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"Delhi Air pollution War Will Not Be Won in Courts"

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Abstract:

"Capital Territory of Delhi is severely facing menace of Air Pollution and its consequent impacts. Air Pollution Governance in Delhi is a multi-layered and multi-institutional process. The web of federal structure imposes restraints in governance of air pollution in Delhi as it obstructs the mediation of actions within inter-departmental and interagency system of working. Instead of mandating institution, Indian Supreme court has stepped into the path of adventurism over stepping activism. Though, there is general public approval of the improvements in Delhi's air quality in recent years; the process by which this change was brought about has been criticized. A common perception is that air quality policies were prescribed by the Supreme Court, and not by an institution with the mandate for making environmental policy. Despite certain measures adopted in the last 12 months, the air pollution problem across northern India has re-emerged this winter, and only worsened after the Diwali festival. The conversations, however, continue to be dominated by Delhi, and revolve around finding quick fixes, mostly pushed by courts, without looking at the deeper, underlying problems or addressing state capacity to deal with air pollution.

Keywords: Environment Law; Air Pollution; Environment Pollution; Right to Life; Delhi Air Quality.

I. Introduction

Clean air and healthy environment are a pre-requisite for well-being of people. In the modernizing world, urban expansion and industrialisation has been a rapid process. With industrial expansion and rapid urbanisation, clean air in cities has become rare phenomena. Though, Air Pollution has increasingly become an environmental health hazard over the years in India and the World. The exposure to air pollution has put people at risk of several kinds, of which health risk is the most

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prominent one. According to a report by World Health Organisation (WHO) on an estimate 7 million people die each year prematurely as a result of air pollution throughout the globe.

Air pollution in Delhi is a contemporary issue but not a recent phenomenon. Over the decades the pollution levels have increased in Delhi crossing limits in 2019, Indian Medical Association declared Delhi as Public Health Emergency with Delhi government directing shut down of industries and closing down of schools. Prior to this in 2014 World Health Organisation (WHO) classed Delhi as the world's worst city for air pollution. Air pollution in India is estimated to kill about 2.5 million people every year. According to the WHO, India has the world's highest death rate from chronic respiratory diseases and asthma. In Delhi, poor quality air irreversibly damages the lungs of 2.2 million or 50 percent of all children.

II. Judicial Decisions on Air Pollution in Delhi

On 25 November 2019, the Supreme Court of India made statements on the pollution in Delhi saying "Delhi has become worse than hell". Supreme Court Judge Honorable justice Arun Mishra said that it is better to get explosives and kill everyone. There are different set of reasons for why Delhi is polluted which are directly related to sources which are contributing in making the air polluted. Delhi's geographic location (being landlocked), its climatic conditions (wind speed, atmospheric pressure, temperature), and its concrete urban space with expanding urban sprawl makes it hotspot of pollution.

The Supreme Court's involvement in policies to curb air pollution in Delhi began with public interest litigation brought to the court by M C Mehta in December 1985. Concerned about rising levels of air pollution and the government's apparent lack of interest in dealing with it, Mehta petitioned the court to direct government ministries and departments to implement the Air Act of 1981 in Delhi. The Air Act gave the government authority to take action. Specifically, the Air Act contains authority for CPCB to "lay down standards for the quality of air", to "advise the central government on any matter concerning the improvement of the quality of air and the prevention, control, or abatement of air pollution", and to "perform such other functions as may be prescribed".

Over time, Delhi's air had deteriorated and this period can be marked as the beginning of an era of Environmental Jurisprudence for Delhi and India. The new legislation included the 1986 Environment (Protection) Act, an amendment to the Air Act in 1987, the Motor Vehicles Act of 1988, and the Central Motor Vehicle Rules of 1989. The latter two specifically added authority to set standards for vehicular emissions for manufacturers and users. As a result, in 1990 vehicular exhaust emissions standards were set, imposing some obligations on owners to maintain clean-running vehicles. Ambient air quality standards were also prescribed for Delhi by the ministry of environment and forests. Nevertheless, pollution continued to rise.

Much later in 2018, ***Arjun Gopal v Union of India,*** the Supreme Court attempted to regulate the bursting of firecrackers while refusing to impose an outright ban on such firecrackers across the nation. The Court's judgment directed that bursting of crackers on Diwali be limited to two hours a day as determined by the state government, that only "green firecrackers" (those not containing barium salts) be sold in Delhi and the National Capital Region, that chain firecrackers be banned, and that the police will be responsible for the enforcement of the order. Needless to say, the order was hardly implemented The Air Quality Index post Diwali was worse than that of the previous year in Delhi suggesting that the judgment (to whatever extent it was enforced) had no serious impact on improving the air quality. Given that air pollution is the result of a number of factors, including the wind conditions, rains, and other sources of pollutants, perhaps, the comparison is not entirely fair since it needs to be checked if all other factors remained the same across the two years. To be fair to the Court, it did also direct the Central Pollution Control Boards and equivalent state-level bodies to monitor the air quality in the short term to assess the impact of the use of firecrackers on it. Although the Court has threatened to hold the jurisdictional station house officer in contempt for failure to carry out the orders of the Court, it remains to be seen what action, if any, the Court will take for the many failures of the police. Given that firecrackers contribute to the pollution problem for only a limited period of time in the winter, the Court's effort in trying to ban or regulate their use seems disproportionate; more so when some sections of society seem to be ahead of the curve and have been reducing firecracker purchases over the years. Though there is a good case to be made for regulating the use of firecrackers, getting an understaffed and

overstretched police force to try and police lakhs of people bursting firecrackers seems a misguided directive to say the least.

