

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**ORIGINAL APPLICATION NO. 687 OF 2023**

**IN THE MATTER OF:**

In Re: Air Quality Index in various Cities

**Along with Original Application No. 663 OF 2023**

News Item published in the Indian Express dated 07.10.2023 titled "GRAP Stage I kicks in as air quality dips to poor condition likely to prevail till Sunday"

**Along with Original Application No. 1228 OF 2024**

News Item titled "Lancet study links alarming mortality rates to poor air quality

12 strategies to combat country's air pollution crisis" appearing in the Indian

Express dated 13.09.2024

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Place: New Delhi

Date: 25.11.2024



Sanjay Upadhyay

*[Senior Advocate]*

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**BACKGROUND NOTE ON BEHALF OF THE AMICUS CURIAE ON  
THE ISSUES RELATING TO PREVENTION OF AIR POLLUTION**

- I. This Hon'ble Tribunal is currently seized of the abovementioned suo moto matters/ Original Applications for remedial action against depleting air quality, effectiveness of the measures such as GRAP by State Authorities against air pollution and impact on health of the depleting air quality.
- II. On the last date of hearing i.e., 05.11.2024, this Hon'ble Tribunal in OA No. 663/2023 and in OA No. 687/2023 had directed the Counsels for the parties and the Ministry of Environment, Forest and Climate Change ("MoEF&CC"), respectively, to submit the Orders of the Hon'ble Supreme Court with respect to the above-mentioned matters. Further, liberty was also granted to the Amicus Curiae to submit a summary of the issues of air pollution which this Hon'ble Tribunal has looked into since 2013 and the parameters on which those issues are required to be examined.
- III. At the outset, it is pertinent to mention that 37 reports, including the reports of MoEF&CC and the Central Pollution Control Board ("CPCB") have been filed in OA No. 687 of 2023 highlighting the remedial action taken for improving air quality and whether the air quality has improved due to those measures. However, on comparing the CPCB Bulletin of November 2023 with November 2024, it becomes evident that in most cities the AQI is worse.

IV. The Bulletin figures make it evident that despite numerous remedial and mitigation measures, the AQI continues to dip to 'severe' category in the month of November. Accordingly, there is a need for revisiting the strategy for remedial action against air pollution in the months of November, December and action to be undertaken for maintaining the air quality throughout the year.

V. Accordingly, the present Note/Written Submission, is being submitted to this Hon'ble Tribunal in the above-mentioned matters, highlighting the 41 broad issues that require urgent consideration of this Hon'ble Tribunal for developing the best short-term and long-term strategies for remedial action against severe air pollution in many cities of the country. These issues of air pollution have been examined on the following seven parameters -

- a. Source of air pollution
- b. Method/Program /Plan to tackle the problem
- c. Punitive Measures
- d. Incentives
- e. Institutional Response
- f. Budget/Funds
- g. Innovation/Technology

VI. The abovementioned seven parameters comprehensively capture the legal framework, the executive instruments and the judicial directions, including the directions of this Hon'ble Tribunal. The Action Taken Reports of the States and the submissions of the MoEF&CC and the CPCB in OA No. 687/2023 have also been taken into consideration. The 41 issues crucial for adjudication of this Hon'ble Tribunal have been categorised under the following sub heads -

**A. General Methods/Strategies for Control of Air Pollution**

1. Air Pollution Control Area (APCA)
2. Air Shed
3. Carrying Capacity
4. Source Apportionment Studies
5. National Clean Air Programme and City Action Plans
6. Regulatory Authorities/Committees
7. Citizen Engagement
8. Commission for Air Quality Management (CAQM)
9. Emergency Measures such as GRAP and Odd-Even Scheme
10. Human Resources

11. Interplay between Environment Protection Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981
12. Environment Impact Assessment Notification, 2006 and its Impact on Air Quality Management
13. General Judicial Decisions

**B. Specific Issues/Sources of Air Pollution**

**1. Industrial Pollution**

- A. Brick Kilns
- B. Stone Crusher Units
- C. Thermal Power Plants
- D. Hot Mix Plants
- E. Other Industries

**2. Development and Greening**

- A. Construction, Demolition, Construction and Demolition Waste, Infrastructure, Dust and Greening
- B. Developing Carbon Sinks/Afforestation

**3. Vehicular Pollution**

- A. Commercial Vehicles
- B. Vintage Vehicles
- C. All Vehicles
- D. Ban on Vehicles based on their age and fuel type
- E. Scrapping Policy
- F. Capping and Pooling
- G. Public Transport Fleets and Infrastructure
- H. PUC Station/On Board Diagnostic System
- I. Traffic Alignment/Congestion/Parking on roads/Blinkers Installation
- J. Parking Policy
- K. Removal of Encroachment from Public Roads/Walkways
- L. Technology Improvement (Green Vehicles/ Emission reduction/ Fuel Improvement/ Fuel Alternatives/ Retrofitting)

**4. Waste Burning/Burning in Landfill Sites/Leaf Litter/Waste to Energy**

- A. Stubble Burning
  - B. Fly Ash
5. Miscellaneous
- A. Firecrackers

- B. DG Sets
- C. Health Impacts
- D. Criminal Liabilities for Air Pollution

### **C. Best Strategies/Way Forward**

#### **A. General Methods/strategies for control of air pollution**

##### **A. 1 Air Pollution Control Area (APCA)**

1. Section 19 of the Air (Prevention and Control of Pollution) Act, 1981 (“Air Act, 1981” deals with the notification of Air Pollution Control Areas (“APCA”). There is also a prohibition on emission beyond the specified parameters in such areas. Chapter 5 of the Air Act, 1981 specifies the budgetary allocations for the implementation of the provisions of the Air Act, 1981. There is very little information on the strategy to deal with legally notified ‘Air Pollution Control Areas”

##### **A. 2 Air Shed**

2. Air Shed as a concept was discussed as early as 2013 in the case of Gokulam Blue Metals v. TNPCB and Others (2013 SCC OnLine NGT 82) wherein the expert appointed by the Hon’ble National Green Tribunal suggested looking at the assimilative capacity of air sheds for the operation of stone crushers.

3. Subsequently, the Graded Response Action Plan Notification of 12.01.2017 and the EPCA Report of 04.04.2017 also refers to development of Air Sheds for regional management of air pollution.

4. CAQM on 13.07.2022 has developed a Policy for Prevention, Control and Abatement of Air Pollution based on Air Shed.

5. The UP Clean Air Action Programme, which is partially funded by the World Bank and partially through carbon financing, has obtained Cabinet Approval for implementation of the programme from 2024-2029. The aim of the programme is to reduce air pollution based on the air shed approach. The Uttar Pradesh Clean Air Management Authority has been set up as a Special Purpose Vehicle for implementation of the programme.

It must be examined as to which of the two “air pollution control areas” or “airshed management area” as a unit, is more effective and why, in order to devise a long-term strategy for controlling air pollution?

### **A. 3 Carrying Capacity**

6. The concept of carrying capacity was introduced as early as 1989 in the Doon Valley Notification. Subsequently, the present methodology/strategy has been utilized for control of pollution in various issues of industrial pollution such as stone crushers, brick kilns in the context of air pollution, among others.

7. That the carrying capacity of environmentally sensitive zones are managed and regulated through various notifications issued under the Environment Protection Act, 1986 (“EP Act”). For instance, the Doon Valley Notification, 1999 issued to protect the ecologically sensitive Doon Valley from environmental degradation by controlling industrial activity. It imposes stringent controls on industrial activities that contribute to air pollution. The Aravali Notification, 1992 regulates the mining activities that are directly related to air pollution, as mining operations are significant sources of particulate matter and other pollutants. The notification restricts mining and other industrial activities in the Aravalli Range, thereby helping to control dust and emissions that contribute to poor air quality in the region. The Coastal Regulation Zone Notification, 2011 restricts industrial activities near coastal zones, it limits the emission of pollutants into the air in these sensitive areas, contributing to the overall protection of air quality. Eco-Sensitive Zones (ESZ) Notifications help reduce air pollution in areas vital for biodiversity and environmental health by restricting industrial activities in and around eco-sensitive zones which is crucial for maintaining clean air in and around protected natural habitats.

### **A. 4 Source Apportionment Studies**

8. A detailed source apportionment study was first undertaken in 2011 by the Central Pollution Control Board. Source Apportionment studies now continue as a method or strategy in tracking the sources of pollution specifically in Non-Attainment Cities as part of the National Clean Air Programme (“NCAP”). However, there is no clarity with respect to the mandate of the cities to undertake source apportionment studies in Cities which are not part of the NCAP programme.

### **A. 5 National Clean Air Programme (NCAP) and City Action Plans**

9. The NCAP programme was discussed in 2017 and conceptualised and implemented in 2019. Under the NCAP Programme, Cities which have failed to

consistently achieve the National Ambient Air Quality Standards have been included in the list of Non-Attainment Cities (“NACs”). The NACs are required to develop City Action Plans based on Source Apportionment Studies. The funding for the same is either granted from the NCAP funds or the 15th Finance Commission funds. However, there is no clarity with respect to cities which are not part of the NACs and have reported poor air quality.

#### **A. 6 Regulatory Authorities/ Committees**

10. The Air Act, 1981 specifies the Central Pollution Control Board along with the State Pollution Control Board/ Pollution Control Committees as the Regulatory Authorities for management of air pollution and implementation, monitoring of air pollution mitigation measures. The Air Act, 1981 post the Jan Vishwas Amendment Act, 2023 has led to the appointment of an Adjudicating Officer for determining penalties under the Act.

11. Numerous committees/authorities have been constituted by the Government (both Central and State) as well as by this Hon’ble Tribunal for monitoring and regulating air pollution. Additionally, the Environment Pollution (Prevention and Control) Authority was constituted for Delhi NCR in pursuance of the Order dated 01.07.1998 of the Hon’ble Supreme Court in the case of MC Mehta Vs. Union of India and Others (WP (C) No. 13029/1985). EPCA has now been replaced by the Commission for Air Quality Management in the National Capital Region and Adjoining Areas (CAQM).

12. Recently, the MoEF&CC in September 2024, has also constituted the Indo Gangetic Committee for creating and monitoring an airshed management plan and integration of State Action Plans for reduction of the pollution. However, there is no mention of the said Committee by the MoEF&CC in its Report before this Hon’ble Tribunal.

#### **A. 7 Citizen Engagement**

13. Historically, the Air Bill 1978 and the parliamentary debates on Air Bill 1980 stressed on the need for participation in implementing the law and a citizen complaint mechanism or a citizens action committee with authority to execute directions.

14. A number of Government Apps have been launched over the years such as SAMEER, PRANA, 311, Dust App, COVID-19 BMW for active engagement of

citizens in facilitating monitoring of air pollution mitigation measures and directions.

15. SAMEER app has been launched wherein air quality information is available to the public along with provision for registering complaints against air polluting activities.

16. CAQM Order dated 18.10.2021 casts the duty on the States/implementing agencies to disseminate information about air pollution levels and steps to minimize air pollution, for creating awareness among citizens. Further, for “Poor” and “Moderate category under GRAP citizens were directed to take steps to check air polluting activities, such as:

- To keep PUC certificates up to date
- To keep engines of cars/ bikes/ scooters properly tuned
- To maintain proper air pressure in tires of cars/ bikes/ scooters
- To adherence to lane driving
- To optimize use of private vehicles
- To not disposing waste /garbage in the open spaces
- To report air pollution activities through SAMEER App, social media platforms and other public grievance portals.

