

The wrong approach to environmental regulation

The Supreme Court order on Monday banning the sale of firecrackers in Delhi and the National Capital Region (NCR) has expectedly turned into a controversy. The period of the ban—till 31 October—covers the festival of Diwali, which is celebrated with elaborate fireworks. Some of those disappointed have gone to the extent of arguing that the court order is “anti-Hindu” in nature. Others point to judicial overreach that they think this order best exemplifies. In essence, there are two distinct issues that need to be separately analysed: a) the scope of the state’s regulatory power vis-à-vis a religious celebration, and b) the agency of the state that such regulation should vest with.

On the first count, the matter is relatively clear. The bursting of firecrackers releases a heavy dose of carcinogens in the atmosphere, presenting a public health challenge for the entire city. This is similar to smoking at public places—a regulated activity—but different from consumption of liquor, which harms the individual. Insofar as even the latter causes harm to others, the laws and regulations do kick in—think, for example, of drink and drive penalties. As soon as it is clear that bursting of firecrackers by one person presents a health challenge to another, any argument of religion cannot reign supreme in a constitutional, secular republic.

The more difficult question is the choice between regulation, short of a complete ban, and a complete ban. The decision requires weighing trade-offs, which would depend on numerous inputs from scientific organizations, regulatory institutions, public policy experts and civil society. Since a court of law does not have in-house expertise in these domains, it should leave such matters to the executive. While the Supreme Court delivered its arguments in the broader framework of the “right to breathe clean air” and the “right to health”, it went about dismissing the commercial considerations of the firecracker industry. These considerations could have equally been framed in terms of the right to livelihoods of thousands who depend heavily on the sale of firecrackers during Diwali.

Besides, bans are rarely effective. It is difficult to imagine that no firecracker sale will happen in the entire territory of Delhi and NCR as a result of the Supreme Court order. If the police fail to enforce the order, the credibility of the Supreme Court, particularly in cases of environmental regulation, will suffer immensely.

The manner in which the Supreme Court has dealt with this particular case also raises a number of concerns. It first passed an order on 11 November 2016 (after Diwali) banning the sale of firecrackers. Then it partially lifted the ban on 12 September 2017. In this second order, it introduced several arbitrary caps like limiting the number of temporary licences for firecracker sellers to 50% of those given in 2016. The judges also made statements like: “In our opinion, even 50,00,000kg of fireworks is far more than enough for Dussehra and Diwali in 2017.” And then finally, it decided on Monday that while the 11 November 2016 order will stay in force, the 12 September 2017 order will only be effective from 1 November 2017. To make matters worse, the court has ordered suspension of all the temporary licences issued after its 12 September 2017 verdict which allowed the grant of these licences—albeit with a cap. The Supreme Court couldn’t have followed a more muddled and ad hoc approach.

But none of this is new. In an earlier instance, the Supreme Court had increased the entry tax on trucks entering Delhi without factoring in the demand elasticity of goods (carried in those trucks) transported to Delhi, an overwhelmingly consumption-heavy state. Before the turn of the century, the Supreme Court had ordered the conversion of the public transport fleet in Delhi from diesel to CNG. Even as the order was passed without the requisite infrastructure being ready, it was lauded widely and did indeed improve the quality of air over the next few years. But questions still

remained. Pratap Bhanu Mehta, a leading political scientist, for example, has asked (goo.gl/5VDQA) whether the court achieved the lowering of air pollution in a cost-effective manner.

The CNG order had other deleterious long-term consequences. [In a 2003 paper](#), Michael Jackson and Armin Rosencranz had warned: "...the Court's action seems likely to impede capacity building in the pollution control agencies, and thereby to compromise the development of sustained environmental management in India." The current situation—the unresolved problem of air pollution, the lack of regulatory capacity on environmental issues, the abdication by the executive and increased judicial activism—do suggest that Jackson and Rosencranz were indeed right.

It is high time the executive returned to take charge at the wheel. The elected government is in the best position to elicit scientific and economic inputs and take a call, even if it involves expending political capital. The governments at the Centre and the states should involve different agencies like the Petroleum and Explosives Safety Organisation and the pollution control boards and invest in setting regulatory standards for the medium to long term. What is currently happening, however, is a far cry: The complementary phenomena of executive abdication and judicial activism have created an ugly spectacle of environmental mismanagement in India.

Do you agree with the Supreme Court order banning firecracker sales in Delhi and the NCR during the Diwali season? Tell us at views@livemint.com

END

Downloaded from crackIAS.com

© **Zuccess App** by crackIAS.com