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ECONOMIC PERSPECTIVE IN LAW: ECONOMIC IMPLICATIONS OF JUDICIAL DECISIONS

- Hrishikesh Rajeshirke¹

- Manali Madhav Joshi²

-Akhilesh Kakade³

ABSTRACT

This research deals with the interplay between law and economics in India, while understanding the economic consequences of judicial decisions. It showcases that judicial decisions are not limited to the immediate litigants but has a farther reaching effect on socio-economic dynamics and different industries through its outcomes. With this evolution of law and economics in India traces from the pre-liberalisation period to the present times, and emphasizes on the growing importance of economic analysis in the legal decisions. This paper uses four major judicial outcomes in mining, hospitality, firecrackers and general industrial operations to demonstrate how judicial decisions can affect economic activities and social welfare. With economic perspective in law, it demands for a balanced approach from judiciary to consider both the legal principles and economic realities when dealing with disputes emanating from polycentric issues or where adjudication is arduous. By relying upon theory and data, this article argues for inclusion of economic perspectives into legal discussions. It discusses a period where courts have to arbitrate complex socio-economic without considering the economic challenges, also it discusses how recently with a landmark adjudication court interpreted the scope of economic perspective in law. The aim of this research is to showcase how interdisciplinary approaches can improve jurisprudence in India, and further contribute to the development of Indian society.

Keywords- Judicial outcomes, Economic perspective, Polycentric disputes

¹ Advocate, High Court of Bombay

² Advocate, High Court of Bombay

³ Advocate, High Court of Bombay

INTRODUCTION

The interdisciplinary fields of law and economics is as prominent as any other aspect of legal study in today's era, "*Many lawyers think that economics is the study of inflation, unemployment, business cycles, and other mysterious macroeconomic phenomena remote from day-to-day concerns of the legal system*"⁴. The judicial decisions impacts which extends beyond the scope of immediate parties involved in the matter, with such adjudication it also exceeds to the economic landscape of the country by formulating the important precedents. Furthermore, it pushes the legislative bodies to make certain improvements which otherwise could have not been attainable. Economics as a social science traces its origins from the point in history of Jeremy Bentham, i.e. the 18th Century, wherein he methodically explained each economic concept by researching how players in the society would have behaved in regard to the legal doctrines, and how to evaluate aftermath effect with the theory of utilitarianism. Jeremy Bentham's research and writings contains noteworthy analysis of both the criminal law and law enforcement, including having research extending to property law, and considerable treatment of legal process. His efforts were undiscovered until the 1960s and early 1970s, when importance in economic analysis of law was encouraged by four crucial contributions: "*Coase's (1960) article on externalities and legal liability, Becker's (1968) article on crime and law enforcement, Calabresi's articles and culminating book (1970) on accident law, and R.A. Posner's (1972) general textbook on economic analysis of law and his establishment of the Journal of Legal Studies*"⁵, thus, this artefact shows that the research with the analysis of economics in judiciary was active since the 1970s, and is evolving further.

Today the India's economy is forecasted by many major consulting and business corporations across the globe. India post the liberalisation has grew immensely by few folds, this juggernaut growth has benefited the people of India. The Ernst and Young, the business consulting company hereby quotes by saying, "*In Market exchange rates terms the Indian economy would cross the thresholds of US\$5, 10, 20 and 30 trillion in FY27, FY34, FY43 and FY48, respectively. We expect that by FY48, in PPP terms, India's GDP may reach the US\$40 trillion mark. Consistent with this scenario (S2), the share of India in world GDP is shown in below Chart 2. By 2047 (FY48 for India), India's share may increase to*

⁴ Richard A. Posner, *Economic Analysis of Law* 3 (Little Brown And Company Law Book Division, 1986).

⁵ Louis Kaplow & Steven Shavell, *Economic Analysis of Law*, NBER Working Paper No. 6960 (1999), <https://ssrn.com/abstract=226405>

19.6%”⁶. With this estimation the judicial outcomes place even larger importance in regard to regulating the economics. Indian Judiciary has resorted to economic analysis of law on ad-hoc basis⁷. In the forthcoming three decades, with India's GDP is projected to reach a juggernaut figure of US\$30 trillion, judicial outcomes will emerge as doctrines for both the economics and the legal domain. Therefore, it is high time to think about the interdisciplinary of Law and Economics as a deep-rooted trend in sustainable development which not only follows legislative norms and regulations, but also takes into account the economic implications of a judicial ruling.