17. Recently, Hon’ble Supreme Court, in its Order dated 18.11.2024 in MC Mehta (WP(C) No. 13029 of 2024), has also directed the States for creating a grievance redressal mechanism to enable citizens to launch complaints.

#### **A.8 Commission for Air Quality Management in National Capital Region and Adjoining Areas**

18. The Commission for Air Quality Management in National Capital Region and Adjoining Areas (CAQM) has also so far issued 84 directions and 15 advisories to tackle stubble burning, winter smog, construction dust, road dust, vehicular pollution, and pollution caused by thermal power plants, diesel generator sets and from industries.

19. The CAQM Annual Report 2022-23 states that as of March 2023, only 9 CAQM posts were filled against sanctioned 56 with no scientist appointed. Further, to make up for the said human resource deficit, contractual appointments are made in CAQM.

20. From the initial constitution of the CAQM, to its present-day composition, the CAQM has never had full capacity of members at any given point in time. No stakeholders from the agriculture, industry, transport or construction sectors have

been included. Moreover, no stakeholders from the agriculture, industry, transport or construction sectors have been included.

### **A.9 Emergency Measures such as GRAP and Odd-Even Scheme**

21. GRAP was notified on 12.01.2017. Further, this Hon'ble Tribunal passed Order dated 09.11.2017 in Vardhaman Kaushik vs Union of India & Ors. (O.A. 21/2014) for the implementation of the GRAP notification. On 10.11.2017, the Hon'ble Tribunal clarified that the norm for implementation of GRAP is 48 hours, which is required for PM 2.5 and PM10 to be 500 µg/m<sup>3</sup> to 700 µg/m<sup>3</sup>.

22. At the present the Revised Schedule of GRAP dated September 2024 read with 20.11.2024 is effective for mandates as under

→ Inserts an additional clause 12 for Stage III - GNCTD and NCR State Governments to stagger timings for public offices and municipal bodies in the National Capital Territory of Delhi and the districts of Gurugram, Faridabad, Ghaziabad and Gautam Buddh Nagar.

→ Under Stage IV of the GRAP, it advises the citizens to wear masks, if required to move outdoors.

23. CAQM Direction No. 66 dated 05.08.2022 requires Actions under Stages II, III, and IV of the GRAP to be invoked at least three days in advance of the AQI reaching projected levels. A Sub Committee has been constituted for planning in advance and issuing the necessary orders for implementation of GRAP.

24. Hon'ble Supreme Court's Order date 18.11.2024 in the case of MC Mehta (WP(C) No. 13029 of 2024 directed GRAP IV to continue even if the AQI drops below 450.

25. The Hon'ble Supreme Court on 22.11.2024 in the case of MC Mehta (WP(C) No. 13029 of 2024 has directed setting up of check points in all the 113 entry points in Delhi for compliance with the GRAP IV directions pertaining to restriction of entry of trucks and LCVs registered outside in Delhi. Bar members were appointed as Court Commissioners for visiting the entry points and ensuring compliance with the Directions of the Court. A comprehensive report regarding the same was directed to be submitted by 24.11.2024.

26. **Odd-Even Scheme** was introduced under section 115 of the Motor Vehicles Act, 1988 as an emergency measure to tackle Delhi air pollution vide notification dated 28.12.2015. It exempted emergency vehicles, Compressed Natural Gas (CNG), electric and hybrid vehicles. Further, it exempted vehicles

carrying children in school uniform, and vehicles of election officials to exemption from the application of the scheme vide notification dated 11.04.2016.

27. The first GRAP Schedule dated 12.01.2017 required Odd-Even Scheme to be introduced in Severe+ category.

28. That this Hon'ble Tribunal in the order dated 11.11.2017 and 18.12.2017, passed the case of Vardhaman Kaushik (O.A. 21/2014) directed that under Odd-Even Scheme, no person will be exempted and 2-wheelers should also be brought within its ambit. However, CNG and Hybrid cars were exempted. Vehicles used for emergency services like ambulance, fire brigade etc. and other public service vehicles and Government vehicles that have been exempted by the Govt. were also exempted from the Odd-Even scheme. Further, under Category II pollution level, Odd-Even scheme is to be implemented.

29. Under the GRAP Revised Schedule 2022, the adoption of the Odd-Even Scheme was made optional for the Severe+ Category under GRAP

30. The Odd-Even Scheme was again notified in November 2019 vide notification dated 01.11.2019 and de-exempted CNG, electric and hybrid vehicles. However, within two days the scheme re-exempted electric vehicles from its application vide notification dated 03.11.2019.

31. In 2016 the violation of Odd-Even Scheme attracted a fine of Rs. 2000/- vide notification dated 28.12.2015.

32. In 2019 the violation of Odd-Even Scheme attracted a fine of Rs. 20,000/-. However, it allowed certain officials to compound the offence with the amount of Rs. 4,000/- vide notification dated 01.11.2019.

33. Presently, the adherence with Odd-Even Scheme is optional under GRAP.

#### **A. 10 Human Resources**

34. Apart from the above-mentioned measures, time and again there have been appointment of expert institutions, citizen-based action groups for facilitating the implementation of the air pollution control measures. A case in point is the Hon'ble Supreme Court's Order date 18.11.2024 in the case of MC Mehta (WP(C) No. 13029 of 2024 wherein the Central Government has been directed to obtain data from Korean stationary satellites for data on farm fires throughout the day to the States. The State Governments have been directed to constitute teams for monitoring the implementation of the action required under GRAP IV.

### **A. 11 Inter Play Between Environment Protection Act, 1986 and Air Act, 1981**

That Environment Protection Act, 1986 (EP Act) is an overarching legal framework for environmental protection that supplements the Air Act, 1981. There exists a regulatory synergy between the two legislations, in Centre being empowered to make rules concerning air pollution controls, Schedule I listing the standards for the emission of environmental pollutants from industries, processes or operations and the maximum permissible limits of concentration of such pollutants, Schedule IV listing standards for the emission of smoke, vapour etc. from motor vehicles and the maximum allowable limits for their emission, Schedule VII laying out National Ambient Air Quality Standards, amongst others.

It may be noted that the provisions of section 24 of the EP Act ensures that the integrated and broader environmental considerations covered under the EP Act are not undermined by specific legislation.

### **A. 12 Environment Impact Assessment Notification, 2006 and Its Impact on Air Quality Management**

That Environment Impact Assessment (EIA) Notification, 2006 mandates certain developmental projects to obtain environmental clearance from MoEF&CC before commencing operations which includes the potential of such projects to impact air quality.

<b>S. No.</b>	<b>Nature of Impact</b>	<b>Impact</b>
1.	Pre-emptive Regulation	The requirement of prior environmental clearance under clause 2 of EIA Notification includes an assessment of air quality impacts.  EIA Notification pre-emptively regulates activities that have the potential to adversely affect air quality adversely.
2.	Mitigation of Air Pollution	Clause 7 of EIA Notification mandates the implementation of mitigation measures through an Environment Management Plan (EMP) to control air pollution, thus

		<p>minimizing the environmental footprint of industrial and infrastructure projects.</p> <p>Through post clearance mechanism i.e. EC Compliance Reports under clause 10 of the EIA Notification air pollution mitigation can be constantly regulated.</p>
3.	Enhanced Public Participation	<p>Public consultation ensures that air pollution concerns raised by local communities are considered in the approval process, leading to more socially and environmentally responsible decision-making.</p>
4.	Continuous Improvement	<p>EIA Notification underwent 26 amendments in 11 years from 1994 to 2006. The transition from the 1994 to the 2006 notification reflects an evolution towards more stringent and comprehensive assessments, better public involvement, and stronger environmental safeguards, including those related to air pollution.</p>

### A.13 General Judicial Directions

35. This Hon'ble Tribunal in the case of Vardhaman Kaushik Vs. Union of India & Ors. (O.A. 21/2014) has dealt with the issue of air pollution comprehensively and has passed several directions over the period of 2014 till 2018 on several subjects such as Stubble Burning, Vehicular Pollution, Graded Response Action Plan, ban on Diesel vehicles which are more than 10 year old and petrol vehicles which are more than 15 years old, waste burning, construction and dust pollution among others. That on 18.12.2017, this Hon'ble Tribunal had combined most of the directions issued earlier in the case and had given one comprehensive judgment wherein it was also directed that the Secretary of Environment of each State shall file in every three months a comprehensive report submitting the air quality standards in relation to all pollutants upon analysis and also the measures/steps taken by that State in relation to prevention and control of air pollution, in accordance with directions contained in the said judgment. It was

also noted that in case the report is not filed, the concerned officer shall be liable to be proceeded against in accordance with law.

36. That under the said order, it was also directed that all environmental compensation collected under the direction of this Hon'ble Tribunal passed in the said case, shall be kept in in separate account and will be utilized for implementing projects in terms of the said direction and for prevention and control of air pollution in in NCT Delhi.

## **B. Specific Issues of Air Pollution**

### **B.1 Industrial Pollution**

37. Industrial Pollution as a source of pollution includes numerous industrial activities such as operation of stone crushers, hot mix plants, thermal power plants, lime kiln units, among other sources.

#### **Methods/Programmes**

38. There are multiple strategies, methodologies for ascertaining the level of pollution and developing specific mitigation measures for certain industrial clusters. Such methods/programmes include the Comprehensive Environmental Pollution Index (CEPI) for categorising Critically and Severally Polluted Areas, development of specific Action Plans for CPAs and SPAs, classification of industrial sectors into Red, Orange, Green and White category industries, frequency of inspections of different industries, assimilative capacity assessments, third party monitoring and certifications, carrying capacity assessments and siting of industrial clusters.

#### **Penalty Provisions**

39. Apart from the appointment of the Adjudicator and the other provisions specified in the amended Air Act, 1981 (imposition of penalty up to 15 Lakhs), the regulatory authorities have also imposed penalty as per the CPCB In house Committee Methodology for calculation of environmental compensation and action plan for utilisation of the funds dated 30.05.2019.

40. Additionally, restrictions were also imposed on the expansion of certain red and orange category industries in CPAs, SPAs (**NGT Order dt. 10.07.2019** - in OA 1038/2018 – News item published in “The Asian Age” Authored by Sanjay Kaw Titled “CPCB to rank industrial units on pollution levels), relocation of

industries in the vicinity of Taj, Industries have also been directed to remain liable for the past non compliances or lapses. (09.05.2024 – NGT Eastern Bench – Original Application No.125/2023/EZ titled Chandrashekhar Khawade vs State of Jharkhand & Ors)

41. Compensation imposed by the UPPCB based on the Paryavaran Suraksha Samiti Order of the Hon'ble Tribunal has been kept in abeyance in view of the SC Order in Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v. State of Gujarat and Others (2022 SCC OnLine SC 120) by the Allahabad High Court vide Order dated 29.05.2024 in Suez India Pvt. Ltd. through its authorized signatory, Rajesh Chandra Mathpal v. Uttar Pradesh Pollution Control Board, through its Chairman and Others.

