



INDIAN JUDICIARY AND ITS ROLE IN PROTECTING ENVIRONMENT: CURRENT DRIFTS AND ANALYSIS

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ABSTRACT

The judiciary plays an imperative and crucial role in bringing reprieve and respite to the sufferings and ebony of the people from every harm that takes a toll on their health, be it physical or mental. It is the judiciary only which by implementing various and assorted legislations made for the protection of environment provide various reprieves to the already frazzled and disheartened people. The main intention of this paper is to identify the current and existing scenario of judiciary in achieving the objective of environment protection in India and whether it has been able to fulfil the objectives as have been enshrined in our constitution or not. This paper will commence with the gist and sum and substance of environmental law and further will go on analysing the judicial remedies available for environmental protection with some remarkable and phenomenal principles and doctrine propounded by proficient and efficient Indian judiciary. It will further deal with the constitutional aspects and the new trends in judicial approach in environmental protection. This will help in comprehending the role of judiciary in environment protection and will also help in providing a clear and unambiguous policy along with the different ways of combating it.

Keywords:- Environment, Environment Protection, Judicial Role.

The greatest threat to our environment is the belief that someone else will save it”.

- **Robert Swan**

INTRODUCTION

Environment consisting of water, air, soil, etc. is considered as the life line of this planet and it is the environment only which makes life and other humanly activities possible. The concept of conserving and sustaining the environment is not the norm of the present day society and has been present since antediluvian civilizations. Various texts highlights that it is the dharma of each and every human being to play an immanent part in preserving the environment. But humans are constantly annihilating and routing it with their inhuman activities. Therefore an exigent need arises for conserving the environment or else there will come a time when there would be nothing left to protect. So, in order to bring change to this picture, the role of Indian judiciary has been increasing drastically for the implementation of measures to control anti-environmental activities. Although Judiciary has played a pivotal and significant role in protecting and shielding the environment, yet, until and unless we the people from the core of our hearts realize the importance of environmental protection and how significant it is for our sustainability nothing much can be achieved.

MEANING OF ENVIRONMENT



The word “environment” relates to surroundings. It includes virtually everything. It can be defined as anything which may be treated as covering the physical surroundings that are common to all of us, including air, space, land, water, plants and wildlife.¹

According to the Webster Dictionary, it is defined as the “Aggregate of all the external condition and influences affecting the life and development of an organism.”²

Section 2(a) of The Environment (Protection) Act, 1986 defines environment as “environment includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property”

Thus, after analysing all the above definitions, the basic idea that can be concluded is that environment means the surroundings in which we live and is essential for our lives.

SOME IMPORTANT DOCTRINES

1. DOCTRINE OF ABSOLUTE LIABILITY³

The doctrine of Absolute Liability provides that when an industry inherently indulges in some activities which pose a serious peril or hazard to the environment and any damage arises from that activities, than it will make the industry liable to pay compensation and

¹Dr. Jai Jai Ram Upadhyay, Environmental Law, Allahabad: Central Law Agency, (2005), p 2.

²R.M. Lodha, Environmental Ruin: The Crisis Of Survival, New Delhi: Indus Publishing, pg. 364.

³Atisha Sisodiya, The role of judiciary in Protection of Environment in India, Academike (Feb. 14, 2015), <https://www.lawctopus.com/academike/role-indian-judiciary-protection-environment-india/>.

damages to the aggrieved parties and further will not be allowed to cite any defences for their irresponsible actions.

This doctrine was introduced to make the enterprises more responsible and ethical towards their employees and environment as this doctrine will ensure that stringent measures are been taken by the enterprises towards the safety of employees as well as environment so as to prevent both of them from any mishap.

M.C.Mehta vs. Union of India⁴:-

A writ petition was filed under Article 32 of the Indian constitution against an industry’s activities. The judges in this case keeping in mind the facts of the case refused to follow the Strict Liability Principle set by the English Laws and came up with a new Doctrine of Absolute Liability as they felt that new norms and principles need to be laid down in order to deal with highly industrialized economy.

Bhopal Gas Tragedy / Union Carbide Corporation v. Union of India⁵ :-

The court upheld the Doctrine of Absolute liability in the infamous case of Bhopal Gas tragedy in which due to the leakage of methyl-iso-cyanide (MIC) poisonous gas from the Union Carbide Company in Bhopal, Madhya Pradesh led to a major disaster and due to this three thousand people lost their lives. This case also led to the enactment of the Bhopal Gas Disaster (Processing of Claims) Act, 1985 by the Government.