EVOLUTION OF LAW AND ECONOMICS

The law-making is characterized by three arms of government, the executive, legislative and judiciary. Historically, the world was majorly perceived to have a bipolar ideological landscape up until mid-20th century. On one hand, there were capitalist countries which followed Adam Smith (Scottish economist and philosopher) ideas while on the other side were communist countries that embraced Karl Marx (German philosopher and economist) doctrines. However, gradually these political theories have become less rigid and gave way to emerge what is now known today as a neo-classical theory. The neo-classic theory is an inclusive concept from both sides of the political divide. Besides it embraces Adam Smith’s capitalism that is free-market-based as well as Joseph Stiglitz (American economist) like redistributive and regulatory ideals. Neo-classical theory basically represents a blending of positions beyond absolute opposites, therefore surpassing earlier ideologies’ sharp differences. It acknowledges the intricacies of modern economic systems and aims for a compromise that achieves efficiency without losing out on equity concerns.

Similarly in reference to the above historical reference, the judicial outcome is evolving with the purview of neo classical theory. Let’s delve now into how India, that is Bharat, grew overtime in recognizing the importance of interdisciplinary subjects of law and economics. Indian is independent since last 79 Years, this amount of time can be considered to be nearly 8 decades. India’s economic success has to be distinguished post and pre liberalization, many economists

⁶ Srivastava, D. K., *Indian Economy by 2050: In Pursuit to Achieve the \$30 Trillion Mark*, EY India: Economy Watch (Aug. 25, 2022), https://www.ey.com/en_in/insights/tax/economy-watch/indian-economy-by-twenty-fifty-in-pursuit-to-achieve-the-thirty-trillion-dollar-mark.

⁷ *Shivshakti Sugars v. Renuka Sugars*, (2017) 7 SCC 729.

argue that India's early 1990s liberalization policy is what led to the country's improved performance. After more than 40 years of following an inward-looking development strategy in which the state had a significant role, India made the decision to shift its economic policies from one that was restrictive and planned to one that was more open and liberalized. These changes were required since India clearly was unable to produce sufficient rates of income and per capita growth, India then, lagged behind many other nations due to its poor performance. India's economic history underwent a significant sea change in 1990–1991 when, in the wake of a dire crisis, the country implemented a structural adjustment program⁸. Therefore India's growth has to be looked upon with the lens eye view post the post liberalisation, and hence economic impact of legal judgements are also to be considered with the recent citations as economic impact of judgements were more prominent post the liberalization.

The question of whether judgments delivered prior to liberalization overlooked the economic impact by only adhering to legislative intent? The answer is neither yes or no, but to have a reference point, that since when the judiciary started considering the economic impact while interpreting the particular legislation is with some landmark judgements covering environmental law as the starting point.

CONSIDERATION OF ECONOMIC IMPACT IN INDIAN JUDGEMENTS

The idea of considering the economic ramifications of legal judgments began to take root with the judgement passed by Justice Arjan Kumar Sikri, in *Shivshakti Sugars v. Renuka Sugars*, 2017⁹, mentioning that, it is the bounded duty of court to consider the economic impact.

“43. ...It has been recognised for quite some time now that law is an inter disciplinary subject where interface between law and other sciences (social sciences as well as natural/physical sciences) come into play and the impact of other disciplines of law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between law and economics is much more relevant in today's time when the country has ushered into the era of economic liberalization, which is also termed as 'globalisation' of economy. India is on the

⁸ Kiran Devi, *Economic Growth in India: Pre and Post Liberalization Era*, 2 Sch. J. Econ. Bus. & Mgmt. 8A, 811-815 (2015), https://www.saspublishers.com/media/articles/SJEBM_28A811-815.pdf

⁹ Supra Note 4.

road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as 'Law and Economics'¹⁰.

In the forthcoming sections, we'll delve into several important judgments that have had a profound impact on economic landscapes. We'll explore whether economic perspectives were taken into account before these judgments were delivered. Moreover, we'll examine whether, if economics have had been considered, these judgments could have resulted in different judicial outcomes. With this scope of understanding, this research aims to highlight occurrences where the interplay of economics and law could have yielded a polycentric judicial outcome. With the aforementioned judgment, we will further delve into how the courts could have taken a second view before adjudicating the matter, and not solely adjudicating it on the basis of legislation.