42. In the case of Vardhaman Kaushik (O.A. 21/2014) this Hon'ble Tribunal vide its order dated 10.11.2016 directed that all power generation plants, Brick Kilns, Hot mix plants, Thermal Plants, Waste to Energy Plants if found to be emitting more than the prescribed standards should be ordered to shut down until they meet such standards.

43. That in the order dated 18.12.2017 passed by this Hon'ble Tribunal, when category I level of pollution is reached enforcement of all pollution laws, is to be ensured, particularly, in relation to the industries or activities which cause emissions into the air for carrying on their activity. Further, when category II level of pollution is reached, all the brick kilns, thermal plants and heavy industries which are causing emissions would be stopped and inspected by PCB and all other concerned authorities and if their emissions are found to be beyond the prescribed standards, such plants shall be directed to be shut down.

44. Periodic Directions have been issued by this Hon'ble Tribunal for restricting the operation of industries during GRAP where the AQI standards are alarming. Accordingly, GRAP III of September 2024 includes measures for closing down of mining, stone crusher units.

### **Incentives**

45. CPCB has instituted incentive programs such as the grant of the Environment Award of Grossly Polluting Units that were complying with the pollution control norms. (CPCB Letter dated 14.07.2017)

46. The Hon'ble Supreme Court in the case of MC Mehta directed paid leaves and shifting bonus to workmen for shifting industries from the Taj Trapezium Area
47. Only Industrial Units using cleaner fuels, namely, Natural Gas (PNG/CNG), liquefied petroleum gas, bio-gas, propane, butane allowed to be established in Delhi NCR (CPCB Direction dt. 27.11.2020)
48. The DPCC was also granting Monetary incentives to industries for shifting to PNG (04.10.2018 by DPCC). Recently, CAQM has been granting these incentives to industries for shifting to PNG.
49. The MoEF&CC has also issued notification for facilitating processing of applications for environmental clearance on priority for those building and construction projects which obtain the green certification such as GRIHA.
50. The MoEF&CC has issued a Notification on 12.11.2024 whereby apart from white category industries, industries which have previously obtained EC after obtaining CTE are exempted from obtaining CTO.

### **Budgetary provisions**

51. NCAP Funds and 15th Finance Commission
52. MoEF&CC Office Memorandum of 01.05.2018 clarified the percentage of Corporate Environment Responsibility as per the Capital Investment of a Greenfield Project or a Brown Field Project.
53. Pradhan Mantri Jaiv Indhan - Vatavaran Anukool Fasal Awashesh Nivaran (JI-VAN) Yojana - Financial Support to Integrated Bioethanol Projects using Lignocellulosic Biomass & other Renewable feedstock (effective from 28.02.2019)
54. Labour cess for payments to construction workers during the ban on construction.
55. This Hon'ble Tribunal had also directed for the capacity enhancement of SPCB from the Consent funds (reference of the NGT Order dt. 05.11.2019 - Shailesh Singh vs. State of Haryana & Ors. OA No. 639/2018.)

### **Innovative Strategies for mitigation Industrial Pollution**

56. MoEF&CC in its Environmental Management Framework for Critically and Severally Polluted Areas has clarified that - B1 category EC projects should be appraised at the Central Level and B2 category projects at the State level with

similar EC conditions as B1 category, utilisation of super critical technology instead of sub-critical technology. Further, increasing the percentage of the Corporate Environment Responsibility for Critically (1.5 times) and Severally Polluted Areas (2 times) as per the Capital Investment as mentioned in the MOEF&CC OM dated 01.05.2018.

57. Installation of Online Continuous Emission Monitoring System (OCEMS), community boilers for industrial areas, Stage I and Stage II VRDs (Vapour Recovery System) at all fuel stations, airports, distribution centres, terminals, railway loading in NCT Delhi and star rating of mines are some other innovations and incentives for ensuring compliance of industries with environmental norms.

58. It is also important to highlight that the pilot Emission Trading Scheme for Particulate Matter from Stationary Sources (Stacks) has been developed by MoEF&CC and is being implemented in Gujarat by the Gujarat Pollution Control Board specifically with respect to textile industrial clusters.

#### **B.1.A Brick Kilns**

59. Numerous Directions have been issued by this Hon'ble Tribunal as well as the Hon'ble Supreme Court for restricting the operation of brick kilns in Delhi NCR and adjoining areas without valid CTO or incorporation of Zig-zag technology, vertical shaft, piped natural gas, staggered firing in brick kilns, maintenance of a distance of 500mts between brick kilns, fixed chimney bulls trench kiln and utilisation of agro fuel, utilisation of fly ash in brick manufacturing and restricting the operation of brick kilns between March to June 2024.

60. CAQM Order dated 18.10.2021 directed closure on all brick-kilns in Delhi-NCR as per the directions of this Hon'ble Tribunal as "Poor" to "Moderate" category action under GRAP.

#### **B.1.B Stone Crusher Units**

61. That in the case of Vardhaman Kaushik (O.A. 21/2014) vide order dated 04.12.2014, it was directed that strict vigil over stone crushers towards obtaining of consent and conforming prescribed norms should be ensured.

62. In Mahendra Singh vs. State of Haryana & Ors, O.A No. 667/2018, 679/2018 and 599/2019, Order dated 18.01.2023 - stone crushers and other mining units were operating in District Mahendragarh, Haryana, this Hon'ble Tribunal noted that despite the negative carrying capacity of the area in terms of air quality, large number of stone crushers are being permitted to continue and prohibited illegal operation of stone crushers till compliance to the extent of

carrying capacity. It was further directed that the number of operating stone crushers be suitably reduced as directed earlier to be within the carrying capacity, maintaining appropriate inter-se distance as may be suggested by CPCB.

### **B.1.C Thermal Power Plants**

63. This Hon'ble Tribunal has directed Thermal Power Plants/Projects to install/retrofit ESP to achieve emission norms, install FGD to comply with SO<sub>2</sub> emission limit and install measures to comply with NO<sub>x</sub> emission limit. Further, Circulating Fluidised Bed Combustion, Fluidised Bed Combustion, Pressurized Fluidised Bed Combustion and integrated Gasification Combined Cycle technologies in thermal power plants for mitigation of air pollution. Power Plants have also been directed to comply with the Fly Ash Notification of 2021, specifically with respect to utilisation of fly ash by brick kiln units, cement plants, road construction among other projects.

### **B.1.D Hot Mix Plants**

64. In the case of Vardhaman Kaushik (O.A. 21/2014), vide order dated 10.11.2016, it was directed that all Hot mix plants among others to be shut down if these are found to be emitting more than the standards.

### **B.1.E Other Industries**

65. In the case of Vardhaman Kaushik (O.A. 21/2014) vide order dated 28.04.2015, the impact of pottery and ceramic industries in NCR and remedial measures, was directed to be examined.

## **B.2 Development and Greening**

### **B.2.A Construction, Demolition, C&D Waste, Infrastructure, Dust, Greening**

66. That this Hon'ble Tribunal under in several orders passed in the Vardhaman Kaushik (O.A. 21/2014) has passed various directions related to construction and dust pollution. These orders include orders dated 04.12.2014, 14.08.2015, 07.04.2015, 10.04.2015, 11.12.2015, 06.01.2016, 01.03.2016, 04.11.2016, 08.11.2016, 10.11.2016, 17.11.2016, 20.04.2017, 09.11.2017, 11m,11,2017, 14.11.2017, 17.11.2017 and 18.12.2017. The directions passed are as follows:

- a. **No dumping of construction materials** on metalled road.
- b. The area where it can be dumped should be **demarcated** by officer concerned and it should not obstruct free flow of the traffic.
- c. It should be **covered** by tarpaulin and other precautions should be taken.

- d. **Wind breakers** should be installed around the construction plot.
- e. Engineers of each PWD to be personally responsible and should submit report to his Chief Engineer, every week, which should also be done for road, highways projects in NCR.
- f. **Vehicles carrying construction materials to be covered.**
- g. Any truck used for **transporting construction materials** were directed not to be permitted to enter NCR Delhi if not complying with the concerned orders of this Tribunal.
- h. **Cleaning** of trucks and other measures to be taken to ensure that no dust is released en route to the destination.
- i. Any truck not complying would not be permitted to enter NCR Delhi.
- j. Authorities having power to sanction construction activities were directed to impose condition that sanction is subject to the condition that compliance of this order and Manual of MoEF 2010 will be adhered to, **every worker to be provided with mask, Compulsory use of wetjet in grinding and stone cutting.**
- k. All builder of projects covered under EIA, 2006 to provide **green belt** around the building and all Authorities shall ensure its existence before issuing occupancy certificate
- l. NCT was directed to enhance the capacity of its **C&D recycling plants.** which is only able to utilise 10% of 4000 MT waste per day.
- m. Builders were directed to **transport their waste** to such sites only and due **record be maintained.**
- n. The Tribunal made it clear that projects even if the EC is granted but the compliance of this order or MoEF Manual is not taken than the authority. shall be entitled to direct stoppage of work.
- o. **Hot mixing on the road side** was directed not to be done. PWD, DDA and others to ensure that coal tar, bitumen and/or asphalt mix is brought in molten condition and not burnt nor melted in open roads.
- p. Even materials stored within the building was directed to also be covered. Same applies to transportation of such materials.
- q. NCT was directed to submit a proposal of green belt with in schools, converting the ground by grass.
- r. As a responsive measure the following were directed:
  - i.No transportation of any construction materials whatsoever.*

- ii. *Concerned authorities of district of NCR were directed to send half of their staff to field duty and ensure that no pollution is generated from construction and all measures are taken as directed in earlier judgments.*
- iii. *No construction activity for one week was also directed.*
- iv. *No transportation of any construction material as temporary measure*
- v. *Authorities of NCR Delhi were directed to ensure that all construction activities are stopped, temporarily. All internal finishing work causing no dust whatsoever was exempted.*
- vi. *No fuel of waste, wood petcock etc. would be used for heating bitumen for metalling roads*
- vii. *Local Authorities to ensure that no dust and waste is accumulated on roads or walking paths/lanes/service roads.*
- viii. *regular cleaning of roads preferably through vacuum cleaners.*
- ix. *The concerned State Government and Authorities shall sprinkle water from the high rising buildings or through helicopters to ensure that excessive parameters are immediately brought down to reasonable limits.*
- s. Delhi authorities were directed to ensure that **parks, flyovers, roads around the government building are covered in greenery.**
- t. Efforts were directed to be made to cover open land with green grass.
- u. **A task force** was directed to be constituted to ensure that roads are cleaned, particularly during environmental emergency.
- v. Water through helicopters was directed to be sprinkled all over the city and highly polluted areas. **Also ordered on 9.11.2017**
- w. NCT Delhi, Corporations and PCBs to identify the area which is highly polluted in NCT and would ensure sprinkling of water through helicopters etc.
- x. Authorities to introduce **vacuum cleaners** for removal of dust from road instead of manually cleaning it, which should be stopped as it is not effective. Mechanical cleaning of roads should be introduced.
- y. No parked vehicles on either side of the roads - where mechanized cleaning takes place.
- z. It was stated builders cannot deny wages to labourers during the period in which work is stopped for causing air pollution.
- aa. The transportation of the construction material to be done in accordance with the directions issued earlier such as ensuring that any kind, particularly sand, cement, etc., is done after properly covering the transportation vehicle.