⁴ A.I.R. 1987 S.C. 1086 (OLEUM GAS LEAK CASE).

⁵ AIR (1991) 4 SCC 548.



2. POLLUTER PAYS PRINCIPLES

“If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...” – Plato

Polluter Pays Principle has become a popular locution in recent times. The slogan for this principle provides that “if you make a mess, it’s your duty to clean it up”. This principle as explained by the Supreme Court means that any person/industry causing damage to the environment have the absolute liability of not only compensating the victim but also to pay cost of repairing the damages so caused to the environment by their irresponsible activities.⁶

The Polluter Pays" principle has been held to be a sound principle by this Court in *Indian Council for Enviro - Legal Action v. Union of India*⁷.

The Court observed, *"We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country"* The Court ruled that *"Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on"*

*Research Foundation for Science(18) v Union of India*⁸:-

In this case the Supreme Court explained that the concept of “Polluter Pays Principle”

imposes a responsibility on individuals and industries to take care of all the compensation and costs regarding the damages that have been caused by their activities.

3. PRECAUTIONARY PRINCIPLE

The precautionary Principle is an ideal principle for ensuring a healthy and a safe environment. Its main purpose is to ensure that if any activity or a substance poses a risk to the environment than the same should be prevented from occurring rather than managing it after the fact. In common language it means “better safe than sorry”. This principle provides prevention of harm should be done when it is within our ability to do so, even when all the evidence are not in. In short, this principle provides for taking protective action before there is complete scientific proof of a risk; that is, action should not be delayed because full scientific information is lacking.

The Supreme Court of India, in *Vellore Citizens Welfare Forum v Union of India*⁹, referred to Brundtland report and other international documents in addition to Article 21, 48A, 51A(g) of the Constitution of India and also developed the following three concepts for the Precautionary Principle:

1. Environmental measures must anticipate, prevent and attack the causes of environmental degradation
2. Lack of scientific certainty should not be used as a reason for postponing measures

⁶ Supra Note to 3.

⁷ J.T. (1996) 2 196.

⁸(2005) 13 SCC 186.

⁹(1995) 5 SCC 647 at 658.



3. Onus of proof is on the actor to show that his action is benign.

Brundtland Report defines Sustainable Development as:-

4. PUBLIC TRUST DOCTRINE

This Doctrine was developed by ancient Roman Empire and basically rests on the concept that certain resources like air, sea, waters and forests play an integral role in the lives of many people and it would not be justified if these resources become a subject matter of some one's private ownership. This doctrine basically imposes responsibility on the state to ensure that all these resources are subjected to public use only and any private action over these resources are duly and lawfully handled. Public trust doctrine serves two purposes: it mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources.¹⁰

The doctrine was first mentioned in *M.C. Mehta v Kamal Nath & Ors.*¹¹ where the Indian Supreme Court suo moto acted on the basis of a newspaper report and applied public trust with regard to the protection and preservation of natural resources. The Supreme Court in *M.C. Mehta* stated that State is the trustee of all the natural resources meant for public use and enjoyment and it is under a legal duty to protect it from any private action as public at large should be the beneficiary of natural resources.

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and
- The idea of **limitations** imposed by the state of technology and social organization on the environment's ability to meet present and future needs."¹²

In *Rural Litigation and Entitlement Kendra Dehradun vs. State of Uttar Pradesh*¹³, which is also known as Doon valley case, dispute arose over mining in the hilly areas. The Supreme Court after much investigation, ordered the stopping of mining work and held that: "This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment."

5. DOCTRINE OF SUSTAINABLE DEVELOPMENT

COMMON LAW AND STATUTORY REMEDIES

The liability of the polluter under the tort is one of the major and oldest legal remedies to

¹⁰Tanvi Kapoor, Public Trust Doctrine, Legal Services India, <http://www.legalserviceindia.com/articles/ptdoc.htm>.
¹¹1997 1 SCC 388.