ACCESING GOA MINING CASE AND ITS ECONOMIC IMPACT

The case adjudicated by the Hon'ble Apex Court, in *Goa Foundation v. Sesa Sterlite Limited & Ors.*, 2018¹¹, wherein the respective case had a backdrop which is important to understand to analyse the proceeding case, with a judgement in, *Goa Foundation v. Union of India & Ors.*, 2014¹², herein a petition was raised in the Hon'ble Apex Court by the Goa Foundation. To this, the response was to widespread reports of illegal mining activities involving iron and manganese ore across various states, the Justice Shah Commission was appointed by the Central Government under Section 3 of the Commissions of Inquiry Act, 1952¹³. This commission was involved with investigation of the unlawful mining, trading, and transportation of these ores, assessing associated losses, and identifying the individuals and entities involved. In regard to the appointment of the commission, the commission was directed to appraise the efficiency level of prevailing regulatory frameworks, dig into official records manipulation in order to facilitate illegal mining and also scrutinize the

¹⁰ Supra Note 4 at para 43.

¹¹ *The Goa Foundation v. M/s. Sesa Sterlite Ltd. & Ors.*, (2018) 4 SCC 218 (India).

¹² *Goa Foundation v. Union of India & Ors.*, (2014) 6 SCC 590 (India).

¹³ *Ibid*, para 5.

wider impacts on forests, environment and rights of tribal and forest dwelling communities as well as financial implications for both Central, and State Governments.

In extension to the Report, the lessees pertaining to mining within the State of Goa, and the Goa Mining Association, subsequently filed writ petitions in the Hon'ble High Court of Bombay, Goa Bench, contending that the Report of the Shah Commission is illegal and shall be quashed, along with the order dated 10.9.2012 by the Government of Goa, which led in suspending the mining¹⁴. In regard to the Report, the following directions were passed by the Hon'ble Supreme Court,

*"87.1. ...the deemed mining leases of the lessees in Goa expired on 22.11.1987 and the maximum of 20 years renewal period of the deemed mining leases in Goa expired on 22.11.2007 and consequently mining by the lessees after 22.11.2007 was illegal and hence the impugned order dated 10.09.2012 of Government of Goa and the impugned order dated 14.09.2012 of the MoEF, Government of India are not liable to be quashed."*¹⁵

After the restrain of the mining operations in the aforementioned matter, the mining activities resumed in 2016 after the Government of Goa granted second renewals to 88 (eighty-eight) mining leases, in accordance with the order in the matter pertaining to *Lithoferro v. State of Goa, 2015*¹⁶. In continuation, these renewals granted by the Hon'ble High Court of Bombay in the case *Lithoferro*¹⁷, were set aside by the Hon'ble Supreme Court of India in the *Goa Foundation case*¹⁸, on February 7th, 2018.

*"154.6.... The mining lease holders who have been granted the second S.L.P. (C) No. 32138 of 2015 etc. Page 100 of 101 renewal in violation of the decision and directions of this Court in Goa Foundation are given time to manage their affairs and may continue their mining operations till 15th March, 2018. However, they are directed to stop all mining operations with effect from 16th March, 2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted."*¹⁹

¹⁴ *Id.* at para 9.

¹⁵ *Id.* at para 87.1.

¹⁶ *Lithoferro v. State of Goa, 2014 SCC OnLine Bom 997 (India).*

¹⁷ *ibid.*

¹⁸ *Supra* note 8, para 154.5.

¹⁹ *Id.* at para 154.6.

This judicial decision by overruling the judgement passed by the Hon'ble High Court of Bombay, not only left an indelible smudge on the legal landscape but also to the economics of the State of Goa.

Economic Impact of Cessation of Mining in Goa, Mining has been crucial for Goa's economy, as it has played a vital role in the state's economy, by creating jobs for many residents. But now with the mining operations coming to a halt, the state has faced a noticeable decline in its economy. Now, Goa is facing a challenging situation, having to deal with the consequences of these economic changes while also trying to remain a popular destination for tourists, both local and international.

Goa In the year 1947, exported about 5,464 tonnes of iron ore, whereas when compared to the year 2011-12 the state of Goa had an annual turnover of 32.61 million tonnes (MT). The 99% of the Goan iron ore was distributed to china and various other eastern countries, as it had an advantage of its geographical location, as Goan iron ore is low in iron (Fe) content, which allows it to export in 1/5th of the cost within India. After the ban, there was a staggering downfall of the iron ore mining contribution from almost 20% to state's GDP to 1.67% in 2017-18, this caused a drastic downturn in Goa's economy²⁰. Subsequently the mining ban caused serious economic consequences, the central and state revenues together suffered an estimated deficit of Rs. 668.39 crore in taxes collected through the mining companies, whereas the state revenues specifically suffered an estimated deficit of Rs. 1821.32 crore²¹.