67. CAQM order dated 18.10.2021 directed authorities to ensure periodic mechanised sweeping and/or water sprinkling on roads with heavy traffic and dust generation potential.

68. CAQM Order dated 16.11.2021 directed the Government of Delhi to set up an effective mechanism to monitor compliance of air pollution emission control norms by the Construction and Demolition (C&D) Projects and heavy penal action and/or closure directions be issued. Further, the order directed imposition of heavy penalties on persons/organisations responsible for stacking construction materials or C&D waste on roads and right of ways in NCR.

**Punitive Measures:**

69. That under orders dated 04.12.2014 it has been directed that person found violating, would be liable to pay compensation of Rs. 50,000/- for defaults at its site and Rs 5,000/- for each violation during carriage of material, debris. this would be in addition to laws in force. Same was reiterated in Order 11.12.2015

70. In order dated 20.07.2016, the Tribunal clarified that the environmental compensation would be imposed on slab basis depending upon the size of the site:

Plot up to 100 sq.mt. – environmental compensation of Rs. 10,000/-,

Plot > 100 sq. mt. but < 200 sq.mt., environmental compensation of Rs. 20,000/-

Plot > 200 sq. mt. but < 500 sq.mt. the environmental compensation of Rs. 30,000/-,

Plot > 500 sq.mt. the environmental compensation would be Rs. 50,000/- as already directed.

Constructed area of > 20,000 sq. mtr. the environmental compensation would be Rs. 5 Lakhs. This rate operates prospectively.

71. In order dated 11.12.2015, Environment Compensation of Rs. 5,000/- per event was stated to apply to dumping of construction and other waste material in public places and on the river bed. It was directed that builders are not permitted to keep their construction materials on road and public place for which they will be liable to pay Rs. 50,000/- per incident, besides seizing such material under Municipal Corp Act.

72. In order dated 10.11.2017, during emergency Measures during severe pollution, it was reported that rampant construction was going on instead of prohibitory orders. Authorities were directed to constitute a team and inspect large construction activities and charge environmental compensation of minimum 1 lakh if a person is found to be carrying on the activity.

73. Under order dated 18.12.2017, for Category II pollution level it was laid down that in default, penal directions to be invoked at environmental compensation of Rs 5,000/- per event for transporting material in violation of directions and Rs 50,000/- in relation to storage of construction material of any kind. If pollution level reaches Category IV, there would be a complete prohibition on all kinds of construction activity and transportation of construction material. The default or violation would incur penalty to the extent of Rs. 1 Lakh for every default.

### **B.2.B Developing Carbon Sinks/Afforestation etc.**

74. That the Hon'ble Tribunal in orders dated 04.12.2014, 10.04.2015, 11.12.2015, 10.11.2016 and 18.12.2017 has passed following directions related to Carbon Sinks and Afforestation:

- a. Increasing forest cover area and not degradation of forest/green area
- b. Authorities in Delhi, Gurgaon and Noida to increase tree covers
- c. Efforts were directed to be made to cover open land with green grass.
- d. Authorities and Schools to ensure an increase of green belt in their respective schools within a period of one month from the date of pronouncement of this order. Large number of trees should be planted.

### **B.3 Vehicular Pollution**

#### **B.3.A Commercial Vehicles**

75. In the case of Vardhaman Kaushik (O.A. 21/2014) vide order dated 26.11.2014 trucks crossing Delhi were directed not to be overloaded and not exceeding 15 years of age. That said direction regarding overloading was reiterated on 04.12.2014 and 16.03.2015. Inspection registers to be maintained on all entry and exit points. DTC buses to be checked, and if found to be emitting more than prescribed norms were directed to not be permitted to ply. Under orders dated 26.11.2014, 28.11.2014, 04.12.2014, 16.03.2015 and 07.10.2015 automatic, computerized or censor-based weigh bridges were directed to be installed at all entries and exits to and fro NCT Delhi which shall have online data of goods carriage vehicles to be maintained and checked by senior officers every day. The State of U.P., Haryana and Rajasthan were directed to provide full cooperation with NCT Delhi for effective operation and installation of weighing machines.

76. That on 04.12.2014, the check posts, at entry points to Delhi, were directed to be monitored by the Police, Transport Dept. & Weight and Measurement Dept.

of Delhi & similar officers of similar Dept. of states to accompany. Only vehicles which are neither overloaded nor polluting to be allowed to be passed on check posts. DTC buses were directed to be checked up through a computerized system once every month and for PUC at least twice a month. Random checks were also directed to be undertaken.

77. That vide order dated 07.10.2015, it was directed that alternative routes should be used to divert heavy vehicles not destined for Delhi. For heavy transport vehicles with their final destination Delhi or enroute to other places entering from Sonipat to are directed to pay Compensation in addition to the toll tax, payable @ s.700/- for 2 axel, Rs 500/- for 4 and above axel and Rs 1000/- for 3 axle vehicles. It was clarified that all trucks destined for other places should divert to alternative routes, and trucks entering Delhi to pay environmental compensation as mentioned above. This amount will be used for improving air quality and a separate account was directed to be maintained. CPCB and DPCC were directed to spend that amount on joint projects. For diversion of vehicles, the Check Posts, State of Haryana, the Government, public authorities and NHAI was made responsible. Under order dated 20.07.2016, it was clarified that vehicles with National Permits are also not allowed to by-pass Delhi and follow routes directly connecting Haryana and Rajasthan. Under order dated 28.11.2016 it was directed that Police of respective States and Municipal Corporations shall ensure that non-destined vehicles do not enter Delhi and they ply in compliance of prescribed norms. In case of violation, appropriate action shall be taken and these vehicles shall be parked at border places before their entry into Delhi. Under judgment dated 18.12.12017, under Category I pollution level it is required that overloaded vehicles are not permitted which shall be challaned and they also pay environment compensation as mentioned above. Alternative routes for heavy vehicles outside cities shall be provided. Non-destined vehicles not to enter Delhi. Under Category II, it is provided that if these non-destined vehicles enter Delhi they will be liable to pay environmental compensation at the rate of Rs. 700/- for 2 axles, Rs.500/- for 4 axles and Rs1000/- for 3 axles.

### **B.3.B Vintage Vehicles**

78. In the case of Vardhaman Kaushik (O.A. 21/2014) vide judgment dated 18.12.2017, in M.A. No. 1543 of 2017, this Hon'ble Tribunal directed that antique vehicles which satisfy statutory requirements may be registered in accordance with law but these can be used only for rallies, exhibitions and not otherwise and will not ply on roads of Delhi regularly. Applicant's Association was also directed to make contribution towards environment by planting trees, providing dust bins and other such material which would help in maintaining the quality of environment in Delhi under their CSR

### **B.3.C All Vehicles**

79. That in the case of Vardhaman Kaushik (O.A. 21/2014) vide order dated 26.11.2014 and 18.12.2017, it was directed that all vehicles should keep their ignition off except when permitted to ply. All concerned authorities to be posted at respective places. The traffic police and other regulating authorities are directed to propagate and advice for the driver to take such steps.

80. Under order dated 21.04.2017 it was noted that agencies should enforce challaning of polluting vehicles which shall be recorded by the traffic police under Motor Vehicles Act 1988 which would be in addition to fines laid down by this Hon'ble Tribunal. Dept. of PWD of NCT was directed to fully cooperate with traffic police to ensure compliance of direction passed by the Tribunal.

81. That vide judgment dated 18.12.2017, for category I pollution level, the measures included for regular checking of vehicles to check maintenance of emission standards; strict vigilance and appropriate action for visible emission from vehicles. In case of Category IV Pollution level, trucks and heavy vehicles carrying materials shall be prohibited to enter NCT Delhi. Vehicles carrying essential Goods would be permitted during Environmental Emergency.

### **B.3.D Ban on Vehicles based on their age and fuel type**

82. That in the case of Vardhaman Kaushik (O.A. 21/2014) vide orders/Judgment dated 27.10.2014, 26.11.2014, 28.11.2014 and 19.01.2015 it was directed that vehicles more than 15 years old shall not be allowed to enter Delhi, they are not allowed to be parked and should be towed away. RTO was directed not to renew/register such vehicles.

83. That vide order dated 04.12.2014, a suggestion to fix life of vehicles was made by this Hon'ble Tribunal.

84. That vide order dated 07.04.2015, Diesel Vehicles of more than 10 years old were directed not to be permitted in NCR. Petrol vehicles of more than 15 years old were directed not to be registered.

85. That vide order dated 13.04.2015 and 02.12.2015, view were directed to be submitted on age of vehicles to be permitted in NCT Delhi with reference to all types of sources of energy/fuel; benefits to transferor/transferee of vehicle which are prohibited in NCR; vehicles are prohibited because of high density of traffic and greater pollution is likely to be shifted to places with lesser density and pollution; Concession for person who scrap his vehicle. No suggestion in this regard was submitted as noted in order dated 01.05.2015.

86. That on 07.10.2015, 02.12.2015, 18.07.2016 and others it was directed to identify the place with least population density and more area of dispersion and dilution of emissions for sale of cars outside Delhi for which a list of zones was directed to be provided where sale can be allowed. CPCB was directed to issue directions to all SPCBs in this regard.

87. It was also directed that the State should not buy diesel vehicles where it is used for other purposes. Corporation was directed to replace diesel vehicles with other energy sources. Under order dated 11.12.2015, authorities were directed to prepare an action plan for phasing out diesel vehicles.

88. That on 11.12.2015, it was directed that as an interim measure registration of new Diesel vehicles is banned. It is noted that for end of life vehicles, the Ministry has already taken a stand that diesel vehicles attaining age of 10 should be directed to take PUC every six months and after 1 year they should be condemned.

89. That on 06.01.2016 The Tribunal had directed the states of major cities like Bombay, Kolkata, Bangalore, Patna, Lucknow, Allahabad, Kanpur, Varanasi, Pune, Nagpur, Chennai, Hyderabad, Ludhiana, Jalandhar and Amritsar to file an affidavit stating the steps taken for vehicular pollution among others. Further on 24.05.2016 and 31.05.2016, CPCB and all State were directed to submit data in regarding population & car density, total pollution of the area and the pollution level of major cities in the entire country, road densities in cities, vehicular pollution in two cities, sources of pollution particularly vehicular and others, number of diesel and petrol vehicles, heavy vehicles, two and three wheelers and more. It was stated that directions passed for NCT would be applied to the 11 cities referred in the order dt. 06.01.2016 (mentioned above).

90. That on 18.07.2016 and 20.07.2016, RTOs of NCR were directed to deregister all diesel vehicles of more than 10 years old. This list shall be given to traffic police to take steps as already directed by this Hon'ble Tribunal and under Motor Vehicle Act 1988. It was directed that deregistered vehicles be transferred outside Delhi. RTO to issue NOC for transfer of these vehicles only to such areas identified by the States. No NOC to be issued for 15 years old BS I and BS II diesel vehicles which shall be scrapped. DDA to provide parking for impounded vehicles.

91. That on 10.11.2016, this Tribunal directed that if any person violates directions regarding vehicular pollution, he shall be liable for environmental compensation to be recovered by concerned authorities including police. It was also directed that other States should take decisions particular for setting age for Diesel vehicles of 10 years.

