

## Vardhman Kaushik vs. Union of India & Ors. (NCR Construction Ban Case)

*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

New Delhi, India's capital city, has been facing severe spells of air pollution over the last decade causing adverse impacts on the environment, public health and economy. The concerns related to adverse impacts due to increasing levels of pollution have been highlighted by many environmentalists and health practitioners. Various strategies and measures have been implemented by respective authorities to reduce the air pollution levels in Delhi.

In 2014, a PIL related to the toxic air of Delhi and its neighbouring region was filed before NGT by an SC lawyer, as he felt that the increasing pollution can be a serious health hazard. The litigation originated from the problem of pollution in Delhi NCR and the failure of the administrative authorities to keep a check on the construction activities that were in violation of the Ministry of Environment, Forest and Climate Change (MoEF) guidelines and causing pollution.

For addressing the mentioned issue, an order was passed on April 07, 2015, by NGT

directing the concerned authorities to direct stoppage of construction activities on a 2-km stretch from NH-24 to Charmurti Chowk in NOIDA Extension and on Golf Course Road, Gurgaon.

## About the Study

The objective of this study was to assess the first order economic impact of the said order, if any, on concerned stakeholders. During the field visit to Delhi NCR for data collection for the case, the team met a number of different categories of stakeholders ranging from the Development Authorities [NOIDA and Haryana Shehri Vikas Pradhikaran (earlier known as HUDA)], Pollution Control Boards (UP and Haryana), Real Estate Companies, Labour Associations, and Homebuyer's Associations.

## Findings

From the meetings with various stakeholders and review of documents made available to the team on the field by concerned government authorities, it was concluded that the authorities did not direct stoppage of construction activities. A set of procedural guidelines guided by the principle of natural justice were followed by all the concerned government authorities for implementation and compliance with the NGT order.

A public notice in various newspapers (English and Hindi) and on the official websites of development authorities, along with a show cause notice, was issued to all builders/contractors/real estate companies who were responsible for the construction activities taking place in Noida, Greater Noida and Gurgaon informing them to comply with the directions laid down by the NGT in its

orders dated April 07, 2015, and other guidelines laid down by NGT in its previous orders.

A compiled report was also submitted by a few of the departments to the Central Pollution Control Board (CPCB) based on the compliance reports received from the contractors and builders and the inspection of the sites conducted by them.

While CUTS intended to analyse the economic impact of the April 07, 2015 order by NGT on stakeholders, the same was not possible as the order was implemented following the stated process and hence there was no stoppage of construction activities.

However, the interaction with stakeholder associations, including Real Estate Associations, Homeowner's Associations, and Labour Associations, helped to gauge the general impact of the stoppage of construction activities that have become a regular norm in the attempt to curb pollution.

Since 2017, there have been continuous orders by the NGT/SC to stop construction activities every year from October-November to curb air pollution.

**The real estate sector is directly impacted by the stoppage of construction activities, which adversely impacts labourers working on the site as well as homebuyers who invest their hard-earned money.** As per media reports, the stoppage of construction activities causes a substantial delay in the completion of projects and up to three per cent cost overrun.<sup>1</sup>

An order by the judiciary for a 15-day stoppage of construction activities leads to project delays of at least three months and also pushes away potential buyers due to postponement and cost escalation.

## Conclusion and Recommendations

The ineffectiveness of procedures adopted by the judiciary and the executive in curbing pollution highlights the existence of loopholes in set procedures and systems owing to various reasons such as capacity and expertise constraints, paucity of resources, etc.

Various authorities and departments, due to constraints faced and no clear division of responsibilities, have failed to ensure proper implementation and compliance of the guidelines and orders.

Thus, the executive and the judiciary urgently need to come up with frameworks that would consist of effective measures and a proper system that would ensure compliance with the guidelines and regulations passed.