Note. Tabular data for estimated impact of revenue on mining industry and service providers²²:

²⁰ CUTS Int'l, *Economic Impact of Select Decisions of the Supreme Court & National Green Tribunal of India*, at 16 (submitted June 20, 2022; published Mar. 27, 2023), <https://www.niti.gov.in/sites/default/files/2023-03/Economic%20Impact%20of%20Select%20Decisions%20of%20the%20Supreme%20Court%20and%20National%20Green%20Tribunal%20of%20India.pdf>.

²¹ *Ibid*, at 17.

²² *Ibid*.

PARAMETERS	ESTIMATED IMPACT (in INR. Crore)
Estimated Revenue Impact On Mining Industry	-6976.71
Estimated revenue Impact on Service Providers	-843.23
Revenue Impact in Toto	-7819.94

As we have discussed the economic impact by the cessation of mining in Goa, furtherance to this we shall discuss other landmark case which had significant economic impact by banning liquor shops and vendors within the radius of 500 metre in national and state highways.

ACCESING LIQUOR BAN CASE AND ITS ECONOMIC IMPACTS

The Hon'ble Supreme Court of India pronounced a judgement, in the case *The State of Tamil Nadu v. K Balu & Anr.*, 2017²³, prohibiting trade of alcohol within a radius of 500 meters across national and state highways. The judgement delivered investigated into by reasoning out the number of road accidents with various aspects by understanding the data, like, exceeding lawful speed; over speeding; intake of alcohol and /drugs. The data used by the learned judges in the aforementioned matter was from the publication titled "Road Accidents in India"²⁴. In regard to the data used, it was logical interpreted as out of the total number of road accidents and its killings, the amount of accidents because of intake of alcohol/drugs comes to only 3.3 per cent, which is (16,298 out of 5,01,423 accidents), and 4.6 per cent, which is (6,755 out of 1,46,133 deaths) respectively.²⁵

²³ *State of Tamil Nadu v. K. Balu & Anr.*, (2017) 2 SCC 281 (India)

²⁴ Government of India, Ministry of Road Transport & Highways, Transport Research Wing, *Road Accidents in India - 2015*(2015), https://morth.nic.in/sites/default/files/Road_Accidents_in_India_2015.pdf

²⁵ id at para 6

These findings showcases that the accidents in regard to alcohol consumption are relatively low in comparison to the total number of road incidents. While acknowledging the data is relevant and accidents do happen, but it is also apparent that such occurrences hold relatively less importance when compares to the total number of road accidents. This standpoint highlights the need for a balanced approach, all risks are effectively addressed which causes road accidents, and not just alcohol consumptions.

Note. With the reference to the *case*²⁶, the following tabular format has been concluded for the year 2014:

YEAR	LOCATION	ACCIDENT CASES	PERSONS INJURED	DEATH
2014	National Highway	1.24 Lakhs	1.35 Lakh	46,110
2014	State Highway	1.13 Lakhs	1.24 Lakh	39,352
2014	Expressways	4,208	4,299	1,802

Note. Similarly with reference to the *case*²⁷, the tabular format in regard to the causes of Accidents in 2014:

CAUSE	PERSON INJURED	DEATHS
Dangerous or Careless Driving	1.38 Lakh	42,127
Over Speeding	1.81 Lakh	48,654
Driving under the influence of alcohol/drug.	7,398	2,591

²⁶ *Supra* note 21, para 7

²⁷ *Ibid.*

In reference to this section of research, it was extended by stating that, the realm of the judgement was not just limited to the liquor shops or vends but involved any establishment situated nearby the highway within 500 metre distance, which is involved in the business of 'selling liquor' for the consumption inside or outside the premise of the establishment, thereby it also involved within the purview of the judgements Hotels, Bars, Restaurants and Clubs²⁸. Some of the most well-known hotel chains in India, including the Taj, Oberoi, Hyatt, and Accor groups, have been forced by the country's highway liquor ban to stop serving alcohol to guests at strategic locations. The outcome was expected for a loss of approximately Rs 65,000 crore in revenue for state governments and the hospitality sector. It was estimated that states may lose Rs. 50,000 crore in total, tax collection of Rs. 10,000–15,000 crore of impact to restaurants and bars, and 100,000 job losses²⁹. This move has initiated a debate regarding on the judgement pronounced, wherein its effectiveness is discussed as to promoting road safety versus its economic repercussions, emphasizing the connection between public policy and economic interests in the pursuit of social welfare.