¹² Dr Paramjit Jaswal & Dr. Nishta Jaswal, Environmental Law, pg 102 (ed. 2017).
¹³AIR 1987 SC 1037.



abate the pollution. The most important tortious liabilities are under the following heads:-

- Nuisance
 - Trespass
 - Negligence
 - Strict Liability
- 1- Nuisance means anything which annoys, hurts, or that which is offensive. It can take various forms like obnoxious smells, noise, fumes, air or water pollution due to discharge of harmful effluents which interferes with the right of the person to which he is entitled to. It is of two types:-¹⁴
- a- Private
 - b- Public

PRIVATE NUISANCE¹⁵

Private Nuisance is committed when a person while using or enjoying his property or anything over which he has control, causes damage to the usage, enjoyment and interference of another person's private use of property. Thus, it can be defined as when an act of one person results in interference of another person's health, comfort and convenience.

Thus the elements of private nuisance are:-

1. unreasonable or unlawful interference;
2. such interference is with the use or enjoyment of land, or some right over, or in

connection with the land; and
3. damage.

PUBLIC NUISANCE

Section 268 of the Indian Penal Code, defines it as "*an act or illegal omission which causes any common injury, danger or annoyance, to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.*"

When an act of any person/authority results in affecting a large amount of public and their rights which they were otherwise entitled to enjoy commits the tort of public nuisance. Thus if any act interferes with the health, safety, comfort or convenience of the general public or which tend to degrade public morals are considered as public nuisance.

In *Ram Raj Singh v. Babulal*,¹⁶ the plaintiff complained regarding the dust which used to enter in his consultation room from the defendant's brick grinding machine, which used to affect him as well as his patients. The Court in this case stated that dust is a public menace and if due to the activities of defendant damage is being caused to plaintiff's rights, than he is entitled to benefit under this tort.

In *Free Legal Aid Cell v. Government of NCT of Delhi*¹⁷

In this notable judgment, the court referred to the timely challenges of Noise Pollution during festivals and marriages due to which physical and mental health of people are

¹⁴Priya Bhardwaj, Role of Judiciary In Environment Protection, Racolb Legal, (Nov. 10,2016), <http://racolblegal.com/role-of-judiciary-in-environment-protection/>.

¹⁵VineetBhalla, Private Nuisance in Tort Law, Legal Services India, <http://www.legalservicesindia.com/article/article/private-nuisance-in-tort-law-648-1.html>.

¹⁶ AIR 1982 All. 285.

¹⁷ AIR 2001 Delhi 455.



affected. The court opined “*the effect of noise on health has not yet received full attention of our judiciary, which it deserves. Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as pollutant because it contaminates environment causes nuisance and affects the health of a person and would therefore, offends Art. 21 if it exceeds a reasonable limits*”.

2- TRESPASS

Trespass means when someone intentionally or negligently interferes with the personal or proprietary rights of another person without any lawful excuse. In order to prove this tort there is no necessity of showing any damages as this tort is actionable per se. There are two requirements relating to this tort i.e. there must be intentional or negligent interference with the personal or proprietary right and secondly such interference must be direct rather than consequential.¹⁸

3- NEGLIGENCE

Negligence may also be used as a cause of action to address environmental harm. To plead negligence, the person bringing the action (“the plaintiff”) must be able to prove that:¹⁹

- 1) The defendant owed the plaintiff a “duty of care”;
- 2) the defendant breached this duty; and
- 3) this breach of duty caused damage to the plaintiff.

People owe a duty of care to those people who are so closely and directly affected by their activities that if they have any lose

ends in their actions, the same would result in damages to the other person. But, the defendants do not have to be able to foresee every type of damages. A defendant will only breach a duty of care if they do not carry out their activities in accordance with the necessary standard of care.

In *Mukesh Textiles Mills v SubramanyaSastri*²⁰ the court applied common law action for negligence to prevent activity causing environment pollution. In this case the appellant had a sugar factory and also used to store molasses when one day molasses stored in the vessel got emptied in the water and damaged the paddy crops of the respondent. The court held that the appellant was liable as there was duty to take reasonable care in matter of maintenance and he could have reasonably foresee the damages which was likely to be caused.

4- STRICT LIABILITY

The rule regarding strict liability was enunciated in *Rylands v. Fletcher*²¹ by Blackburn J. that any person who for his own purpose or benefit brings on his land something dangerous which if escaped is likely to cause mischief to other person must keep that at its peril and if it escapes and causes damages to other person than the person who brought that dangerous thing will be held liable for the payment of all the damages. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances.