92. That on 30.03.2017, the Hon'ble Tribunal passed an order noting that the Hon'ble Supreme Court has passed an order and amendment notification dated 23.02.2012 of MVA provides that only BS IV diesel vehicles would be permitted to ply in NCR. Special Commissioner of Traffic, Delhi as directed to ensure the same.

93. That on 14.09.2017, judgment passed by Hon'ble Tribunal wherein the 10 years and 15 years ban has been upheld in view of rejection of appeal filed before Hon'ble Supreme Court vide Order dated 15.05.2015 passed in Sheela Yadav v. Vardhaman Kaushik and Ors. (C.A. Diary No. 11902 of 2015) against said orders of the Hon'ble Tribunal.

94. That on 13.10.2017, it was directed that only BS-IV vehicles shall be registered which will be permitted if vehicles of more than 10 years old in possession have been dismantled and certificate to that effect is issued by designated agencies and an undertaking is provided to the concerned RTO. These directions are to be applicable to all vehicle's owners including Public Departments, Petroleum Companies, usage of essential commodities, civil services. Applicants for plying of buses in Moradabad, Bulandshahar, Meerut and Muzaffarnagar which are more than 10 years old, would be permitted for three years, within which they should replace their buses either by BS IV compliant vehicles or shifting to CNG.

95. That on 09.11.2017 all authorities were directed that 15 year and 10-year older Petrol and Diesel vehicles shall be seized and parked in identified temporary sites

96. That on 14.11.2017, it was noted by this Hon'ble Tribunal that a large number of Diesel taxis were pointed out to be permitted in Delhi contrary to the Judgment of SC. State Government of NCT was directed to look into this aspect and particularly diesel vehicles which are more than 10 years old must be seized.

97. That under judgment dated 18.12.2017, for Category I pollution level, the measures included that 10 years and 15 years old Diesel and petrol vehicles should not be permitted which shall be seized. These vehicles are to be deregistered. It also included that BS-I, II vehicles shall not be permitted to ply.

#### **Punitive Measures:**

98. That under order dated 10.11.2016, this Hon'ble Tribunal specifically directed that any person who violates directions regarding vehicular pollution should be strictly liable for environmental compensation which would be recovered by concerned authority including police. that thereafter on 28.11.2016, this Hon'ble Tribunal clarified that any vehicle found polluting would not only be challaned under Motor Vehicle Act 1988 but also Environment protection Act 1986 and upon the orders of the Tribunal. Carriage and parking charges will also be paid which shall be identified by the Delhi Police. The environmental compensation has already been identified as Rs. 5,000/- for each violation.

#### **B.3.E Scrapping policy**

99. That Hon'ble Tribunal under the Vardhaman Kaushik Case (O.A. 21/2014) on 13.04.2015, directed to submit views on the benefits to transferor/transferee of vehicles which are prohibited in NCR.

100. That vide order dated 11.12.2015, Government of NCT Delhi was directed to consider the view of adopting a system for scrapping and benefits thereof.

101. Under order dated 18.07.2016 and 20.07.2016, the submission of Ministry of Heavy industries to place an incentive proposed to be given for Old Petrol and Diesel vehicles (Scrapping Policy) was recorded. The Ministry was directed to issue letters to every state, stating the benefit of condemning.

102. That vide order dated 18.12.2017, it was directed that the Government shall also provide the due incentive for scrapping of old cars as well as provide concession in registration of new cars to such car owners.

### **B.3.F Capping and Pooling**

103. That in the Vardhaman Kaushik Case (O.A. 21/2014) vide order dated 04.12.2014, all States were directed to submit views on capping of vehicles.

104. That on 13.04.2015, views on Capping of Number of vehicles in NCR with reference to sources of energy/fuel; incentive for pooling; imposition of higher charges including registration and congestion charges for possession of more than one vehicles per family was directed to be provided.

105. That on 18.12.2017, this Hon'ble Tribunal under Category I pollution level required the Government and all concerned departments to put a cap on the number of vehicles of all kinds that can ply in NCT Delhi. Government should formulate a policy of putting higher registration fee and road tax on purchase of second vehicle.

### **106. B.3.G Public Transport Fleets and Infrastructure**

That in the case of Vardhaman Kaushik (O.A. 21/2014) this Hon'ble Tribunal vide order dated 26.11.2016 directed that **Cycle tracks** should be provided and encouragement for cycling should be done.

107. That on 04.12.2014 and 24.08.2015 direction was passed to enhance public transportation facilities, provide infrastructure and make it user friendly. DTC was directed to run buses of different capacity, size, at different timings and routes and would be driven on CNG only and should provide incentive to encourage its use. It is noted that MD of DTC assured to initiate a data-based study to rationalize plying of DTC Buses and ensure least congestion. Further, on 20.07.2016, NCT Delhi was directed to augment buses which should be of different kinds, including - buses for metro stations and should be CNG, hybrid or electric buses.

108. That on 13.04.2015, views were directed to be submitted on public transport vehicles for places of high commercial activities, markets or industrial areas. On 31.03.2017, the Chief Secretary was directed to submit a status report as to why destination buses has not been started in terms of the Tribunal's order. Direction related to destination buses were reiterated on 20.04.2017, 21.04.2017, 09.11.2017 and 18.12.2017.

109. That on 11.11.2017 it was directed that Private transporters shall during emergency period & implementation of odd even scheme provide CNG buses free of charge in discharge of CSR. DTC to procure CNG buses.

110. That under judgment dated 18.12.2017, under Category I pollution level it has been included that effective steps should be taken to enhance public transport facilities and provide due infrastructure, which should be user friendly. Prevention to be ensured that empty buses do not ply, proper time table, relatable to the passenger peak load should be prepared by DTC and all other stakeholders. It was also directed that the State Government and all its instrumentalities shall endure their best to introduce battery and electric mass transportation system, incentives/ concessions shall be provided for buying the hybrid vehicles. For category II of pollution level, it was mentioned that the frequency of public transport shall be increased.

### **B.3.H PUC Station/ On Board Diagnostic System**

111. That in the Vardhaman Kaushik Case (O.A. 21/2014) vide order dated 28.11.2014 and 04.12.2014 the following directions were passed relating to PUC:

- a. Steps against the agency issuing PUC certificates to non-conforming vehicles was directed to be decided.
- b. Inspection of such agencies was directed to be done and a report to be submitted and any illegal agency was directed to be closed.
- c. Concerned authorities, engaged for **checking emission** from vehicles were directed not to issue certificate casually.
- d. All states of NCR were directed to constitute a team to keep a check on PUC issuing agencies and ensure that their machines are duly calibrated and PUC are issued according to the norms.

### **B.3.I Traffic Alignment/Congestion/Parking on road/ blinkers installation**

112. That this Hon'ble Tribunal in the case of Vardhaman Kaushik (O.A. 21/2014) vide order dated 26.11.2014 directed authorities to ensure that vehicles are not parked for an unduly long period on entry and exit points to Delhi. The vehicles should keep ignition off except when permitted to ply. On 04.12.2014 and 10.11.2016, 18.12.2017 it was directed to DTC to ensure that buses do not cause congestion; authorities to ensure freeflow; no unauthorized parking is done and if a car breaks down it should be removed quickly; no undue jam. Government of NCT Delhi and DDA were directed to complete the flyway project to connect all existing flyovers and traffic lights on top priority. Under order dated 16.03.2015 and 18.12.2017, it was directed that no loading and unloading in all

markets shall be done between 11:00 a.m. to 8 p.m; regulation of hours in that regard, particularly in congested areas, and that wherever mechanized cleaning of dust is introduced, there are no parked vehicles on either side of the roads.

113. Further, vide order dated 28.11.2016, it was directed that non-liable vehicles parked on public roads should be lifted. DDA and Police Authorities and Municipal Corporations. were directed to hold meeting to identify temporary places for problems of parking of vehicles as well as free flow of traffic.

114. Direction related to specific markets/places in Delhi such as Lajpat Nagar, and Alaknanda Road and Rao Tula Marg were passed under orders dated 17.02.2015, 07.04.2015, 10.04.2015, 01.05.2015, 09.08.2016 and 20.04.2017 wherein directions such as placing Jersey barriers while protecting tree line in Central Verge, no space for U-Turn, no crossing from one end to another end of the road which means no intersection, no space in road alignment central verge in Alaknanda Road, putting traffic light in Rao Tula Marg were passed.

115. That vide order dated 11.11.2017, it was directed to the State of Rajasthan, Haryana and UP to depute special forces at borders of NCT to ensure no congestion is caused in these points.

116. That vide judgment dated 18.12.2017, it has been directed that Western and Eastern Expressway should be operationalized. Further when category II pollution is reached rigorous steps to be taken for avoiding congestion particularly at peak hours.

### **B.3.J Parking Policy**

117. That this Hon'ble Tribunal vide orders passed in the case Vardhaman Kaushik Case (O.A. 21/2014) has issued several directions related to Parking Policy. These include orders dated 26.1.2014, 04.12.2014, 17.02.2015, 04.03.2015, 16.03.2015, 10.04.2015, 13.04.2015, 20.07.2016, 11.11.2017 and 17.11.2017. The directions passed include:

- a. No Parking on tarred/metalled roads
- b. In markets only one side parking is done and sufficient space is left for both way.
- c. Parking spaces to be earmarked beyond which it should be prohibited.
- d. Authorities were directed to consider the proposal of charging **higher parking fee, registration fee and impose congestion charges.**
- e. Unauthorized parking is not done

- f. Lajpat Nagar and Karol Bagh were directed to be the pilot project for de-congestion of traffic resulting from excessive parking.
- g. SDMC was directed to mark parking areas on the road Veer Savarkar Marg and Shiv Mandir Marg where on both side single parking would be permitted and, on the road, Firoj Gandhi Road only one side it would be permitted.
- h. Temporary parking beside MCD Hospital; parking capacity to be electronically displayed
- i. Multi-Level Parking in Shastri Park and Lajpat Nagar; enforcing directions related to parking in Karol Bagh, South Extension and Nehru Place
- j. Rationalization of parking charges to encourage to park in areas where it can be provided and not on main road.
- k. DDA to provide space and identify the already provided space for parking of buses and Police Vehicle, including impounded vehicles.
- l. The Tribunal stated that parking spaces must be provided in Delhi, such as in Sarojni Nagar multiple parking spaces remain empty and all vehicles are parked on roads. No car permitted to be parked in front of market on metalled road but in multi-level parking. Open area to be declared as no parking/tow-away zone. NDMC to consider if charges to residents for parking in the multi-level parking can be different than customers.

### **B.3.K Removal of encroachment on public roads/walkways**

118. Under orders dated 17.02.2015 and 07.04.2015, this Hon'ble Tribunal in case of Vardhaman Kaushik (O.A. 21/2014) has directed that no Rickshaw and Hawkers would be permitted on metalled road (SC in *EktaHawkers case*).