Furtherance to this many states, notably state of Maharashtra saw a drop of sales in liquor which impacted many allied industries of liquor, including manufacturer and retailers. The consumption data was drastically reduced, which impacted the economics of the particular jurisdiction, Beer consumption decreased by 15.04%, although country liquor and IMFL consumption decreased by 6.81% and 3.99%, respectively³⁰. Subsequently with the order of liquor ban having the purview of hospitality industry also impacted by led to the closure of 60% of the state's 25,173 shops and bars³¹.

²⁸ CUTS Int'l, *Economic Impact Analysis of Supreme Court Judgment Prohibiting Sale of Alcohol on Highways* at 13 (Mar. 31, 2017), <https://cuts-ccier.org/pdf/report-research-study-on-economic-impact-analysis-of-supreme-court-judgement-prohibiting-sale-of-alcohol-on-highways.pdf>.

²⁹ Ratna Bhushan, Sagar Malviya & Richa Maheshwari, *Liquor Ban Impact Estimated at Rs 65,000 Crore in Revenue Foregone by States, Hospitality Industry*, Econ. Times (India), Apr. 3, 2017, <https://economictimes.indiatimes.com/industry/cons-products/liquor/liquor-ban-impact-estimated-at-rs-65k-crore-in-revenue-foregone-by-states-hospitality-industry/articleshow/57980528.cms>,

³⁰ Surendra P. Gangan, *Liquor Sales in Maharashtra Drop by After Supreme Court's 2017 Ban*, Hindustan Times (India), May 12, 2018, <https://www.hindustantimes.com/mumbai-news/liquor-sales-in-maharashtra-drop-by-after-supreme-court-s-2017-ban/story-cj6alzGkrFLGwEMA8KrdL.html>.

³¹ *Ibid.*

To the conclusion, the judgement passed resulted into economic loss, Riyaaz Amlani, the president of the National Restaurant Association of India (NRAI), stated by saying that this shall result in 100,000 people going out of workforce from the restaurants and pubs³². In reference to the documented losses suffered by various states, there remains an undiscussed debate into whether there has been a noteworthy reduction in cases of accidents caused due to alcohol/ drugs, subsequent to the judicial ruling. This raises an important question regarding the effective implementation of the judgment and any potential economic attentions that may have influenced its procurement in a positive manner.

There are many states in India wherein the roads have been declared as state highways, many hospitality business have been established, bars and restaurants have been build. This judgement did not consider all the factors into account before the pronouncement of the judgement, and which led the hospitality industry suffer immensely.

Note. Tabular data as how much of economic impact it had on establishments serving alcohol (in INR Crores)³³:

SN.	Particulars	Uttar Pradesh	Delhi	Haryana	Rajasthan	Total
1.	Retail Vendors	30.77	-98.56	-124.60	48.75	-143.64
2.	Hotels and Bars	-4.56	-25.24	-4.97	-1.32	-35.09
	Aggregate Estimated Impact	26.21	-123.80	-129.58	47.43	-179.74

The sale of liquor along national and state highways displays significant inconsistencies across different states. For instance, the volume of liquor sold in Kerala differs substantially from that sold in Punjab, along with that the highways in Punjab are relatively less and banning the liquor shops across highways in Punjab does impact its highway economy more when compared to the state of Kerala. With this section of research, we move forward in the next segment discussing the

³² *Supra* note 26.

³³ *Supra* note 23, pg. 10.

important case which deals with economics while pronouncing the judgement, and how this perspective in law could have impacted positively to the above two mentioned cases.

