

Suspending Iron Ore Mining in the State of Goa¹

The judiciary in India, led by the Supreme Court of India (SC), operates at the intersection of public interest, political pressures, and social expectations. The apex court continuously negotiates such undercurrents and attempts to demonstrate ideal conduct for all levels of the judiciary to follow, including itself. This includes managing and balancing the varied expectations and interests of the society and economy and increasingly dealing with complex issues interlinking economics, environment, competition, trade, technology and allied fields.

The Shivshakti judgement noted that the law and economics interface is most relevant today as India is on the path of economic growth and development due to decades of effort. The judges made strong observations to initiate the discourse on economic analysis of law while adjudicating a sensitive economic matter, the consideration of such commentary by the judiciary in its decision-making still requires attention and adoption.

In the above background and context, this study attempts to understand the first-order direct economic impact of the select (five) judicial decisions of the SC and National Green Tribunal (NGT) on the economy and stakeholders. The study also aims to inform an evidence-based approach toward institutionalising comprehensive and balanced thinking in judicial decision-making.

Furthermore, the study intends to inform the human-centricity of economic development and environment sustainability and evaluate the best possible remedy with equal consideration to equity, environment and economy. It is purely an academic exercise and is nowhere intended to interfere with the decision-making process of the judiciary. This is an attempt to assess the economic impact of select decisions of the SC and the NGT.

Background

Iron ore has been a mineral of economic significance for Goa since the 1950s. However, around the late-2000s, concerns about environmental violations and illegal mining in Goa surfaced. Consequently, the Government of Goa (GoG) suspended all mining operations on September 10, 2012, after the Justice MB Shah Commission tabled its report in Parliament on illegal mining in Goa.

On April 21, 2014², the SC, on a petition by Goa Foundation, a civil society group, ruled that all the mining leases expired on

November 20, 2007, and, thus, all the mining operations since then were illegal. However, the mining activities were restarted in 2016, after the GoG granted second renewals to 88 mining leases, following the Bombay High Court (BHC) order.

The SC set aside these renewals on February 07, 2018,³ and termed them illegal, thus suspending the mining operations for the second time from March 16, 2018. In the bargain, the mining suspension resulted in economic and job losses to the mining companies, dependents, service providers and the state exchequer.

In this case, CUTS team met with representatives of the Goa Foundation who were not hostile to the mining operations and even met us. They had even suggested an alternate strategy to minimise environmental harm, but the government did not adopt that.

About the Study

The purpose of the study was to understand the economic impact of the mining suspension on the Goan economy and relevant stakeholders of the iron ore mining sector using primary and secondary research methodologies. The Assessment Period of the impact was March 2018-January 2021. The study also tries to identify the best possible remedy that would have been benign to the environment.

Growth and Significance of Iron Ore in Goa:

In 1947, about 5,464 tonnes of iron ore was exported, whereas, in 2011-12, Goa had an annual iron ore production of 32.61 million tonnes (MT). Almost 99 percent of the Goan iron ore was exported to China and other eastern countries.

The Goan iron ore is low-grade with low iron (Fe) content and Goa's geographical location gives it the advantage to export at one-fifth of the cost to transport within India. In 2010-11, iron ore mining contributed almost 20 percent to the state's Gross State Domestic Product, which declined to 1.64 percent in 2017-18, a drastic fall.

Impact on State Exchequer: The state public debt increased at a Compound Annual Growth Rate (CAGR) of 10.06 percent from 2007 through 2021, while the market loans taken by the state increased at a CAGR of 19.93 percent, consequently due to mining suspension. The

total revenue⁴ earned by the state government between the financial years 2015-18 was ₹1128.38 crores, which declined by 79.51 percent to ₹231.23 crores in the Assessment Period, a difference of ₹897.15 crore.

As a consequence of the mining ban in Goa, the Central and state revenues cumulatively suffered an estimated deficit of ₹668.39 crores in taxes paid by the mining companies. In contrast, the state revenues suffered an estimated deficit of ₹1821.32 crore.

Impact on Mining Companies and Service

Providers: The revenues of the mining companies are estimated to have been impacted by ₹6976.71 crores between 2018-19 and 2020-21. Whereas, amongst the service providers, the truck owners, barge owners and mining machinery owners may have an estimated revenue impact of ₹609.28 crores, ₹193.50 crores and ₹40.45 crores, respectively, in the assessment period.

Impact on Livelihood and Employment:

About 10,108 workers employed with the service providers (barge owners, truck owners and machines owners) and 4,750 mineworkers (employed with the mining companies) are estimated to have lost employment due to the mining suspension.

Impact on Mormugao Port: The Mormugao Port earned about ₹228.82 crores from Cargo Handling and ₹100.54 crores from port charges in 2010-11, which declined to ₹60.07 crore and ₹86.89 crores, respectively, in 2013-14. Also, about 1161 service providers⁵ workers at Mormugao Port in 2017-18 were reduced by 34 percent to about 763 workers in 2018-19. These 398 workers who are estimated to have lost their jobs due to mining

suspension are also estimated to have an immediate adverse impact on their livelihood by about ₹7.51 crore loss in welfare.

Conclusion

With respect to the matter in its current form, both the iron ore mining suspensions in Goa were completely avoidable. The GoG failed to act judiciously in mitigating the environmental violations reported in the mid to late-2000s and granting second renewals on time (before 2007). Even after the SC termed mining illegal from 2007 to 2011, considering the significance of mining for Goa and its livelihood, the court directed the state to issue fresh mining leases as a matter of state policy.