Not to be entirely outdone, the NGT in ***Ganga Lalwani v Union of India*** **(2018)** directed the state governments of Uttar Pradesh, Delhi, Punjab, and Haryana to come up with a scheme to penalise farmers, who set fire to their fields to clear it of plant residue, by not paying them minimum support price (MSP). There is nothing in the order that indicates any serious application of mind on the part of the court as to the measure it is proposing and its potential effectiveness. Indeed, the suggestion seems to have been made for the first time in the court during arguments and the court seems to have seized upon it simply because it has been told at the bar that it is possible to do so. There is no analysis of the underlying causes for the burning of crop residue or even whether the court's directions are feasible in light of the failure of state governments to prevent crop residue burning.

In fact, the court order notes the failure of the union and state governments in curbing crop residue burning in the areas around the National Capital Territory. However, the NGT incongruously does not blame the state governments or the centre for not being able to curb crop residue burning. The solutions being proposed in any case are purely technological: getting farmers to use harvesters and seeders, which avoids the problem of crop residue so that they can plant multiple crops quickly. Even where there was an attempt at behavioral change, it was done in a ham-fisted manner: the fines for crop residue burning were cheaper for farmers to pay than the losses they would incur as a result of holding it off.

What the NGT, and perhaps much of the discussion around crop residue burning, entirely misses, is that the phenomenon, at least in Punjab and Haryana, is fairly recent. It is the fallout of the green revolution's success, a combination of factors such as the use of tube well irrigation and high-yielding varieties of rice, and the pressure to plant multiple crops in a given season that have led to this situation. In fact, instances of crop residue burning may have increased after a particular legal intervention by the Punjab government to prevent depletion of groundwater in the state.

Despite the absence of data, studies, or for that matter any empirical proof that withdrawing MSP is a viable means of nudging farmer behavior, the NGT has simply directed parties to carry out

this ill-conceived idea. Having noted that fines were proving to be ineffective, the NGT seems to be persisting with the notion that economic disincentives would work in preventing farmers from setting fire to the crop residue, without actually assessing whether the loss from lack of MSP for crops would deter them.

Several times, the Supreme Court has issued a suo-moto notice to the Delhi government to submit an action plan to control the city's air pollution. Supreme Court from time to time came down heavily on the central and state government from order on banning construction to asking government to file report on steps taken to curb pollution. While doing so, Supreme Court very swiftly stepped into the shoes of adventurism from activism leading to abuse of separation of power.

III. Government initiative to curb Air pollution:

- In 2002, Delhi's public transport system underwent an overhaul—public vehicles were mandated to convert to compressed natural gas (CNG). While CNG is a clean burning alternative to diesel, the change has not had a desirable effect on ambient air quality. While carbon emissions have reduced, suspended particulate matter (SPM), and oxides of nitrogen are still prevalent (and increasing) in the atmosphere.
- Schemes such as the odd–even rule only reduce congestion on roads, and do little to reduce PM in the air. Industry, coal combustion, road dust, construction, and waste incineration, among others, are major sources of PM in the air. A flawed approach to PM mitigation, which involves solely focusing on the transport sector, is in fact encouraging a higher usage of private transport.
- Unregulated trash burning across Delhi is the new normal, burning waste contributes between 20% and 30% of air pollution in Delhi. Further, 95% of emissions from landfills are methane (which is highly flammable) and carbon dioxide. Despite this, policy to regulate waste in Delhi is lacking.
- Even though crop burning is banned, it continues largely unchecked. Farmers are willing to pay a fine and burn stubble, as the alternatives, such as the use of Happy Seeder machines

or mulching processes, require investments that are beyond their reach. Farmers are willing to forego paddy burning if they can be remunerated for their effort in converting it into bio-fuel, but confused government policy and vested interests means that such initiatives may not come to fruition.

IV. Conclusion:

As a recent book on air quality in India puts it, "all of the above" is the only option that can reasonably be expected to address the pressing problem of air quality in India. While, no doubt, more data is needed on the exact sources of air pollution and the quantum of contribution by each to the problem, the available data is clear that there are multiple sources, all of which contribute significantly, such that tackling any one to the exclusion of others will have no impact on the problem. It is not just road dust, vehicular pollution, dust storms, industrial pollution from power plants, and biomass burning, but a combination of all that has led to the problem.

It is also very clear that this is not just a "Delhi problem" or even an urban problem. But an international one that affects wide swathes of northern, western, and eastern India. It cannot be tackled through one-off measures by courts, it cannot be handled with piecemeal measures aimed at one source, and it cannot be focused only on the cities.

No, part of this progress, however, was cost-free or an overnight process, but change did come about gradually thanks to governmental interventions. Even so, such interventions are bound to fail if they are not backed by the institutional capacity to suggest, implement, and see the interventions through. Unfortunately, public debate and discussion is still focused on finding quick fixes and demanding court intervention, making any successes short-lived and unsustainable.

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