

Right to a Healthy Environment: Can Delhi Residents be Saved From its Toxic Air

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Abstract

The Right to a Healthy environment though it is not a guaranteed right under the Constitution but has been accepted as such by the judicial rulings as a part of Right to Life guaranteed under Article 21 of the Constitution. Although the Indian Constitution has the unique distinction of being the only constitution having provisions for the protection of Environment, the fact is that so far it has remained a mirage with the result that the list of most polluted cities constitutes almost exclusively of cities from India. At the heart of the country, The National Capital Territory of Delhi is symptomatic of the problems facing the country and has the dubious distinction of having the worst polluted Air in the world.

Unfortunately, despite tall talks and the various steps taken by the Courts and other regulatory bodies the citizens of India, particularly belonging to the Capital Territory have been denied the basic human right of clean air which has led to a scenario where there is no end in sight to the air pollution and the 'right to clean environment' has remained a hollow right with no stakeholder appearing to be serious about the implementation of this right.

It has become an annual ritual in winters for the authorities concerned to blame other players for air pollution while they themselves are not serious about bringing about the changes required for better pollution control. As a result we have witnessed a lopsided policy which is obsessed with the vehicular pollution and pays very scant regard to the other major factors responsible for air pollution .

This paper seeks to analyze the policy of air pollution and their drawbacks along with some possible issues which may help in bringing about a substantial reduction in the air pollution levels.

Keywords: Healthy environment; Judicial activism; Air pollution; Smog towers; Vehicular pollution.

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Background

The relationship between human rights and the environment is deep rooted but also not specifically recognized by the law specifically, right to environment has been recognized as belonging to the third generation of the human rights.¹ There is a school of thought which raises the question about

environment and human rights being mutually exclusive or at best having only a marginal relation amongst them. The academic approach in dealing with this topic has been mixed with different ideas regarding the interrelation between the two.² These include the use of procedural human rights for environmental protection, recasting human rights provisions to include environmental concerns, and articulating a new right to environmental protection.

While there is almost universal acceptance about the need to conserve the environment due to the catastrophic impact which is likely to affect the whole mankind in the future, there is no universally accepted model which is accepted cutting across the North-South divide. While the Northern countries which are developed and contribute the

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biggest chunk to the environmental pollution, the Southern hemisphere countries have bigger issues to deal with and do not have the 'luxury' of taking up environmental conservation as their top priority.

Similarly, the southern countries have a legitimate grievance that the responsibility of curbing environmental degradation lies primarily upon those who have been the one responsible for creating the same. Northern countries, particularly the United States of America has been non committal towards the environmental conservation and some sections amongst them have even questioned the seriousness of Environmental pollution.³

India is in a unique situation in this environmental discourse as though it is a country which is geographically north but economically south with aspirations of becoming a global superpower. Although, economically India is still a poor country, yet it has been one of the countries which has been strongly committed to the environmental conservation through constitutional and other legal initiatives embarked upon by the Country.

Yet, it should not be forgotten that due to the massive poverty level in India the efforts towards the environmental conservation would always be under pressure from the economic interest of the country which primarily are aimed at lifting the citizens from massive levels of poverty. This is evident from the fact that the efforts towards environmental conservation has always been at loggerheads with the industry which has been strongly suspicious about the environmental laws.

This dilemma of choosing between industry and environment is clearly evident from the fact that despite boasting of some of the most comprehensive laws relating to environmental pollution the country also has seen a drastic decline in the environmental matters and is amongst the worst pollution index be it water, air or other environmental matters.⁴

A particularly disturbing feature of the environmental pollution in India has been the catastrophic rise in the air pollution which affects each and every section of the of the society irrespective of the class, caste and religious divide amongst the population, ironically it is one unifying factor which overcomes the prevailing divisions in the society and spares none.⁵ Although there is broad agreement amongst all the stakeholders about the need for curbing air pollution, there is a great mismatch and all the discussions etc. result in negligible action on the practical front when it comes to dealing with the the actual improvement

of the air quality. As per the available data the air quality in National Capital Territory (NCT) remains in the range of dangerous to hazardous during winters and improves to 'poor' during the better times of the year, the situation is not much different across most cities of North India and even in other areas where the air quality may be better in comparison with NCT but is hardly ambient for breathing.⁶