¹⁸Supra Note to 12 pg. 24(ed.2017).

¹⁹*Ibid*, pg. 25.

²⁰ AIR 1987 Kant. 87.

²¹UKHL 1, (1868) LR 3 HL 330.



However, there are certain *exceptions* to this rule:-

- Act of God i.e. *Vis Major*
- Act of Third Party
- Plaintiff's own fault
- Plaintiff's consent
- Natural use of Land
- Statutory Authority

The common law remedies against the environmental pollution are available under the law of torts. A plaintiff in the tort action may sue for damages or seek an injunction or both.

CONSTITUTIONAL PROVISIONS AND ENVIRONMENT PROTECTION

Environment was hailed in the medieval India but till 1976 there were no major laws for the protection of the environment. It was the *Stockholm conference* in 1972 that played a vital role in the amendment of the constitution and to the development of protection laws for environment such as, Water (Prevention and control of pollution) Act, 1974 and Air (Prevention and control of pollution) Act, 1981.²²

To protect and improve the environment is a constitutional mandate. It is the commitment for a country wedded to the ideas of a welfare State. Protection of environment is explicitly been provided under the provision of Directive Principles and Fundamental Duties in Indian Constitution and any absence in the constitution regarding the

²²Akshay Shandilya, Constitutional provisions and legislative policies for the protection of environment in India, August 18 2013, <http://lex-warrier.in/2013/08/constitutional-provisions-and-india/>

environment protection is abridged by judicial activism.²³

FUNDAMENTAL RIGHTS

Article 21 of the Constitution of India guarantees all persons a fundamental right to "life and liberty"²⁴. Article 21 guarantees fundamental right to life. Right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity. The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra, Dehradun vs. State of UP*²⁵. It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986.

In *M.C. Mehta vs. Union of India*²⁶ the Supreme Court stated that Right to live in a pollution free environment is an integral part under Article 21 of the Indian Constitution.

In *T. Damodar Rao v S.O Municipal Corporation, Hyderabad*²⁷ The court held

²³AdvRudra, [Environmental Laws and Constitutional Provisions In India](http://www.legalservicesindia.com/article/article/environmental-laws-and-constitutional-provisions-in-india-1926-1.html), Legal Services India, <http://www.legalservicesindia.com/article/article/environmental-laws-and-constitutional-provisions-in-india-1926-1.html>.

²⁴Article 21 provides "No person shall be deprived of his life or personal liberty except according to a procedure established by law".

²⁵ AIR1988 SC 2187 (Popularly known as Dehradun Quarrying Case).

²⁶ AIR 1987 SC 1086(Oleum Gas Leakage Case).

²⁷ AIR 1987 A.P 171.



that “*the slow poisoning by the polluted atmosphere caused by environment pollution and spoliation should also be regarded as amounting to violation of article 21 of the Constitution*”.

Article 19

Article 19 (1) (g) of the Indian constitution confers fundamental right on every citizen to practice any profession or to carry on any occupation, trade or business. This is subject to reasonable restrictions²⁸. A citizen cannot carry on business activity, if it results in health hazards to the society or general public. The Supreme Court, while deciding the matter relating to carrying on trade of liquor in ***Cooverjee B. Bharucha v Excise commissioner, Ajmer***²⁹ observed that, if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations.

Excessive noise creates pollution in the society. The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution assures right to decent environment and right to live peacefully. In ***PA Jacob v The Superintendent of Police Kottayam***³⁰, the Kerala High Court held that freedom of speech under article 19

(1)(a) does not include freedom to use loud speakers or sound amplifiers.

ARTICLE 47 & 48-A (DIRECTIVE PRINCIPLES)

Article 47 states that it is the “*Duty of the State to raise the level of nutrition and the standard of living and to improve public health*”. This Directive Principle imposes a responsibility on the state that they should continuously work towards raising the level of nutrition and standard of living of its people and particularly should indulge in activities which results in the prohibition of substances which pose a serious threat to the health of its people i.e. drugs and intoxicating drinks.

A global conference on environment shook the country’s consciousness for the protection of the environment in the seventies and prompted the Indian Government to enact the 42nd Amendment (1976) to the [Constitution](#). The said amendment added **Art. 48A** to the Directive Principles of State Policy. It Declares:-

“*The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country*”.