HON'BLE SUPREME COURT'S LANDMARK RULING ON SUGAR FACTORY CASE RAISES STAKES FOR ECONOMIC INTERESTS IN LAW

In the recent times in the history of Indian Judiciary, the economic perspective was discussed passing a ruling in the Landmark case of *Shivshakti Sugars Ltd. v. Shree Renuka Sugar Ltd., 2017*³⁴. In this concerned matter the question was regarding whether a factory, named raibag sahakari factory, wherein according to section 6-A of the Sugarcane (Control) (Amendment) Order, 2006, which states that the appellant could not have been granted permission to open its plant within a radius of 15 kilometres from the location where it had established its factory³⁵. The matter was first taken on board at Hon'ble Karnataka High Court for the matter *Shree Renuka Sugars Ltd. v. Union of India, Ministry of Consumer Affairs Food and Public Distribution, by its Secretary and Others, 2011*³⁶, the conclusion was that there were no "effective steps" taken by the appellant, and hence the order was passed that appellant cannot have any sugar factory within 15 km from other sugar mills in the area.

The Supreme Court of India in the *Shivshakti Sugars case*³⁷, overruled the Karnataka High Court *case*³⁸, by clarifying that merely having a factory within a 15-kilometer radius of the appellant's facility is not enough to classify it as a sugar factory. Rather, for a factory to be considered a sugar factory within the ambit of the law, it must be actively in operation. It further stipulates that a sugar factory that has not conducted its crushing operations for the previous five sugar seasons shall not be regarded as an existing sugar factory³⁹. Furtherance to this, The Hon'ble Supreme Court kept the economic impact and its adverse effect that the appellant could possibly have had faced due the former judgement in the Hon'ble Karnataka High Court⁴⁰.

³⁴ *Supra* note 4.

³⁵ *Supra* note 4, para 11.

³⁶ *Shree Renuka Sugars Ltd. v. Union of India & Ors., 2011 SCC OnLine Kar 93 (India).*

³⁷ *Supra* note 4.

³⁸ *Supra* note 33.

³⁹ *Supra* note 4, para 33.

⁴⁰ *Supra* note 33.

Hence, the Hon’ble Supreme Court of India highlighted few factors, which led them to adjudicate the matter with regard to considering the economic impact, the data has been procured through the following case⁴¹:

SN.	FACTORS	DETAILS
1.	Investment	INR 300 crores invested in establishing the factory, including Rs. 142.26 crores for land and building.
2.	Loans	INR 237 crores borrowed, indicating financial commitment to the factory's success.
3.	Operational Costs	INR 150 crores spent annually on operational expenses.
4.	Employment Generation	Provides regular employment to 377 people and indirectly supports over 7000 jobs.
5.	Electricity Production	Co-generation plant produces 37 MW of electricity, contributing to the energy sector.

After accepting the appellant’s appeal, the Hon’ble Supreme Court of India, acknowledged seven legal concerns submitted, which were listed from (a) to (g). However, only two of the seven aforementioned issues (b) and (g) were addressed, the case was resolved successfully.

Considering the important issue we shall discuss further only on issue (g) which is, “*whether even if the High Court is correct in law, in view of the subsequent events i.e. the establishment of the sugar mill by the appellant and it continuing to crush sugarcane since the year 2011, the appellant’s factory may be permitted to continue, in the interest of justice, in the facts and circumstances of the present case?*”⁴². Wherein the Hon’ble Supreme Court of India, allowed the aforementioned petition by exercising its constitutional authority under the Article 142 of the Indian Constitution by understanding the economic impacts in play, by allowing the appeal and setting aside the Hon’ble High Court’s judgement⁴³. In

⁴¹ *Supra* note 4, para 42.

⁴² *Supra* note 4, para 27.7.

⁴³ *Supra* note 33.

furtherance to this, the Hon'ble Apex Court stated that, it is the bounded duty of the Court to have the economic analysis and economic impact of its decision⁴⁴.

SUPREME COURT RULING ON BAN OF FIRECRACKERS, AND GREENCRACKERS AS SUBSTITUTION FOR SOCIO-ECONOMIC BALANCE

India is the land of festivals, and considering Diwali, it is the most important festival of our country. Firecrackers are not only a symbol of the victory of light over darkness, but an act of joy which every Indian wants to celebrate. But considering the horrendous pollution, it became more important than ever to focus on the environment and simultaneously intermeddling it with the economics of firecrackers. A question arises as to whether an absolute ban would have been the solution, or if a partial ban could have been sufficient?, well, Justice Arjan Kumar Sikri passed a well sought judgement in the case, *Arjun Gopal & Ors v. Union of India & Ors*⁴⁵. This ruling was passed not only by keeping in mind of the air pollution in the Delhi and NCR region, but also the noise pollution which accompanies along with it, by bursting the firecrackers.