Judicial Interevtion in Environment

The Supreme Court of India had long ago begun to take an activist role by establishing public interest litigation (PIL) and allowing citizens to appeal directly to the Court to protect their fundamental rights. PIL cases relating to the environmental protection evolved from the Court's wide interpretation given to the fundamental right to life, to include the right to a healthy environment.⁷ The Court has in numerous cases relaxed the concept of standing, which has allowed public interest lawyers, such as M.C. Mehta, to petition the Court on behalf of people who were likely to be effected and has also enabled the court to initiate actions on its own motion in certain cases even without the intervention of any person.⁸

The Constitution is India has got a guaranteed bill of rights in the form of Fundamental rights, the Courts have over the years, going beyond the simple interpretation of express provisions in the Constitution.⁹ The Courts have widened the scope of these rights, by including such other rights that are important for the enjoyment of life.¹⁰ Article 21 emerges as the most widely relied upon the provision in this regard. In fact, the Supreme Court of India has observed that the right to life includes "finer graces of human civilization"¹¹ Thus, some of the most important, powerful and thought-invoking judgments rendered Article 21 of the Indian Constitution have re-affirmed its position as the repository of Human Rights.¹²

Environment Conservation in the Indian Constitution

Although the Indian Constitution contains two provisions expressly referencing environmental rights¹³, they are not enforceable by as per the law. However, this handicap had been overcome by the Court by establishing that Article 21, which guarantees the fundamental right to life, encompasses the right to a healthy environment.¹⁴

It must never be forgotten that Socio-economic transformation is a challenge in a developing

nation like India is a huge challenge which may take generations for even the executive arm to achieve, yet the Courts have attempted this despite the gargantuan challenges it faced. In words of Chief Justice Bhagwati, law has to grow in order to satisfy the needs of the fast changing society and keep abreast of the developments taking place in the country.¹⁵

The analysis of the public interest litigation cases provide us with very interesting insights as several cases involved the blatant violation of human rights which could not be adequately dealt with traditional form of remedies like the issuing of prerogative writs.¹⁶ It is to the credit of court that in order to overcome this grave drawback it resorted to unorthodox remedies. In cases where the special situations in a case prompted urgent action, the Court provided immediate interim relief with final decision deferred so as to allow the court to weigh in the factual issues and legal liability.¹⁷

A Landmark Moment in Environmental Conservation: Introduction of CNG

In the landmark case related to air pollution in NCT¹⁸ the court virtually took it upon us the arduous task of legislative and executive functions while dealing with the transport fuel in the NCT. Prior to this the Court had also directed the relocation of certain polluting industries in an extraordinary step which had led to the strong resentment amongst the affected people but which was nonetheless seen as necessary by the Court to protect the choking of the lungs of the city. It must be kept in mind that the Court was venturing into uncharted territory and was dealing with an issue on which it neither had domain exercise, nor it had any experience internationally from which it could take some inspiration.¹⁹ The Court relentlessly carried on with its push for phasing out the toxic diesel run vehicles and in its place it introduced Compressed Natural Gas as a fuel which was much cleaner but was an untested commodity in India and hence a risky proposition.²⁰

The high risk taken by the Court in this case which came at a great cost to the image of the Court did not go into vain and the efforts of the Court led to a notable drop in the air pollution levels of the NCT which was a welcome change.²¹

Air Pollution in Delhi

The Pollution level in the NCT has been on a steady increase every year, despite the best efforts the

actual pollution levels have not been reduced so much so as to make it safer for the human race, of particular concern in the last decade or so has been the fact that there seems to be hardly any reduction in the air pollution level and even during better days it remains in the region of severely polluted.²²

The NGT²³ had issued 14 point directions to the Delhi government to curb vehicular pollution and has imposed a ban on burning plastics to reduce air pollution in the NCR region.²⁴ Apart from this the Court has also directed the banning of diesel vehicles which have been plying on the roads for 10 years and the petrol vehicles older than 15 years from plying on the roads in NCR.²⁵ This decision which once again has been based upon the target of reducing the pollution has been controversial and has been contested strongly by the stakeholders which have termed it as judicial overreach.²⁶

There has been a palpable increase in the level of air pollution which threatens the healthy growth and development of young people and the life of adults due to which a number of people are deprived of their fundamental right to health which has elicited only cosmetic response from the stakeholders and very little work on the ground to reverse the damage.²⁷

In a recent development, the Supreme Court has taken a strong exception to the 'willful disregard' of the directions issued by the Court to install the smog towers at different locations in the NCT for reducing air pollution.²⁸ Taking a serious note of the reluctance of certain authorities the court has threatened contempt proceedings against them, later on the court has relented and has asked the Central Government to file a detailed affidavit to inform about the steps which have been taken and the difficulties being faced by them in the implementation of the directions issued by the Court.²⁹

Smog Towers: A Waste of Resources

Although the Court has been eager to deal with the menace of the air pollution and is well withing its right to express concern over the alarming deterioration in the air quality which shows no sign of abating, yet there should be closer scrutiny regarding the efficacy and the utility of the directions given by the Court as not only does it affect the exchequer but it also has the potential of setting back the environmental conservation if care is not shown.