The court also set a cap of 20MT on the annual production of iron ore. The second renewal of 88 mining leases by GoG, on BHC's order allowing renewals despite SC directing for fresh leases, was in haste and to avoid an ordinance by the GoI that would make the grant of leases through bidding or competitive auction mandatory. This led the SC to set aside the second renewal.

Although an appeal against the BHC order would have delayed restarting the mining to an extent, it would have ensured judicial backing by the SC and certainty for the mining operations.

Recommendations

Considering SCs acknowledgement of the socio-economic significance of mining in Goa while quashing 88 mining leases, the apex court could have directed and overseen the state Government to restart mining in Goa. It should have been done within a stipulated time under the court's supervision and

facilitated by a committee of subject experts, including economists, environmentalists, etc.

Such an approach could have been informed by an *ex-ante* impact analysis of the mining suspension, initiated and supervised by the SC. There are many such orders of the apex court to resolve public interest cases. The analysis could have also explored the best possible environmental protection measures to minimise the damage. It could have mitigated or lessened the adverse impact on many key stakeholders, especially the livelihood of many mining dependents, and ensured economic progress while preserving environmental and intergenerational equity.

The following **overarching recommendations for the courts** are drawn from the economic analysis case study findings. These recommendations sustain the larger objective of human-centricity of economic development and environmental sustainability with equal consideration to the objective of equity, environment, and economy:

1. The SC must undertake **comprehensive economic impact analyses facilitated by experts**, including economists, environmentalists, and sociologists, to address and adjudicate public interest cases involving sensitive economic matters. Such experts could be engaged by exercising explicit and discretionary powers under the Specific Relief Act and Code of Civil Procedure, respectively, which empowers the court to get an expert opinion and secure their attendance for providing evidence.

This would facilitate decision-making backed by scientific evidence and ensure that the interests of a multitude of direct and indirect stakeholders are

acknowledged. Most importantly, it could inform various options the court could take while pronouncing its decision on the issue, thus, minimising the adverse multiplier effect.

Similarly, such analyses should also examine the potential enforcement challenges of implementing the decision in explicit conflict of interest cases. As a public institution and constitutional body, the SC has a crucial responsibility to ensure that the interests of the society, development and environment are balanced and sustainable development is facilitated.

Moreover, under Article 142(1)15, the SC must consider all dimensions of a matter to arrive at a judicious decision. To this end, a standing roster of experts from different domains could be maintained with HC and SC's registries, so a committee could be quickly framed.

2. To **institutionalise cost-benefit assessment during decision-making and as a continuous process of monitoring and evaluation** by relevant authorities, including regulators, state agencies, expert committees, judiciary, etc. This would entail continuous tracking of cost and benefit to different stakeholders as a dynamic tool, rather than a one-off number used for the final decision.

Towards this, a specialised research unit could be formulated with professionals from law, economics, finance, political science, sociology, and environment within the judiciary or the Law Commission to monitor and evaluate cases of SC, High Courts, Lower Judiciary, Tribunals or even Regulatory Bodies.

Regular reporting of the effectiveness of the different judgments on the economy and society while highlighting key trends, evolving judicial principles, solutions and alternate remedies would facilitate analytical discourse towards balanced decision-making.

Such an approach could also be facilitated by artificial intelligence and information and communication technology initiatives, as has been increasingly recognised by the SC e-Committee towards transforming country's judicial system and facilitating transparency and efficiency in case of management processes. Moreover, a timely case management policy for all the judicial courts would facilitate expeditious disposal of cases.

3. The **impact analyses and assessment framework** must qualitatively acknowledge vital indicators of people's welfare, which may be difficult to quantify. A dynamic assessment **with qualitative feedback** would benefit any envisaged decision backed by evidence. However, on the other end, in cases where strict adherence to legal provisions may lead to substantive economic losses, the decision-making of the SC should be guided by the larger public good.

Moreover, the apex court must demand accountability by levying fines and penalties on officers and politicians involved in outright corruption and maladministration cases.

4. The above mentioned proposed recommendations will likely require a robust capacity-building exercise to drive change and achieve the envisaged

objectives. Another effective way to resolve the capacity issue would be to **delegate the functions of capacity building needs to an independent, multi-disciplinary, representative (age, occupation, gender, among others) and inclusive body** attached to relevant institutions.

At the same time, it is also essential for capacity building in the judiciary to enable holistic decisions. Similarly, the number of judges and their competencies in the lower judiciary must be increased.

The fact that matters escalate to the level of judicial intervention should be given more attention, and an attempt must be made to get the perspectives of all related and relevant stakeholders – even though they might not be parties to the case.

For better quality of judges, the law on National Judicial Commission could be revived.

However, it is equally vital for judicial officers to be exposed to (basic) economic issues to recognise the need for a holistic and balanced decision and approach and to institutionalise accountability in the judiciary to ensure a high standard of jurisprudence analysis and decision-making.

These recommendations attempt to catalyse the process of understanding the multiplier effect of court's decisions and orders and institutionalising holistic and balanced thinking in all ranks of decision and policymaking to converge development, society, and environmental interests for the larger societal welfare.

Furthermore, it enshrines consideration of interests of all different stakeholders, which are often relegated in the discourse, towards human-centricity and equal consideration to equity, economy and environment.

Endnotes

- ¹ Goa Foundation vs Sesa Sterlite Ltd. & Ors., (2018) 4 SCC 2183
- ² In Goa Foundation vs Union of India & Ors., (2014) 6 SCC 590
- ³ Supra Note 1
- ⁴ Royalty (excluding e-auction ore), District Mineral Fund, Goa Iron Ore Permanent Fund, and State GST
- ⁵ Steamer Agents, Repair Workshops, Ship-handlers, Surveyors, Launch Owners, and Stevedores

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