### **B.3.L Technology Improvement (Green Vehicles/ Emission reduction/ Fuel Improvement/ Fuel Alternatives/ Retrofitting)**

119. That this Hon'ble Tribunal in case of Vardhaman Kaushik (O.A. 21/2014) has vide its orders dated 04.12.2014, 07.10.2015, 18.07.2016 and 18.12.2017 has passed several directions related to Technology improvement and innovation. These are as follows:

- a. Installation of catalytic convertors, particularly in Diesel vehicles.
- b. BS V to be introduced neighbouring States to have BS-IV compliant vehicles only

- c. CPCB and DPCC were directed to arrange proper mechanism for checking emission of moving overloaded heavy vehicles.
- d. Counsel of Ministry of Heavy Industries submitted to place status of the viability of electric & hybrid transport system & also submit as to how does the Ministry proposes to increase its manufacturing and what incentive is proposed to be given.
- e. The State Government and all its instrumentalities shall endure their best to introduce battery and electric mass transportation system, incentives/ concessions shall be provided for buying the hybrid vehicles.

#### **B.4 Waste Burning/Burning in Landfill Sites/Leaf Litter/Waste to Energy**

120. That key aspects of the framework of regarding air pollution caused by burning of waste, leaf litter burning, burning in landfills, etc., including methods to address it, punitive measures to enforce it, institutional changes, key funding mechanisms and innovations currently in place can be summarised as follows:

##### **Methods to address pollution caused by waste burning**

121. **Implementation of waste management rules:** Open waste burning continues to be a significant source of air pollution due to the non-implementation of various waste management rules such as the Solid Waste Management Rules, 2016, Plastic Waste Management Rules, 2016, E-waste Management Rules, 2016, Hazardous and other Wastes (Management & Transboundary Movement) Rules, 2016, among other rules notified under the Environment (Protection) Act, 1986. The CPCB, the Ministry of Urban Development, and the MoEF&CC have issued multiple directions, advisories, guidelines, manuals, standard operating procedures, frameworks for implementing extended producer responsibility obligations, and other methods to ensure proper collection, segregation, recycling, treatment and disposal of wastes.

122. That this Hon'ble Tribunal under its various orders passed in Vardhaman Kaushik Case (O.A 21/2014) has passed several directions related to waste burning and management. These are as follows:

- a. Directed that no person shall burn any material in open for which authorities are to take steps.
- b. In case of refusal to pay compensation, notice to appear before the Tribunal to be served.

- c. Authorities were directed to create web portals, where people can report burning incidents.
- d. Directed to create a special force to enforce this direction.
- e. Directed to take steps to reduce PM<sub>2.5</sub> caused by garbage burning through anti-pollution devices.
- f. All authorities of NCR Delhi are to ensure that no burning of any material earmarked at landfill sites is done.
- g. The Tribunal stated that any person shall have the right to make to SHO and other authorities of the area where the incident is found.
- h. Authorities were directed to notify name, tele. nos., web addresses etc., where the complaints could be filed.
- i. A DPCC Facebook page and WhatsApp no. was informed about authorities were directed to notify on their websites the address and Mob. no. to which such complaints can be made.
- j. Immediate action to be taken after receipt of complaint.
- k. Land fill sites to be identified, which was also directed by SC in Almitra H. Patel V UoI, but no adequate no. of sites has been earmarked.
- l. Police and Officers of Corps. were directed not to permit burning of Plastic and allied products, which should be seized, held illegally by a person. The same is to be disposed of by an Authorized Dealer after directions by this Tribunal.
- m. Authorities of NCT, UP and Haryana were directed to take steps to educate the public, of the ill effects of burning of materials, necessity of steps to be taken and punitive actions for violation.

### **Budget/Funds**

123. The Swachh Bharat Mission is targeted at strengthening the waste management system in India. This plays a key role in providing funding to Urban Local Bodies for ensuring proper waste management. It encourages waste management projects to be undertaken in a public-private partnership mode alongside a payment of viability-gap-funding by the Central government.

### **Punitive Measures**

124. **Fines and Environmental Compensation:** Any person liable for garbage burning would pay compensation from Rs. 20,000 to Rs. 1 lakh per incident, in terms of Section 15 of the National Green Tribunal Act, 2010. Later, it has also been directed that a penalty of Rs 5000/- would be imposed for each instance of

waste burning and Rs. 25,000/- for bulk waste burning. It is also noted that such payment will not absolve the offender from other liability under law. In case of refusal to pay comp., notice to appear before the Tribunal to be served. (orders of this Hon'ble Tribunal dated 04.12.2014, 28.04.2015 and 18.12.2017 in O.A. No. 21/2014).

125. A compensation scale ranging from Rs 1 lakh to Rs 10 lakh per month was also laid down for the continued failure of Urban Local Bodies to comply with statutory timelines for implementation in the Solid Waste Management Rules, 2016 (order of this Hon'ble Tribunal dated 10.01.2020 in Compliance of Municipal Solid Waste Management Rules, 2016, O.A. No. 606/2018).

126. **Responsibility of Authorities:** The senior most in-charge of the State Government or Urban Local Body would be personally liable for the violation of the Solid Waste Management Rules and orders of the Hon'ble Tribunal. This would be in addition to punitive action under Section 15 of the Environment (Protection) Act, 1986. (Judgement dated 22.12.2016 in O.A. No. 199/2014 Almitra H. Patel and Ors. v. Union of India).

127. With respect to waste burning near railway stations, penalties must be imposed on all passengers who litter. Furthermore, at least three persons must be identified to be held accountable at every railway station, to ensure proper management of waste. (Order of this Hon'ble Tribunal dated 01.10.2018 in Saloni Singh & Anr. v. Union of India and Ors., O.A. No. 141/2014)

128. **NCT of Delhi:** The Lt. Governor of Delhi is responsible for issuing directions to Municipal Corporations in Delhi under Section 487 of the Delhi Municipal Corporation Act, 1957 to ensure proper solid waste management in the city. (Order dated 12.07.2018 of the Hon'ble Supreme Court in In Re: Outrage as Parents End Life After Child's Dengue Death, SMW(C) No. 1/2015). Furthermore, the Zonal Deputy Commissioner would also be responsible for preventing open waste burning in the NCT of Delhi. (Order dated 04.11.2019 in M.C. Mehta v. Union of India and Ors., W.P.(C) No. 13029/1985).

### **Institutional Framework**

129. Committees constituted under Rule 5 of the Solid Waste Management Rules, 2016 must meet at least once in three months as opposed to once a year. (Judgement dated 22.12.2016 of this Hon'ble Tribunal in O.A. No. 199/2014).

130. District collectors must meet monthly as opposed to quarterly, as provided under Rule 12 of the Solid Waste Management Rules, 2016 to report compliance

with the waste management rules (Order of this Hon'ble Tribunal dated 16.01.2019 in O.A. No. 606/2018).

131. Constitution of an Apex Monitoring Committee and State Level Monitoring Committee involving former High Court Judges and senior bureaucrats to work in tandem with the Committee constituted under the Solid Waste Management Rule, 2016 to ensure its implementation. The Apex Monitoring Committee is to report to the Hon'ble Tribunal quarterly after meeting with the State Level Committees at least once a month. (Orders dated 20.08.2018 and 16.01.2019 in O.A. No. 606/2018)

132. Each State/UT should constitute a four-member Special Task Force in every district to raise awareness about the Solid Waste Management Rules, 2016. (Order dated 16.01.2019 in O.A. No. 606/2018).

### **Innovation**

133. **Waste-to-Compost:** To prevent burning of leaves and other horticulture residue, Corporations, Authorities and State Governments are directed to ensure area-wise composting pits. These must be provided near a place with a large number of trees, and the compost made must be used for horticulture to avoid over-burdening such pits (Order of this Hon'ble Tribunal dated 28.04.2015 in O.A. No. 21/2014).

134. **Waste-to-Energy Plants:** Vide judgment dated 22.12.2016 in O.A. No. 199/2014, this Hon'ble Tribunal mandated proper segregation of waste prior to it being sent to landfills or its processing in any waste-to-energy plant. It also directed that for such plants requiring direct incineration for power generation, absolute segregation of waste must be a part of the terms and conditions of the contract awarding work to the operator of the facility.

135. The Hon'ble Tribunal has further directed that wherever a tipping fee is payable to the operator of any waste-to-energy facility, it must be related to the efficient and regular functioning of the plant, rather than merely the quantum of waste supplied to it, thus encouraging proper segregation of waste.

136. **Market for Refuse-derived Fuel:** This Hon'ble Tribunal further directed that the power generation and cement plants located within a 100 km radius of a Waste-to-Energy segregation facility must be directed to mandatorily use Refuse-derived Fuel (RDF) as fuel in their respective plants, thus it was mandatory for State Governments and local authorities to create a market for consumption of RDF. (Judgment dated 22.12.2016 in O.A. No. 199/2014).

137. **Buffer zone around landfills:** This Hon'ble Tribunal further directed that there must be a buffer zone and green belt around each landfill site to abate pollution. Furthermore, non-biodegradable and inert waste that is brought to landfill sites must be segregated and used for construction of roads and embankments in all road projects across the country. (Judgment dated 22.12.2016 in O.A. No. 199/2014).

#### **B.4.A Stubble Burning**

138. **Prohibition on Stubble Burning:** On 16.09.2013, the State of Haryana issued a notification burning leftover straw in the entire state of Haryana. This was followed by the State of Rajasthan which prohibited stubble burning vide notification dated 27.08.2015. On 04.11.2015, this Hon'ble Tribunal explicitly prohibited agricultural residue burning in any part of the NCT of Delhi, State of Rajasthan, Punjab, Uttar Pradesh and Haryana thereby extending the ban to all the major stubble burning states in the case of *Vardhaman Kaushik vs Union of India & Ors. OA No. 21/2014*. This ban on stubble burning is being regularly monitored by both this Hon'ble Tribunal as well as the Hon'ble Supreme Court in *MC Mehta vs Union of India & Ors (WP (C) 13029/1985)*.

139. **National policy for Management of Crop Residue:** In 2014, the Ministry of Agriculture published National Policy for Management of Crop Residues which the objective to control burning of crop residue. The Policy *inter alia* contained several interventions viz. technological interventions, diversified uses of crop residue, capacity building and awareness generation, financial resource mobilization for management of crop residue and monitoring mechanism to curb stubble burning.

140. **Framework devised by CAQM to tackle Stubble Burning:** the CAQM has developed a Framework for control of stubble burning in National Capital Region and Adjoining Areas. The framework lays down an action plan for eliminating stubble burning, with a specific emphasis on In-situ and Ex-situ crop residue management, effective monitoring/ enforcement mechanism, schemes to reduce generation of paddy straw and the concerned State Governments have been directed to prepare and implement state specific action plans based on the contours of the said framework.

141. **Monitoring Mechanism:** In order to ensure uniformity and standardization of data regarding monitoring of farm fire events, a "Common Protocol for Estimation of Crop Residue Fire Counts Using Satellite Data" has been prepared

by ISRO in consultation with other stakeholders including National Remote Sensing Center. CAQM has issued individual directions dated 16.08.2021 to the concerned state regarding adoption of the protocol. Supreme Court has also taken note of several novel measures suggested to improve monitoring of farm fires such as utilizing technology similar to forest fires management system technologically handheld by Forest Research Institute/ Forest Survey of India (Order dated 10.11.2023 in MC Mehta case) and placing reliance on stationary satellite instead of polar orbiting satellites (Order dated 18.11.2024).