There is growing concern amongst the experts

that the Courts are unnecessarily stressing upon the smog towers which is scientifically unproven when it comes to improving the air pollution.³⁰ The open skies should not be treated like the indoor spaces where the air purifiers can lead to the reduction in the air pollution levels. Despite the mounting scientific evidence to the contrary it is indeed unfortunate that the Court is unfortunately pushing towards the technology which will incur a huge cost on the exchequer, moreover it would remain a useless tool which would lead to absolutely no fruitful improvement in the air quality. This novel approach of the court must be differentiated from many similar cases in the past wherein the court had issued some unprecedented directions which were risky but had the potential for improving the environment.

The Court should remember that smog tower is not CNG introduction which though untested had potential, on the other hand, these towers are bound to fail and will only be a waste of time, energy and efforts of the scarce resources available.

Additionally, the Courts would be well advised to remember that even the much celebrated CNG introduction in Delhi was also not an unqualified success and suffered from a variety of limitations which hindered the improvement in air pollution levels.³¹

Role of the Delhi Government

The elected government in any democratic institution is meant to work for the welfare of the citizens, the basic premise in a democracy is that the people may be able to raise their grievance with the concerned authorities. This is a task which the governments are supposed to do and which the Courts, despite their best intentions are ill equipped to do, the Delhi government has initiated many programs for improving the Air quality of NCT, particularly during the winter months when the air quality of the NCT worsens dramatically. These include the sweeping of roads through machines, using water guns for settling down the dust particles, restrictions being placed upon driving of vehicles whereas the odd and even numbered vehicles are allowed to ply on the roads of Delhi only on alternate days.³² The apparent benefits of these scheme have been disappointing to say the least, while the Government has hailed it as a landmark step to clean the air quality the response of the authorities like the Central Pollution Control Board(CPCB) has been guarded. They have held

that the odd-even scheme had not been effective in limiting the air pollution and the only benefit has been de congesting the roads of Delhi.³³

One of the major drawbacks of these scheme has been that most of these schemes are populist but hardly feasible, for instance the use of water guns is nothing but a step which is high on optics but hardly effective. Similarly the odd-even scheme suffers severely from the loophole of exceptionally large number of vehicles which been granted exemption from the scheme as they contribute as much as 46 percent of the total vehicular pollution. Apart from this, the logic of only allowing the vehicles on alternate days is not appealing in a democratic country like India.³⁴

The simplistic view that air pollution in Delhi can be decreased by exhausting all efforts on one of the sources of air pollution is bound to fail. This is due to the reason that the other reasons which have more scope for reduction in air pollution have never seriously been sought to be addressed.³⁵ While vehicular pollution is indeed a major source of pollution, it is also an area where the maximum steps have been taken by the Courts and even the administrative agencies for reducing air pollution. Therefore, despite the best efforts of the stakeholders there is very little room for further reductions in air pollution by vehicles in the present technological scenario.³⁶

Policy Flaws: Ignoring Key Factors in Air Pollutions

One of the biggest problems with the Air pollution is that the policy makers have not been ignoring some of the very important issues related to the air pollution and most of the measures have been taken based upon the sentiments of the people rather than the actual ground situation. While the stakeholders have been consistently coming up with measures for curbing air pollution their target has been mostly limited to vehicular pollution.