In ***T.Damodar Rao v S.O. Municipal Corporation, Hyderabad***³¹ the court in this case stated that in view of Articles 48-A and 51-A(g) protection of environment is not the sole duty of citizens. In order to reap better results both government and citizens need to work hand in hand against this common menace.

In ***M.C Mehta v Union Of India***³², the court observed that articles 39(e), 47 and 48-A of

²⁸ Pooja P. Vardhan, Environment Protection under Constitutional Framework of India, Press Information Bureau, 04-June-2014, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=105411>.

²⁹ (1954, SC 220).

³⁰ AIR 1993 Ker 1.

³¹ AIR 1987 A.P 171.

³² (2002) 4 S.C.C. 356



the Indian Constitution casts a duty on the state that they have to take steps which helps in improving the health of people, improving the environment and taking steps which helps in reducing their ill-effects.

FUNDAMENTAL DUTIES

The Constitution (Forty-Second Amendment) added a new part IV-A dealing with “Fundamental Duties” in the Constitution of India. The concept of fundamental duties was added in the constitution by the recommendations of the Swarn Singh committee bringing the Constitution of India in line with Article 29(1) of the Universal Declaration of human rights.³³

Article 51-A(g) provides “*to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures*”.

In *L.K Koolwal v State of Rajasthan*³⁴, a writ petition was filed under Article 226 of the Constitution which stated that the municipality have failed in discharging their functions of sanitation. The court by allowing the petition explained the true scope of Article 51-A in the following terms “ We can all call Article 51-A ordinarily as the duty of the citizens, but it truly enforces right on the citizens, that they have the right to move to the court if they see that the state is not performing their functions with sincerity”.

a simple writ petition by citizens of Jaipur compelled the municipal authorities to

provide adequate sanitation. The court observes that when every citizen owes a constitutional duty to protect the environment (Art.51A), the citizen must be also entitled to enlist the court’s aid in enforcing that duty against recalcitrant State agencies. The Court gave the administration six month to clean up the entire city, and dismissed the plea of lack of funds and staff. *Goa Foundation v State of Goa*³⁵, In this case the question that arose before the court was whether a society registered under the law also has the fundamental duty under Article 51-A(g) to protect and improve the environment, which was answered in affirmation by the court.

In *Sitarani Chhaparia v State of Bihar*³⁶ The Patna High Court held that protecting the environment is a fundamental duty under Article 51-A(g) and accordingly the respondents were directed to wind up their industry emitting carbon dioxide and other obnoxious gases.

STATUTORY REMEDIES

Apart from the tortious remedies for environment protection, there also exist statutory remedies which can be availed of by the citizens for environment protection and statutory remedies includes the following:-

1- INDIAN PENAL CODE

Indian Penal Code, 1860 makes various acts affecting environment as offences, CHAPTER XIV of the Indian Penal Code containing sections 268 to 294-A deals with the offences affecting public health, safety, convenience, decency and morals. The sole

³³ Article 29(1) of the Universal Declaration of human rights provides: Everyone has duties to the community in which alone the free and full development of his personality is possible.”

³⁴ AIR 1988 Raj. 2

³⁵ AIR 2001 Bom. 318 at 319.

³⁶ AIR 2002 Pat. 134.



object of Chapter XIV is to safeguard the public health, safety, and convenience by making those acts punishable which makes the environment polluted and makes people's life miserable.

2- CRIMINAL PROCEDURE CODE, 1973³⁷

Like IPC, CrPC can also be brought into use for protecting and conserving the environment from almost all kinds of pollution. Chapter X part B containing sections 133-143 and Part C having section 144 provides the most effective and speedy remedy for preventing and controlling pollution.

In *Raghunandan vs. Emperor*³⁸ the Allahabad High Court upheld the magistrate's order forbidding the factory owner from operating his factory engines from 9 pm to 5 am on the ground that the noise emanated from the factory is 'injurious to the physical comfort of the community. The Court held nuisance of such a nature would undoubtedly be injurious to the physical comfort and those living in the neighbourhood of the factory and the matter attracts action under Section.133 of Cr. P.C.