142. **Constitution of Various Committees:** Under Order dated 10.12.2015 passed by this Hon'ble Tribunal in the Vardhaman Kaushik Case (OA 21/2014), the District Magistrates of NCR States and State of Punjab were directed to constitute a team for regular check on crop burning and reports to respective boards which would conduct studies and report to the Tribunal. Further, under Order dated 10.11.2016, Centralized Monitoring Committee (CMC) was constituted and directed to supervise implementation of orders for residue burning. State Level Monitoring Committees (SMC) were also directed to be constituted to inform the farmers of the incentives available in consonance of the orders for not burning crop residue. A Task Force was directed to be constituted to ensure that there is no burning. **Happy Seeders** to be provided for removal and utilization of agricultural residue to concerned plants. Authorities were directed to issue orders to such companies to discharge their **corporate social responsibility** and collect such residues from farmers and provide money for it. Each state to notify one agricultural next harvesting season. Each state to submit inspection report whether crop district to be a model district for implementation of the directions for prohibition of residue burning. Preventive steps to be taken well in advance for burning practice has stopped or not in that area, and reasons thereof. The same shall be implemented in the rest of the states.

143. That directions have been repeated under judgment dated 18.12.2017 wherein these has been categorized under different pollution levels. These are as follows:

– **Category I measures:** Authorities to ensure that there is no crop residue burning anywhere. Due incentives and even machines like happy seeder, etc. should be provided to the farmers wherever necessary and recourse to punitive provisions should be taken. The State Government, its instrumentalities and the monitoring Committees shall take effective steps through publicity (print or electronic media) to inform the farmers at large the adverse impacts of burning of

crop residue upon the environment, public health and the soil on the one hand. While on the other, utilising crop residue for providing them some income for productive and beneficial purposes like fuel in plants, bio-mass or thermal, manufacturing of boards, compact wood and such other useful items.

– **Category III measures:** There shall be complete prohibition on burning of crop residue and all the departments concerned would take recourse to the punitive provisions in terms of the judgement of this Tribunal in the case of Vikrant Tongad vs. Environment Pollution (Prevention and Control) Authority & Ors. dated 10th December, 2015. Officers who are found to be avoiding their statutory duties would be liable in accordance with law.

– **Category IV measures:** There will be complete and absolute prohibition on burning of all agricultural residues. Penal actions shall be taken and environmental compensation imposed in accordance with the orders on the defaulters/offenders.

144. **Promoting Ex-Situ Utilization of Paddy:** CAQM has issued directions dated 17.09.2021 and 17.03.2023 to co-fire biomass pellets/ briquettes (with focus on paddy straw) along with coal in various Power Plants in NCR and Adjoining areas. CPCB has also framed Guidelines for grant of one-time financial support under Environment Protection Charge Funds for facilitating setting up of paddy straw pelletisation plants.

145. **Diversified use of crop residue:** Hon'ble Supreme Court, in its Order dated 07.11.2023 in the MC Mehta case, has emphasized that need for reconsidering the cultivation of the particular kind of paddy which is grown in Punjab.

146. **Punitive measures:** Section 14 of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 provides that any non-compliance with any Rule/Order/ Direction of the said Act is punishable with imprisonment (up to five years) and/ or fine (up to one crore rupees). Pertinently, Hon'ble Supreme Court, in Order dated 16.10.2024, has directed State of Haryana and Punjab to initiate action under Section 14 against officials responsible for non-compliance with CAQM Directions dated 10.06.2021. Further, CAQM has also made Commission for Air Quality Management in National Capital Region and Adjoining Areas (Imposition, Collection and Utilization of Environmental Compensation for Stubble Burning) Rules, 2023 for imposing Environment Compensation against farmers liable for stubble burning.

**147. Institutional Mechanism:** That as per the framework prepared by CAQM, responsibility for monitoring of various orders and directions passed with respect to stubble burning is done at various levels viz. State Level, District Level Officers, Sub Division/ Tehsil Officer, Cluster Officer and Village Nodal Officer. In particular, the police authorities have been directed to enforce and implement various directions issued in respect of the ban on stubble burning. As noted above, various committees viz. CMC, SMC and Task Force have been constituted by this Hon'ble Tribunal.

#### **B.4.B Fly Ash**

148. The latest Fly Ash Notification of 2021 is applicable with respect to disposal and management of fly ash generated by the Thermal Power Plants. Apart from the Notification, there are numerous Guidelines issued by the CPCB which clarify the auditing of Annual Reports for fly ash management, a dedicated portal for submissions of Quarterly and Annual Reports.

149. Manufacturing of Fly Ash bricks has been categorised as a white category industry as per the Schedule of the Latest Notification of 12.11.2024 exempting requirement of CTO to certain industries.

150. This Hon'ble Tribunal has also issued Directions for development of fly ash mounts through structural improvement of dykes (Ashwani Kumar Dubey vs. Union of India & Ors. OA No. 164/2018, Order dated 05.11.2019), penalty for storage of fly ash in CRZ area (Nitin Devraj v. Union of India and Others (OA No. 104/2019); Order dated 13.04.2023) and expediting the allotment of abandoned coal mines for filling of fly ash generated from Thermal Power Plants (Shivpal Bhagat & Ors. v. Union of India & Ors. OA 104/2018 (PB) (M.A. No. 279/2018, M.A. No. 858/2018, I.A. No. 382/2020) With E.A. No. 05/2019, Order dated 20.11.2020)

151. Infact, the Directions of the Hon'ble NGT also led to the constitution of the 'Fly Ash Management and Utilization Mission' to coordinate and monitor issues relating to handling and disposal of fly ash.

152. That this Hon'ble Tribunal in the case of Vardhaman Kaushik (OA 21/2014) vide orders dated 28.04.2015 and 18.12.2017 directed:

a. Authorities to ensure that Brick Kilns in NCR have obtained consent and are conforming to the prescribed norms and if not, then report to be submitted and show cause notice be issued against them. While conducting inspection, the extent

of fly ash being used to manufacture bricks was also to be reported, if none, causes thereof.

b. In case of Category IV pollution load, there shall be complete prohibition and ban on lifting, transportation and generation of fly ash.

## **B.5 Miscellaneous**

### **B.5.A Firecrackers**

153. That over the years, several legislative interventions and measures have been adopted to deal with the menace of firecrackers and the same are discussed below: -

154. **Regulating Noise Pollution emitted from Firecrackers:** - That noise standards have been laid down in the Environment (Protection) Rules, 1986 whereby manufacture or use of firecrackers generating noise level exceeding 125 db (AI) or 145 dB(C)<sub>pk</sub> at 4 meters distance from point of burning was prohibited. In addition, the Noise Pollution (Regulation and Control) Rules, 2000 also contain several provisions to regulate noise pollution from firecrackers. For instance, Rule 5A prohibits burning of firecrackers in silence zones or during night times. Pertinently, the Hon'ble Supreme Court has also passed several notable directions in this regard which *inter alia* include – imposing a complete ban on bursting sound-emitting crackers between 10 PM and 6AM (***In Re: Noise Pollution (V), (2005) 5 SCC 762***); prohibition on bursting crackers in silence zones (*Order dated 12.09.2017 in Arjun Gopal & Ors. vs Union of India & Ors. (hereinafter Arjun Gopal case)*).

155. **Suspension of Licenses for Sale of Fireworks in Delhi NCR:** In 2016, the Hon'ble Supreme Court vide Order dated 11.11.2016 in Arjun Gopal case, directed suspension of licenses for the sale of fireworks, thereby implicitly prohibiting the bursting of fireworks (Order dated 11.11.2016 in Arjun Gopal case). The Hon'ble Court observed that snapping the supply chain of fireworks was a more practical way of dealing with menace of firecrackers than banning the firecrackers which involved several monitoring challenges. Although the complete suspension was later revoked vide Order dated 12.09.2017, the Supreme Court has directed for a gradual reduction in temporary licenses. More importantly, since 06.11.2020, there is a complete ban on bursting and sale of all kinds of firecrackers in NCT Delhi, including through E-market platforms.

156. **Ban on harmful chemicals and certain firecrackers:** In addition to the above measures, the Hon'ble Supreme Court, vide Orders dated 31.07.2017,

12.09.2017 and 23.10.2018 in Arjun Gopal Case prohibited the manufacturers from using certain chemicals from being used in manufacturing of chemicals including – antimony, lithium, mercury, arsenic, lead, strontium and barium salts. Further, the sale of joined firecrackers (laris) has also been banned. The Hon’ble Supreme Court, in Order dated 31.10.2018 in Arjun Gopal case, has prohibited the sale of banned firecrackers throughout the country.

157. **Permitting use of “Green Crackers”:** In an effort to address the menace of air pollution resulting from firecrackers, this Hon’ble Tribunal, vide Order dated 09.11.2020 and 01.12.2020 in Tribunal on its Own Motion v. Ministry of Environment, Forest and Climate Change & Ors. OA No. 249/2020 has extended the total ban on sale and use of all kinds of firecrackers to all cities/ towns where ambient air quality falls under “poor” and above category. For cities where air quality is “moderate” or below, the use of firecrackers, other than Green Firecrackers, have been prohibited.

158. **Punitive measures:** Certain punitive measures have also been adopted to regulate the use of firecrackers. For instance, CPCB has come up with a compensation scale with respect to compensation to be recovered for violation of noise norms which was accepted by this Hon’ble Tribunal vide *Order dated 11.08.2020 in Hardeep Singh & Ors. vs SDMC & Ors. OA No. 519/2016*. Recently, the Hon’ble Supreme Court, vide Order dated 11.11.2024, has directed the Commissioner of Police to set up a special cell for implementation of ban on firecrackers in NCR and has held Station House Officers of all local police stations responsible for enforcing the ban.

159. **Institutional Mechanism:** The Petroleum and Explosive Safety Organization (PESO) is responsible for *inter alia* implementation of the noise standards specified in the Environment (Protection) Rules, 1986 and to ensure that no firecrackers are manufactured using banned chemicals. Further, police machinery of the respective states have been tasked with the responsibility of ensuring that there is no sale of banned crackers and that no bursting of crackers beyond the specified time. District Magistrates are also directed to recover compensation in terms of the compensation scale laid down by CPCB.

The CAQM Order dated 18.10.2021 directed strict enforcement orders of Hon’ble Supreme Court and of this Hon’ble Tribunal regarding firecrackers as an action to be taken for “Poor” to “Moderate” Category under GRAP.

### **B.5.B DG Sets**

160. That this Hon'ble Tribunal, in its Order dated 10.11.2016 in Vardhman Kaushik vs Union of India & Ors., directed the authorities in NCR to ensure that DG sets, if in operation anywhere, should be adhering to the prescribed norms. And in case of default, they should be shut down and confiscated.

161. That subsequently, this Hon'ble Tribunal in Order dated 18.12.2017 specified five categories based on pollution level in ambient air quality. In Category II (Severe), this Hon'ble Tribunal directed seizure of any DG Sets found emitting in excess of any prescribed standards and no permission would be given for its usage whatsoever. However, for Category (IV), it was directed that there would be complete prohibition on the use of DG Sets.

162. CAQM Clarification regarding use of DG sets during GRAP dated 04.10.2022 states that under Stage I the use of DG sets is not permitted for regular supply substituting GRID power, however, it is permitted in exigencies during failure of GRID power. Further, under Stage II a complete ban on use of DG Set is applicable except exempted activities as mentioned in CAQM Direction 54 (states essential services like hospitals, rails, metros, etc.)