Air pollution in Delhi and its neighbouring regions is not a short-term crisis but is a chronic problem that has accelerated in the last 6-7 years and not only the NGT but the SC has also given directions to curb the problem of increasing air pollution.

The SC recently remarked that the measures to curb air pollution must be taken in anticipation and not as *ad-hoc* measures, which must be backed by scientific studies having statistical models. It needs a holistic solution that should be based on rigorous research and analysis, and on the contours of enforceability.

Overall, the problem of pollution in Delhi is a result of the failure of multiple agencies and levels of governance, which involves the executive and judiciary. The **solutions must include unconventional and probably unpopular measures that tackle short- and long-term causes** and benefit all residents of the city.<sup>2</sup>

**1. Adopting a multisector and multiagency approach:** Environmental concerns such as pollution tend to be caused via multiple sources and hence require systematic coordination between different administrative agencies and governments of different states to tackle it.

Hence, improvements are required in existing mechanisms to make speedy and effective resolution of environmental issues via a well-co-ordinated multi-state, multisectoral and multi-agency approach.

The Union Government had also tried to rearrange the existing legal framework to address the current issues related to the environment. In 2015, a committee was appointed to suggest amendments to six environmental laws<sup>3</sup> to factor in the current economic and development needs.

One of the recommendations by the committee was to create new "umbrella law", the Environment Laws (Management) Act (ELMA), with the intent to induct the concept of "utmost good faith" which would also help in reducing the 'inspector raj'. The draft was released in public for comments which were criticised by experts and environment lawyers.<sup>4</sup>

**2. Resource constraints faced by concerned authorities:** There is also the requirement to strengthen the concerned authorities such as PCBs and Development Authority in terms of manpower, expertise and infrastructure. From the time these bodies had been set up, there has been an expansion of duties and responsibilities both at the board and operational levels.

Thus, there is a pressing requirement to recruit technical and scientific manpower at PCBs and experts. This also highlights the necessity for a periodic institutional impact assessment to ensure adequate resources in terms of human capacity (experts, technicians and other staff) and other technical and financial resources to ensure proper implementation of policies and regulations on-ground.

One of the reasons that do not allow effective implementation of various environmental guidelines as well as the decisions by the courts is that administrative agencies are not adequately equipped with the manpower and technical expertise to ensure proper implementation of proposed measures. The same was also acknowledged by the departments when the team met with them in their offices.

As there has been an increase in the number of industries, private vehicles on the road and the number of constructions sites in Delhi and NCR, a shortage of staff also leads lack of monitoring and inspection of sites to ensure effective compliance of the orders and guidelines by the judiciary and the executive.

- 3. Strengthening the NGT:** The body in its decade-long journey has passed a number of path-breaking judgements and has been effective in resolving many environmental disputes with its "4 D approach of dismiss, dispose of, delegate and deserve".<sup>5</sup>

NGT deals with issues arising in different areas of the environment and thus it is important to strengthen the body with technical and subject matter experts

from different fields to help the judiciary to come to decisions with a holistic approach.

It has also been seen that because of shortage of judges, the cases registered with zonal benches are also being heard by judges of the principal bench via video conferencing.

The adoption of technology is a much-appreciated step, but it is important to have adequate appointments of judges at all four zonal benches to reduce the burden and have time-efficient decisions. There exist a number of reasons that pull down NGT's graph of consistency and progress such as capacity crunches, varied expertise, and also time constraints.

Although the NGT should comprise expert members, apart from the judicial members appointed for the resolution of environmental disputes, most of its decisions have relied on court-appointed expert committees.<sup>6</sup>

It has been noted that the tribunal has been facing a major crunch in terms of both judicial appointments as well experts from different sectors or areas of concern.

#### **4. Effective compliance and monitoring mechanism:**

There should be clear and coordinated mandates and roles across and within concerned authorities and departments in the government to ensure the compliance of orders and guidelines passed by the judiciary.