The case emerged when Diwali was celebrated in 2016 on 30th October, 2016, when the air quality in Delhi and NCR region arose to alarming levels. With this in the case, *Arjun Gopal & Ors. v. Union of India & Ors.*⁴⁶, in reference to this matter, the Hon'ble Apex Court issued a ban on storing of firecrackers in all reference such as factories, retail shops, and bursting crackers in the residential arenas. Further to which the Hon'ble Apex Court, considering the grave air quality situation in NCR, directed the central government the following:

"19...

- i. Suspend all such licenses as permit sale of fireworks, wholesale and retail, within the territory of NCR.*
- ii. The suspension shall remain in force till further orders of the Court.*

⁴⁴ *Supra* note 4, para 43.

⁴⁵ *Arjun Gopal & Ors. v. Union of India & Ors.*, (2019) 13 SCC 523 (India).

⁴⁶ *Arjun Gopal & Ors. v. Union of India & Ors.*, (2017) 1 SCC 412 (India).

iii. *No such licenses shall be granted or renewed till further orders.*⁴⁷

Following this emerged a new case, *Arjun Gopal & Ors. v. Union of India & Ors.*⁴⁸ Wherein a writ petition was filed for an absolute ban on the firecrackers, as bursting them caused severe illness around the year like bronchitis, nervous issues, and cognitive disabilities. This case lifted the absolute ban as placed by the former case⁴⁹, by further directing the authorities to issue licenses to 50% of the businesses engaged in this practise.

*"72.5. ...The Delhi Police is directed to reduce the grant of temporary licenses by about 50% of the number of licenses granted in 2016. The number of temporary licenses should be capped at 500. Similarly, the States in NCR are restrained from granting more than 50% of the number of temporary licenses granted in 2016. The area of distribution of the temporary licenses is entirely for the authorities to decide."*⁵⁰

With the aforementioned two cases, it brings a conflict between the fundamental rights under Article 21 of the Constitution of Indian "*Protection of Life and Personal Liberty*" with Article 19(1) (g) "*Right to practice any profession or to carry on any occupation, trade or business to all citizens*" and Article 25 "*Freedom of conscience and free profession, practice and propagation of religion*" of the Constitution of India. With this in the case⁵¹, The Hon'ble Supreme Court laid down guidelines that balances both the intent to curb air and noise pollution and also to mitigate the economic repercussions for the manufacturers and retailers of firecrackers.

These decisions by Justice Arjan Kumar Sikri was laid down by economic analysis as discussed in the *Shivshakti Sugar Case*⁵². The Hon'ble Apex Court stated that, the crackers with reduced emissions, which, as specified in Suggestions II and III above, are referred to as "*green crackers*" and "*improved crackers*," would be the only ones allowed to be produced and distributed. Consequently, cracker production and sales which do not fall under the ambit of the mentioned suggestions is hereby banned⁵³. Firecrackers may only be sold through licensed dealers, and it was directed to be

⁴⁷ *Ibid*, para 19.

⁴⁸ *Arjun Gopal & Ors. v. Union of India & Ors.*, (2017) 16 SCC 280 (India).

⁴⁹ *Supra* note 43.

⁵⁰ *Supra* note 45, para 72.5.

⁵¹ *Supra* note 42.

⁵² *Supra* note 4.

⁵³ *Supra* note 42, para 48.1.

ensured that these dealers are only offering firecrackers that are approved by this order. Flipkart, Amazon, and other e-commerce websites are not allowed to take online orders or conduct online transactions, if such e-commerce businesses are discovered to be selling crackers online, they will be held in contempt of court and the court may also impose financial penalties⁵⁴.

This judicial outcome not only proactively responded to the alarming pollution levels in the area but also recognized the potential economic impact of an absolute ban on the firecracker industry. Hence, it strikes a balance between environmental concerns and the livelihoods of those involved in the firecracker and its allied business.

POLYCENTRIC DISPUTES AND THE LIMITS OF ADJUDICATION

Lon L. Fuller (Fuller) the professor of Harvard, was first to introduce Polycentric usage in the field of law. For many years, Fuller taught law at Harvard Law School, and he is renowned in American law for his contributions to contract law and jurisprudence⁵⁵. By the forms of adjudication Fuller refers to the ways in which adjudication may be organized and conducted. For instance, "tripartite arbitration" is a hybrid form that we come across in labour relations and international law. In this form, an "impartial" or "public" arbitrator sits surrounded by arbitrators nominated by the interested parties. When adjudication is organized differently, it raises concerns like: What are its appropriate uses, if any? What are its unusual boundaries and risks? Other deviational forms, like Judge Bridlegoose's decisions made by a coin toss, provide less nuanced concerns. Generally speaking, the following queries are put out for discussion: What are the acceptable variances in the modes of adjudication? When has its character changed to the point where we feel obliged to refer to it as a "perversion" or an "abuse" of the adjudicative process?⁵⁶

Fuller interprets Polycentric disputes to that of a spider web, wherein everything is interconnected.