163. CAQM Direction No. 54 dated 08.02.2022 states that Ban on use of DG sets under GRAP not applicable to – Escalators, Medical Service, railways and metro services, air ports, ISBTs, Sewage Treatment Plant, Water pumping Stations, Projects related to national security, defence & of national importance, Entities involved in telecommunications and IT/ data services

164. CAQM Direction No. 68 dated 14.09.2022 permitted Use of DG sets of capacity more than 800 KW permitted during GRAP for industrial / commercial operations

165. CAQM Direction No. 71 dated 09.02.2023 permitted operation of DG sets of capacity up to 800 kw shall be permitted for Industrial and commercial sector in entire NCR, only subject to their conversion to dual fuel system (70% gas+30% diesel) in areas where gas infrastructure and supply is available.

### **B.5.C Health Impacts**

166. In 2010, the Indian Institute of Tropical Meteorology, Pune (IITM, Pune) released a report titled *Scientific Evaluation of Air Quality Standards and Defining Air Quality Index for India*. This report introduced AQI as a new public information tool to protect public health from the impacts of air pollution in India.

167. CPCB in its report titled *National Air Quality Index 2015* noted that previous attempts had not taken into account the impact of air quality on health,

or took into account limited pollutants, or were based on data collected from only two cities.

168. The CPCB Direction on Revised CEPI dated 26.04.2016 states that reduced weightage is given to health-related statistics (component C) and gave higher weightage to the quality of the ambient environment (component B) in calculating Environmental Pollution Index (EPI).

169. In *Arjun Gopal v. Union of India*, (2017) 1 SCC 412, Hon'ble Supreme Court directed Delhi Government to interact with established medical institutions for issuing advisories cautioning people about health hazards of bursting firecrackers.

170. The Ministry of Health and Family Welfare's Health Advisory on Air Pollution under National Programme on Climate Change and Human Health (NPCCHH) issued in October, 2023 aims to enable State health departments to develop appropriate mechanisms to address health issues arising due to air pollution. Further, it also suggests ways through which health departments may obtain air quality information from CPCB and SPCBs for public awareness of potential health issues and preventive and protective health measures.

#### **B.5.D Criminal Liabilities for Air Pollution**

171. That air pollution in India is primarily regulated under environmental laws such as the Air Act and EP Act, among others that are civil laws. However, air pollution can also attract criminal liabilities under the *Bhartiya Nagarik Suraksha Sanhita, 2023* (BNSS). The provisions covered under *Bhartiya Nyaya Sanhita*<sup>1</sup> and BNSS addresses the broader impact of air pollution on public health and safety, particularly in cases where pollution constitutes a public nuisance or endangers human life. However, it may be noted that under Section 163 BNSS the Magistrate has the power to issue orders in urgent cases of nuisance or apprehended danger. The said section is preventive and facilitates quick action in cases of emergencies. In cases of acute air pollution events, such as industrial accidents or large-scale burning of waste, where immediate action is necessary to prevent harm. The Magistrate can prohibit certain activities or enforce actions to control pollution on an urgent basis. However, the applicability of this section is more suited as a short-term provision. Presently, this provision is applied only in the cases of stubble burning but can be used for open burning of waste, leaves, and biomass, which releases toxic gases and particulate matter. It may be noted

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<sup>1</sup> *Bhartiya Nyaya Sanhita, 2023* Sections 125, 270, 271, 272, 280, and 292.

that section 133 CrPC is another preventive provision where the Magistrate and local authorities have the power to pass a conditional order for removal of nuisance, in case air pollution is causing harm to the public a Magistrate may order the polluter to cease the polluting activity and remove the nuisance. If the polluter fails to comply, the authorities can take direct action, including shutting down the polluting activity or imposing penalties. It is pertinent to note that application of Sections 152 and 163 of the BNSS depends on the discretion of local authorities and magistrates who might lack the requisite expertise to deal with air pollution. Therefore, it is respectfully submitted that there is a need to strengthen the knowledge and capacity of the Magistrate and local authorities to deal with environmental issues in general and air pollution in particular.

**C. Best Strategies/Way Forward**

A. Pre-emptive Action for Implementation of GRAP

B. **Disintegrate CPCB and SPCBs into sector specific Boards:** For example, there should be separate boards for water and separate boards for Air. This would also help in unburdening CPCB and SPCBs who presently are required to give effect to several environment law Acts, Rules, Notifications and Norms.

C. **Amendment to Air Act, 1981 in General:** That Air Act 1981 should be revised to align with recent trends, developments and needs of the sector. The last major amendment to the Air Act, 1981 was made in 1987 thereafter it has not been able to align itself with recent developments in air quality management such as adoption of air shed approach, moving from command and control approach to bottoms up approach in adopting market based mechanisms such as emission trading, Green Bonds, among others. Presently, the Air Act 1981 does not provide for allocating any fund for the purpose of performing functions under the Air Act. The provision for allocation to the proposed Air pollution specific boards shall be introduced.

D. **Devise an Alternative to funds for discontinuance of Water Cess Act 1977** which was acting as a source for raising budget and funds for SPCBs has been removed without ensuring any gap filling.

E. **Amendment to Air Act, 1981 to Delegate Powers to Local Authorities:** Presently Air Act, 1981 empowers the Board to delegate Chairman or the member-secretary or any other officer of the Board to carry out the its powers and functions under the said Act. The Air Act, 1981 may be amended to extend the

said power of delegation to local authorities with respect to air pollution as nuisance or otherwise for a more on ground implementation of Boards mandate.

**F. Streamlined Co-ordination between Multiple Committees:** The coordination between the various committees constituted at National, State and Regional Level for implementation of air pollution remedial measures may strengthen the air quality management at all levels.

**G. Dedicated Fund for Air Pollution Control:** As a preventive measure, SPCB should have a dedicated budget allocated for air prevention and control of pollution for cities that do not fall under the NCAP.

**H. Implementation of Judicial Orders:** The earlier orders/directions passed by this Hon'ble Tribunal in various cases, including the directions passed in the case Vardhaman Kaushik Vs. Union of India & Ors. (O.A. 21/2014)

**I. Airshed a Legal Requirement:** Airshed approach may be accorded legal recognition and force for effective and holistic implementation of the air pollution mitigation measures, if found successfully implemented, especially in the Indo Gangetic Region.

**J. Develop Voluntary Third-Party Air Audit Mechanism:** A voluntary air audit mechanism may be developed that may have a third-party independent verification along with random sampling of units which can be selected with automation and chance with least human interference by the respective Regulator such as the MoEF&CC, CPCB and SPCB/PCC.

**K. Impleadment of Ministry of Health and Family Welfare:** The Hon'ble Tribunal may direct the Ministry of Health and Family Welfare (MoHFW) to be impleaded as a party in the matter as air pollution has a direct impact on health. Further, it may be noted that MoHFW is the executing ministry of the National Programme on Climate Change and Human Health, a programme closely related to abatement and mitigation of air pollution under which State health departments are required to work in coordination with CPCB and SPCBs for effective implementation of air health programmes.

**L. Taking Appropriate Action against the Concerned Officials for Non-Implementation of the Directions passed by CAQM regarding Stubble Burning:** CAQM, since its establishment, has passed various directions with a view to eliminate the practice of stubble burning, particularly direction dated 10.06.2021 which are yet to be properly implemented by the State Governments in letter and spirit. A case in point is Order dated 03.10.2024 of the Hon'ble Supreme Court in the MC Mehta vs Union of India & Ors. WP (C) 13029/1985

wherein the Court found that direction dated 10.06.2021 has not been properly implemented by the States of Haryana and Punjab till date. Therefore, there is a pressing need for the State Governments to take appropriate punitive action against the erring officials under Section 14 of the CAQM Act.

**M. Reconsidering the effects of Haryana Preservation of Sub Soil Water Act, 2009 and Punjab Preservation of Subsoil Water Act, 2009:** It is well established that the preservation of subsoil acts, enacted by the States of Haryana and Punjab in 2009 to preserve groundwater in the states, has had the unintended consequence of increase air pollution. Therefore, there is a need to introduce suitable amendments in the said Act/ or consider the possibility of repealing the same. The Hon'ble Supreme, in Order dated 07.11.2023, had also directed State of Punjab to have a relook at its Subsoil Act.

**N. Formulate a strategic plan to increase public awareness and encourage public engagement with air pollution abatement activities:** These include door-to-door implementation of strict waste segregation, keeping PUC certificates up to date, actively reporting polluting activities and following-up on complaints, choosing public transportation, cycling and walking for short distances, combining resources to provide electric heaters to security staff in winters, among others.

#### **O. Institutional Recommendations**

##### **1. State Pollution Control Boards:**

In light of the suggestions made by the Parliamentary Joint Committee Report on Air Bill, 1978 the State Pollution Control Boards may include

- (i) a representative from the field of trade labour, particularly the inclusion of workers' representatives as they are the primary victims of air pollution
- (ii) at least two members who shall have special knowledge or practical experience in matters relating to improvement of air quality and air pollution.

**2. Delegation of power to CPCB for defaulting SPCBs:** For states, particularly Delhi NCR where the Hon'ble Tribunal is of the view that the SPCB/PCC has faulted in complying with the directions of the CPCB which has led to AQI reaching Severe and Severe category leading to "grave emergency" adversely affecting the health of public at large, it may direct CPCB to perform the functions of the SPCB/PCC effectively as provided under section 18(2) of Air Act, 1981.

**3. Filling of Delhi Pollution Control Committee (DPCC) Posts:** The Hon'ble Tribunal in order dated 11.09.2024 passed in O.A. No. 693/2023

observed that DPCC has only 153 posts filled against the sanctioned 344, some of which had been vacant since the past 9 years. DPCC may be directed to fill the presently vacant positions in a time bound manner.

Further, it may be noted that the DPCC website only details the monitoring done by its Air Lab, Consent Management Cell and EIA Cell from 2014 to 2015.<sup>15</sup> Furthermore, there is no information available on the website regarding the number of personnel dedicated to the respective cell. The Hon'ble Tribunal may direct DPCC to provide information regarding human resource allocation in DPCC could be understood.

4. **Strengthening CAQM:** For effective abatement of air pollution in Delhi NCR strengthening CAQM institutionally is very important

(i) **Establishment of CAQM Offices:** Section 3(5) of the CAQM Act, 2021 provides for establishment of offices at other places but none have been established so far. The Hon'ble Tribunal may direct the constitution of CAQM offices in the Delhi NCR States for effective on ground monitoring and implementation.

(ii) **Ensuring Filling of CAQM Posts with Mandated Representation:** Hon'ble Tribunal may direct filling CAQM posts to its sanctioned capacity for effective working while ensuring appointment of scientists and stakeholder representation from agriculture, industry, transport or construction sectors.

5. **Strengthen Compliance Monitoring of Permissions/Clearances:** The clearances granted under various Notifications issued under EP Act are designed to regulate and mitigate activities that could impact air quality. These clearances ensure that industries, projects, and developmental activities comply with environmental standards and laws. Strengthening compliance monitoring of the said clearances would facilitate general air quality management across States.

Place: New Delhi

Date: 25.11.2024



Sanjay Upadhyay

[Senior Advocate]