It should be kept in mind that although vehicular pollution is a major contributor to the environmental pollution yet apart from it there are other factors like the disposal of municipal waste, unrestricted construction activities and industrial pollution through the emission produced by the factories operating in Delhi which have a big share in the overall air pollution.³⁷

Although many of these issues have been addressed through the rulings of the Supreme

Court and the National Green Tribunal, yet the implementation process of these rulings has been extremely limited, the proverbial slips between the cup and the lip perfectly fit the situation related to these areas which have the potential to greatly reduce the air pollution in the NCT.³⁸

Municipal Waste

The disposal of municipal waste for instance is an issue that has hardly seen any tangible solution. Despite the well intentioned directions given by the Court the municipal authorities have been willfully disregarding them, while in some cases it is due to the lack of financial resources, in case of Delhi there is simply no dearth of funds but a clear lack of will on the part of the Municipal authorities, thus it is very common to witness the burning of the highly toxic municipal waste by the corporations themselves, the public also indulges in this highly hazardous activity with the willful neglect of the law enforcement agencies.³⁹

Construction Activities

Apart from the municipal wastes another neglected area that silently contributes to the particulate matter suspension in the air is the indiscriminate and relentless construction activities in and around the National Capital Territory. It is a fact that the construction industry violates every direction related to the regulation of air pollution with the connivance of the authorities. What is even more shocking is the fact that in most cases they do not even make an attempt to minimize the construction dust and other particles from escaping into the air. The net result is that they contribute to the already worsening air quality, despite this there is hardly any seriousness displayed by the authorities for holding them to account for their blatant violation of the environmental notifications.⁴⁰ If this single source is dealt by the authorities with the seriousness it deserves, it would go a long way in improving the overall air quality in the NCT and other areas as well.

Crop Burning

Perhaps the biggest underlying factor contributing to the worsening air pollution in the winter months is the burning of the crop residue by the farmers of neighbouring states at the onset of the Rabi season.⁴¹ This practice of crop waste burning is economically beneficial to the farmers as they save on the labour costs, nonetheless, it leaves a devastating impact on the air quality as the dew present in the atmosphere does not allow the smoke to escape and with the

winds this highly toxic smog engulfs all of Northern India, particularly affecting the already poor air quality of National Capital Territory. Despite the orders of the NGT, the state governments have shown a lacklustre approach to this problem.⁴²

Conclusion and Some Suggestions

The air quality of any city is an issue that cuts across the class, caste, and religious divide, it affects everyone without any distinction. This is all the more reason why the issue should be dealt in a holistic manner through a concerted effort involving the Judiciary, various state Governments and the Central Government together.

It is most convenient for the judiciary, administration, and governments to blame others for the mess but it does not solve the problem nor does it even try to deal with the problem. That is why there is a need for stakeholders to realize the futility of their actions, a strong effort with the co-operation, support and efforts of all is needed if there is even the slightest of chance for the air quality to improve.

This is all the more reason for trying to minimize the air pollution and secure future generations a real right to healthy environment which in the present times is practically a right devoid of any substance. The role of an informed citizenry which can be achieved through the Non Governmental Organizations (NGOs) working in the field of environment conservation is also key in providing the inputs for the proper policy formulation and implementation, sadly in the last few years they have been treated like a pariah which has been a great disservice to the environment protection program.⁴³

Need for an Integrated Approach

The right to a healthy environment is amongst the third generation of human rights Although the judiciary had for a while been vigilant for preserving the environment, it has of late not shown as much zeal for the environment, air pollution in the National Capital territory of Delhi is just one of the examples of the limitations of bringing about long lasting changes to the environmental protection through judicial activism.⁴⁴ The Judiciary has a solemn duty as a custodian of the Constitution to act in the capacity of *parens patriae* of the citizens, therefore it has an important role to play in the overall scheme of control of environmental pollution.

The Courts should involve the various stakeholders including the state governments and the statutory authorities for environmental protection for closer co-operation in formulating programs for the environmental conservation in general and air pollution in particular. It would be worthwhile to remember that irrespective of the commissions and omissions of the various bodies which have been responsible for air pollution, ultimately it is the citizens who suffer and have to pay a price as high as life for the fatal accident of taking birth and living in Delhi. As an emerging world power, nothing could be more embarrassing for Indian capital to have air quality which makes it unfit for human habitation.⁴⁵

Instead of squandering the scarce resources on the air cleaning towers as mooted by the court, there is a greater need for air pollution display at various spots in the capital region. Similarly, the Court may be using its powers under Article 142 direct the state governments to pay the farmers compensation as a part of minimum support price (MSP) for disposing of the crop residual. The burning of crop residual by the farmers which is economical for the farmers is one of the major sources of hazardous air quality during the winter months and though it is not the only source of air pollution, yet it is one source where much progress can be made in combating pollution.

Thus, the economic costs and the related aspects notwithstanding there is a need for a comprehensive program for reducing air pollution in Delhi and further all over the country if there is any seriousness about the fundamental right to a healthy environment. The task is not easy, yet it is worth the effort.

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