3- ENVIRONMENT (PROTECTION) ACT, 1986 AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 AND WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

Under the Public Liability Insurance Act, claims upto Rs.25,000/- may be filed before the district collector, with the jurisdiction for

awarding larger amounts vesting in the National Tribunal constituted under the Environmental Tribunal Act, 1995.

Until the enactment of the Environment (Protection) Act of 1986, the power to prosecute belonged exclusively to the Government under the existing laws. Citizens had no direct statutory remedy against a polluter.

But after the enactment of Environment (Protection) Act, 1986 under Section 19 of the E.P. Act a citizen may prosecute an offender by a complaint to a magistrate of course prior to complaining he must give the government 60 days notice of his or her intention to complain.

Similar provisions are available allowing citizens participation in the enforcement of pollution laws, in the *Section 43 of the Air Act 1981* and in *Section 49 of the Water Act as amended in the year 1988.*



4- CIVIL PROCEDURE CODE,1908³⁹

The Civil Procedure Code has Section 91, under which the Advocate General, or with the leave of the Court, two or more persons, can institute a suit, whether or not special damage caused to such persons. A suit may be filed in the case of public nuisance affecting or likely to affect the public. The remedy may be either a declaration or injunction or any other relief according to the facts of the case.

³⁹AishwaryaUpadhyay, Remedies for Environmental Protection: Civil, Criminal & Constitutional, Young Arena Litigators (Jan. 23 2017).

³⁷ Supra Note to 12, pg. 31.
³⁸ AIR 1931 All 433



WRITS AND ENVIRONMENT PROTECTION

One of the most innovative part of our constitution is the Right to enforce our fundamental rights by directly moving to High Court and Supreme Court. Writ jurisdiction is conferred under Article 32 for Supreme Court and Article 226 for High Courts. The only difference between the two sections is that one can go to Supreme Court only to enforce fundamental rights whereas in High Courts, one can move for the enforcement of Fundamental Rights as well as for any other purpose. Since environmental rights are also an integral part of Fundamental Rights, so most of the writ petitions filed in the courts are related to environment cases only. Generally, the writs of *Mandamus*, *Certiorari* and *Prohibition* are used in environmental matters. For instance, a *Mandamus* (a writ to command action by a public authority when an authority is vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains, clean street and clear garbage likewise, a state pollution control board may be compelled to take action against an industry discharging pollutants beyond the permissible level.⁴⁰

IMPORTANCE OF PIL (PUBLIC INTEREST LITIGATION)

In order to provide protection to the environment the judiciary opened the door for general public also to do the same. Thus, by allowing PIL the court fulfilled the objective of public-spirited individuals for environment protection and shaded the inhibitions against refusing strangers to

present the petitions. PIL is considered as an ideal weapon that is used by the Indian Judiciary in the protection, improvement and development of environment.

PIL has proved to be a great weapon in the hands of higher courts for protection of environment & our judiciary has certainly utilized this weapon of PIL in best possible manner.

In the case of *M.C Mehta v Union Of India*⁴¹, The court held that all the industries that are operating in the Taj Trapezium Zone must change their fuel to natural gas or should stop using coal as a fuel within the stipulated time or else their functioning will be stopped permanently. The Shifting Industries were promised incentives from the provisions of Agra Master Plan and also the incentive normally extended to the new industrial units

In the case of *T.N Godavarman v Union Of India*⁴², the court acted on the PIL filed by a public spirited person and held an injunction on the lease of forest land for non-forest activities and asked the government to provide funds for the protection of forest lands.

NATIONAL GREEN TRIBUNAL

The National Green Tribunal Bill passed by both the Houses of Parliament received the nod of the President on 2 June 2010 and came into force on 18 October 2010. The National Green Tribunal will have jurisdiction over all the civil cases where substantial question in the case is related to environment.

⁴⁰ Supra Note to 12, pg 80.

⁴¹ (2008) 1 SCC 407.(TAJ MAHAL CASE).

⁴² (2006) 5 SCC 28.



Objectives of the National Green Tribunal are⁴³:-

- 1- To provide for effective and expeditious disposal of cases relating to environmental protection;
- 2- To provide for conservation of forests and other natural resources including enforcement of any legal right relating to environment.
- 3- To provide for relief and compensation for damages to person.

