)

Marine Plastics Pollution and Urbanisation

In India, it is also observed that coasts of heavily urbanized states such as Karnataka and Gujarat and tourism based states such as Goa are more polluted with plastic debris than less urbanized state such as Odisha (Kaladharan et al., 2017)

Transboundary Nature

Unlike terrestrial pollution due to plastics where the waste materials would generally be found in proximity to the area where they have been used, with respect to marine plastic pollution, there is no linkage between marine debris and the use of plastics in the adjoining land.

Assessing Marine Plastic Pollution in India' (IEG 2020)

The shore and coastal 6 regions of Andaman and Nicobar and Lakshadweep Islands in India have higher levels of pollution and substantial amount of marine plastic debris than the mainland coastal states, which imply that marine litter is coming from neighboring nations like Sri Lanka, Maldives, Singapore, Malaysia, Indonesia and other East Asian Countries. The share of plastics in marine debris was 40 percent for Lakshadweep and 47 percent for Andaman and Nicobar islands, whereas the national average stood at 14 percent.

While anthropogenic pollution is mostly local near the point source, marine debris at a place depends on movement of sea currents. Distant locations, even uninhabited areas are seen to have piling of marine debris’.

Assessing Marine Plastic Pollution in India’ (IEG 2020)

87% of the plastic waste is mismanaged in India per year, of which, 0.09 - 0.24 million metric tons goes into the ocean ranking India the 12th in the world in plastic marine debris generation. However, marine plastic pollution is an under-researched area in India with little information on how, from where and what type of plastic waste is entering the sea and what consequences it has on marine life.

Jambeck et al (2015)

90% of plastic polluting our oceans comes from just 10 rivers



Asia is responsible for 8 of the rivers that have the most plastic waste.
Image: REUTERS/Stringer

Plastic River

- <https://www.youtube.com/watch?v=Jjv3744mzXw>

The plastic pollution of freshwater systems, particularly rivers and of the marine environment is interlinked because rivers ultimately discharge into the marine environment

Domestic legislation

- Plastic Waste Management Rules, 2016
- Solid Waste Management Rules, 2016
- Biomedical Waste Rules, 2016
- CRZ Notification, 2019
- Water Act, 1974
- State Government Notifications about plastic
- Court Orders

One of the main reasons for India's plastic crisis is that the country's plastic industry uses different tactics to distract, delay, dilute and derail progressive legislations on plastic control that are unfavourable to them,

Talking Trash: The Corporate Playbook of False Solutions to the Plastic Crisis. 2020

Influence of plastic manufactures on legislation

- In 2009 draft plastic rules proposed regulation on multilayered plastic
- Final rules in 2011- no restrictions were put following the representation of Indian Institute of Packaging (IIP)
- The plastic Rules were amended in 2016 and introduced provision of phasing out non recyclable multilayered plastic in two years' time
- The provision related to ban on non recyclable multilayered plastic was amended in 2018 and the provision about explicit pricing on carry bags also removed

The problem of plastic pollution is serious. Public nuisance, because of plastic pollution to the detriment of the people, is a challenge to the social justice component of the rule of law. It is well settled that all human beings have the fundamental right to unpolluted environment, pollution free water and air. The State is obliged to preserve and protect the environment. It is mandatory for the State and its agencies to conceive, anticipate, prevent and attack the causes of environmental degradations.

Rajasthan High Court in Indian Asthama Care Society v. State of Rajasthan 2008

Highlight of 2016 Plastic Rules

- carry bags less than 50 micrones were completely prohibited
- emphasis on the producers, importers and brand owners of plastic and also elaborated the scheme of Extended Producer Responsibility(EPR)
- elaborated the role of the local bodies and for the first time even Gran Panchayat (Village body) Rule 6 of Plastic Waste Management Rules 2016

Extended Producer Responsibility

Extended producer responsibility is an environmental protection strategy to reach an environmental objective of a decreased total environmental impact from a product, by making the manufacturer of the product responsible for the entire life cycle of the product and especially for the take back, recycling and final disposal of the product.

EPR and Polluter Pay Principle

EPR is part of the polluter pay principle. The polluter has to pay for the damage caused and remedy the situation. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it.

Research Foundation for Science (18) v. Union of India 2005) 13 SCC 186 at page 200

The problem with EPR

In a country like India with extremely poor track record so far as implementation of environmental law is concerned, the over reliance on EPR is unlikely to give the desired result. In such a situation, recourse could be made to the 'Precautionary Principle'. This is specially relevant given the fact that it is rather impossible to fix liability when it comes to marine plastic pollution.

In environmental law, “precautionary principle” is one of the well-recognised principles which is followed to save the environment. It is rightly argued by the petitioners that this principle does not need exact studies/material. The very word “precautionary” indicates that such a measure is taken by way of precaution which can be resorted to even in the absence of definite studies.

In Arjun Gopal v. Union of India, (2019) 13 SCC 523 : (2019) 4 SCC (Cri) 598 : 2018 SCC OnLine SC 2118 at page 545

India's approach towards dealing with plastic waste in general and marine waste in particular is based on a 'soft approach' which looks at environmental law implementation from the eyes of the violators as opposed to one where the environment is seen as victim. Despite, the development of a robust environmental jurisprudence starting from the 'precautionary principle, 'polluter pay principle' and 'public trust doctrine', actual environmental law framework is based on condoning the violation and externalising the environmental harm

Plastic pollution in marine areas needs a multiple legal strategy – a strategy where India is able to undertake transboundary environmental litigation for environmental harm and damage due to plastic waste emanating from other country and landing in India. It should aim at identifying the manufacturers of plastics as a ‘class’ and initiate litigation for fixing liability not on individual producers but the plastics producers and bulk users in totality. The principle of absolute liability has to be invoked applying both the precautionary principle and the reversal of burden of proof

States banning Single use plastic

Environment and Forests (EC.2) Department

G.O. (Ms) No.84

Dated:25.06.2018

விளம்பி, ஆளி-11,

திருவள்ளூர் ஆண்டு -2049

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ORDER :

The Hon'ble Chief Minister on 05.06.2018, on the floor of the Legislative Assembly, with a view to make Tamil Nadu Plastic Free, has announced, ban on 'one time use and throwaway plastics', irrespective of thickness, with effect from 1st January, 2019 under the provisions of the Environment (Protection) Act, 1986.

2. Accordingly, the following Notification will be published in the TamilNadu Government Gazette:-

NOTIFICATION

WHEREAS, plastic carry bags and other plastic items used in daily life cause short term and long term environmental damage and health hazard;

EPR vs Precautionary Principle

Extended producer responsibility (EPR) is an environmental protection strategy to reach an environmental objective of a decreased total environmental impact from a product, by making the manufacturer of the product responsible for the entire life cycle of the product and especially for the take back, recycling and final disposal of the product

The “precautionary principle” — in the context of the municipal law — means:

- (i) Environmental measures — by the State Government 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 not be used as a reason for postponing measures to prevent environmental degradation.
- (iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign

Thank You