

Business Standard

Ganga's plight is no different from that of the 'holy cow'

Pollution load in the river Ganga has increased by nearly four times from 2009 to 2016 in the stretch between Haridwar to Kanpur

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In 1985, the Supreme Court of India issued directions to various

River Ganga

authorities to clean up the river Ganga. The Supreme Court's intervention in M C Mehta versus the Union of India was seen as unprecedented at that time. The apex court became the epitome of judicial activism and innovation. The concept of '*continuing mandamus*', the 'Polluter Pay Principle' and 'liberal locus standi', led to judgements of the Supreme Court being quoted the world over. Environmental jurisprudence in India was born principally out of the various orders to clean the most polluted, yet, sacred river. The 'Ganga Pollution case' as it is known, is a test case to examine the efficacy of public interest litigation (PIL) as a panacea for environmental problems.

The Supreme Court itself acknowledged the ineffectiveness of its directions in order of October 29, 2014.

"We regret to say that the intervention and sustained effort made by us over the past 30 years notwithstanding no fruitful result has been achieved so far, except shutting down of some of the polluting units. This is largely because while orders have been passed by us, the implementation remains in the hands of statutory authorities including the CPCB and the State PCBs which have done practically nothing to effectuate those

orders or to take independent steps that would prevent pollution of the river. A total lack of monitoring by the Statutory bodies has contributed to the current state of affairs".

The above observation reflects the sorry state of implementation of orders and disdain for the orders of even the highest Constitutional court of the country. The court felt that given the necessity of close monitoring of the cleaning of the river, the National Green Tribunal is better placed to adjudicate on the issue and in October 2014, transferred the case to the NGT.

The National Green Tribunal on July 13, 2017, delivered a 543-page judgement on the river Ganga. The Tribunal, painstakingly, went into minute details and perused reports after report on a 'drain to drain' basis on the stretch of the river Ganga between Haridwar to Kanpur. The Tribunal's task was not easy: It had less to do with the actual cleaning and more to do with getting information from the agencies and balancing conflicting interests. The varied and conflicting stands of Central Pollution Control Board, the various State Pollution Control Boards as well as the Municipalities and Industry Association made the task of the Tribunal difficult.

One of the most startling facts that has come out in the judgement is that the pollution load in the river Ganga has increased by nearly four times from 2009 to 2016 in the stretch between Haridwar to Kanpur. This is the same stretch which has seen the maximum judicial orders as well as government expenditures for cleaning up of the river. The judgement refers to the challenges faced in the cleaning of the river Ganga. Firstly, there is open and indiscriminate dumping of both industrial and domestic sewage into the river with no treatment of the effluents. This is the most important reason for the pollution. Secondly, while Common Effluent Treatment Facilities/ Sewage Treatment facilities exist, they are not equipped to treat major pollutants such as faecal coliform and finally, where the technical facilities exist with the capacity to treat pollutants, they are not operated in order to reduce the costs. How this will change with the NGT's direction, only time will tell. We must not forget that we live in a culture of tolerance toward those who have a disdain for rule of law. Violation of the law is seen as a democratic right and the 'Right to Pollute' is seen as a component of the fundamental right of expression.

The Supreme Court, in order to deal with the Ganga Pollution case, used the legal tool of '*continuing mandamus*'. A mandamus is a direction (writ) issued by the Court and the government is obligated to implement it in letter and spirit. Given the complicated nature of the issues related to the cleaning of the river, the Court felt that rather than a single comprehensive direction, there is a need to issue directions on a continuing basis. '*continuing mandamus*' was, therefore, an innovation of the Supreme Court and is now followed by many judiciaries across the world. However, the fact that despite series of directions, the orders of the Supreme Court were not followed, raises serious questions about the efficacy of *continuing mandamus* as a tool for ensuring compliance. The NGT, in its latest judgement on the Ganga pollution, has taken some innovative and not so innovative steps. First, rather than an adversarial approach of litigation it has followed what it has termed as "Stakeholder Consultative Process of Adjudication' which involves judges, officers and scientific bodies sitting across the table and trying to resolve complicated issues in a more cordial atmosphere. The second is the Tribunal's recognition that there needs to be "Segmental Watershed Based Approach to rivers and that a river Basin Approach needs to be adopted. However, in place of a more decentralised model for treatment of effluents, the Tribunal has, in fact, approved an "End of the Pipeline of each drain as a solution."

Only time will tell how seriously the NGT's order will be followed. History does not inspire much confidence. The Supreme Court's orders for cleaning up the Ganga were flouted with impunity. After 30 years of effort, not a single officer was held guilty for wilful and deliberate violation of the orders of the highest Constitutional Court armed with powers of contempt. Sadly, river Ganga's plight is no different from the 'holy cow'. The sacred view towards the cow does not insulate it from the unimaginable cruelty the animal suffers throughout its life as both a dairy and draught animal. The river Ganga is viewed as a sewage drain even in areas where it is regarded as the most sacred for example in Varanasi, Haridwar, Allahabad and Rishikesh. As a result, ironically, the river regarded as sacred by a large number of people in the world, is also among the worlds' most polluted river. The latest judgement of the NGT is one more effort by the court to clean the river. Hopefully, the efforts of the court will not go down the drain.