This will help avoid finger-pointing among different government authorities, something which was evident during our field interactions with various authorities responsible for implementation and monitoring. It is important to fix

responsibility and hold the executive answerable to ensure compliance.

The judiciary should also monitor the implementation of its directions, appointing monitoring committees to inspect and ensure compliance could be one of the ways. It should pass strict conditional orders for the implementation of environmental judgments and should also clearly define the responsibilities and accountability of the concerned government authorities of different states.

While the decision-making is purely dependent on the understanding and ability of the judges, the compliance and monitoring of the decisions also play a major part. The effectiveness of judgments, especially related to environmental concerns, can only be ensured with proper compliance and monitoring processes.

It has been often pointed out by NGT that the government bodies have failed in ensuring compliance with orders and guidelines passed by the NGT and thus leaving the problem or issue unresolved.

In the case of Delhi NCR, there are a number of different government agencies responsible for ensuring the implementation of the guidelines or regulations formulated to address the issues. Because some of them report to the Union Government, some to the State Government (Delhi), while some are under the control of neighbouring states, as a result, they create confusion and lack of coordination among them.<sup>7</sup>

##### **5. Adopting a holistic and balanced**

**approach:** The formulation and decision-making processes of policies and measures should be in a manner that

should take a holistic approach and assess the impacts on the lives and livelihood of the humans that are involved in activities that cause air pollution.

The policies and measures should be more empathetic towards the vulnerable working class and should ensure that the poorest are not paying the cost of such measures. The measures and directions given by both the judiciary and the executives to curb the adverse impact of air pollution in Delhi were prohibitor steps.

The measures have severely impacted the livelihoods of many daily wage labourers such as informal workers working on construction sites or in sand and rock quarries, at brick kilns, etc. Most migrant workers live in slums around industrial areas or construction sites where the air quality index remains 'severe' and work at polluting factories or construction sites.

Consequently, they are directly exposed to pollutants, thus facing maximum exposure to health hazards.<sup>8</sup> The measures adopted so far do reduce their exposure to toxic air conditions but at the cost of their livelihood. Thus, facing a double whammy situation, being worst affected by both the problem of increasing air pollution and the measures adopted to curb it.

##### **6. Citizens' awareness and engagement:**

Lastly, the consciousness and awareness among the common people need to be evoked. For this, both the judiciary as well as the executive during any decision-making process need to explain, justify and convince concerned stakeholders to get them on board to protect the environment and move towards sustainable development.<sup>9</sup>

Creating awareness about the adverse impact of increasing air pollution among the residents of the Delhi NCR would encourage the residents to switch to greener fuel alternatives and make them aware of how their actions can lead to harmful effects.

In conclusion, the problem of pollution in Delhi is a result of the failure of multiple agencies and levels of governance, which

involve the executive and judiciary. The approach adopted at present only focuses on treatment over cures and cures over prevention, which might be necessary during a period of emergency, but is short-sighted. A holistic approach is needed to tackle the problem at various sources and levels

## Endnotes

- 1 <https://www.99acres.com/articles/99acres-insite-sequential-construction-bans-delay-housing-projects-in-delhi-ncr.htm>
- 2 <https://www.healthaffairs.org/doi/10.1377/hblog20200130.710866/full/>
- 3 Environment (Protection) Act, 1986; Forest (Conservation) Act, 1980; Wildlife (Protection) Act, 1972; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; and The Indian Forests Act, 1927
- 4 [India's umbrella environment law idea triggers renewed concerns - Hindustan Times](#)
- 5 <https://thewire.in/environment/nearly-a-decade-old-is-the-national-green-tribunal-losing-its-bite>
- 6 *Ibid*
- 7 [Why Delhi's air pollution problem never gets solved | Mint \(livemint.com\)](#)
- 8 [The Human Cost of Delhi's Quick-Fix Pollution Control Measures \(thewire.in\)](#)
- 9 NGT, International Journal of Environment, 2017

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