"We may visualize this kind of situation by thinking of a spider web. A pull on one strand will distribute tensions after a complicated pattern throughout the web as a whole. Doubling the original pull will, in all likelihood, not

⁵⁴ *Supra* note 42, para 48.5.

⁵⁵ "Lon L. Fuller," *Wikipedia* (last modified Apr. 12, 2024), https://en.wikipedia.org/wiki/Lon_L._Fuller.

⁵⁶ Lon L. Fuller & Kenneth I. Winston, *The Forms and Limits of Adjudication*, 92 Harv. L. Rev. 353 (1978), <https://www.jstor.org/stable/1340368>.

*simply double each of the resulting tensions but will rather create a different complicated pattern of tensions. This would certainly occur, for example, if the doubled pull caused one or more of the weaker strands to snap. This is a "polycentric" situation because it is "many centered" - each crossing of strands is a distinct center for distributing tensions'*⁵⁷.

When examining the first two cases of this research, and especially if they could have been adjudicated from a polycentric perspective, it becomes apparent by incorporating economic viewpoints that these judicial outcomes could have been different from the actual outcome.

*In the case for 2018 Goa mining case*⁵⁸, the dispute of mining lease renewals which involved numerous stakeholders, including, mining firms, government bodies, environmental organizations, and local communities. The Supreme Court's decision to invalidate the renewals had many economic implications, which affected the livelihoods of numerous individuals employed in the mining sector, along with impacting the state's economy. A polycentric approach could have involved considering not only the legal validity of the leases but also the broader economic consequences for Goa's economy, employment rates, and revenue streams. In regard to understanding the interconnectedness of economic interests and environmental concerns, the court could have noted alternative resolutions that makes a balance between economic development and environmental sustainability, such as implementing stricter regulations or advocating for sustainable mining practices which are in compliance with the respective authoritative body.

*Likewise, the case involving the liquor ban*⁵⁹ along national and state highways demonstrates the complex nature of polycentric disputes encompassing public health, road safety, and economic interests. While the Supreme Court's ruling aimed to mitigate road accidents caused by drunk driving, it also had substantial economic repercussions for the hospitality sector and state finances. With the adoption of a polycentric approach, the court could have taken into consideration not only by considering the public health and safety aspects but also the economic repercussions on businesses, employment rates, and tax revenues. Alternative way to adjudicate the matter would have been, like enhancing enforcement of drunk driving laws or promoting alternative

⁵⁷ *Id.* at pg.395.

⁵⁸ *Supra* note 8.

⁵⁹ *Supra* note 20.

transportation options, these options could have been explored to achieve road safety objectives without imposing disproportionate economic burdens on stakeholders.

CONCLUSION

The economic perspective in judicial decisions, first laid down by Richard A. Posner and implemented in India through *Shivshakti Sugars*⁶⁰, bridges a gap of 31 years of judicial decisions which were pronounced without considering the economic outcome. This decision equips courts to think beyond legislation and perceive the economic impact of a judgment on the general public at large. The Hon'ble Judges are now not just learned in the field of law (jurists) but are also capable of understanding economics. It would be unfair to say that judges should be learned in every field that exists, but there are many regulatory and research bodies laid down by the Government of India, of which the judiciary can take assistance before the pronouncement of a judgment. This not only gives them a different perspective other than the facts of the matter but also allows them to think with a paradigm shift of considering polycentric disputes and to what extent the judiciary can intervene for adjudication.

To conclude, the interdisciplinary of law and economics in India's legal system represents a significant paradigm shift, with the judiciary taking a more active role in influencing socio-economical results. As India continues on its path of economic progress and advancement, it becomes more than necessary to incorporate economic viewpoints into legal frameworks as it is expected to enhance legal reasoning, promote societal well-being, and guide the country towards a future characterized by fairness, prosperity, along with adherence to the rule of law.

⁶⁰ *Supra* note 4.