In the case of *Sanjay Kumar v Union Of India*⁴⁴, the NGT directed the Delhi government to demolish all permanent and temporary illegal structures built by RAMJI BAPU for the protection of forest area and also directed the trust to dismantle the sewage pipe emanating the sewage from ashram to that area.

In the case of *Asim Sarode and Others v Maharashtra Pollution Control Board and Others*⁴⁵, the NGT was of the opinion that there was an urgent need to regulate the used tyre disposal to avoid the environment problems, on the principles of sustainable development and precautionary principle.

In the case of *Goodwill Plastic Industries & Anr. V Union Territory of Chandigarh & Ors.*⁴⁶, the constitutionality, legality and correctness for the use, manufacture, storage, sale was challenged. The NGT by applying the doctrine of pith and substance upheld the constitutionality validity of the impugned notification.

CONCLUSION

Environment plays a very focal and crucial role in the life of all living beings on this orb. It is the very part and parcel of one's life. Playing with it means playing with the lives of all living beings on this earth. Pollution, land disturbance, landfills, constructions, deforestation are some of the cases which have played a significant role in disturbing and upsetting environment. Presently, it is not being realized that what kind of wretched and devastating effects it can have on the life of everyone living on this planet. It could have a distressing and shattering effects, to name a few, health hazards which could be fatal and lethal, global warming, depletion of ozone layer resulting in various and assorted skin diseases including cancer etc., deforestation resulting in various harrowing and horrendous effects etc. Thus, it is evident that environment does play an immanent and innate role in the life of humans and annihilating it just in the name of development, progress and growth will bring humans more close to their doomsday. Realizing the importance of environment protection, judiciary has come forward and have given certain landmark and momentous decisions. Now, it is our turn to come forward and play our part, so that everyone on this earth can live with dignity and poise. Actions taken by courts, tribunals will have no effect unless earnestness and candour to really protect the environment rises from one's own consciousness and perception. Additionally, environment protection study should be imparted to each and every person on the earth, so that they should be familiar and acquainted with the effects and repercussions of environment degradation. If

⁴³ Supra Note to 12 pg. 374.

⁴⁴ Original Application No. 306 of 2013(Order dated 10th November 2014, Principal Bench, New Delhi).

⁴⁵ Application No. 43/2013(order dated 6 September, 2014, western zone Bench, Pune).

⁴⁶ 2013 All (1) NGT Reporter (Delhi) 486.



we really need to bring some colour to this picture, than we should consider environment protection as our very own accountability or else there would be nothing left to take responsibility for.

CHALLENGES AND PROPSALS FOR MEASURES FOR VICTIMS OF CRIMANISATION OF POLITICS IN INDIA

In the process of prevention of victimisation and the protection of victims, there are many challenges faced in India which are being tackled through some positive measures. Some of the challenges include:

- No Separate Law for Crime Victims Yet

But continuous efforts are going on to enact a national law for victims. The ISV’s Victim Bill is a model draft Bill.

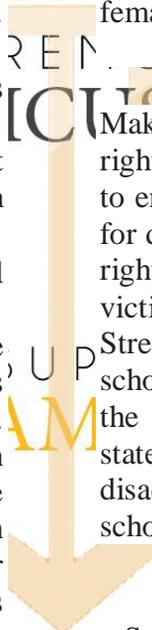
- Corruption in the Indian Criminal Justice System

Corruption by public officials erodes the entire health of the society and victimizes people in all sections of the population. Many steps to reduce the level of corruption and accumulation of illegal wealth have been taken by the Government. Declaration of assets and wealth by judges of the higher judiciary and ministers of the government is a recently introduced example.

- Empowerment of Women to Prevent Victimization of Women

Serious efforts to change the traditional submissive and victimized role of women have been taken up by NGOs and the Government. One attempt is the consistent struggle and active efforts by women’s organizations to get more political power for women in the form of representation in the Parliament, state legislatures and local

bodies through a 33% reservation of seats for women in these bodies.⁴⁷ Women have already succeeded in getting representation in local self-government but the struggle continues to get reservations for women in Parliament and state legislatures. Many concessions, special privileges and tax rebates are provided for female students to encourage them in higher education and employment, and to encourage senior women citizens in economic self-reliance. The Cradle Baby scheme of the Tamil Nadu State Government is a step towards protecting female babies and preventing female infanticide.



- Empowerment of Children

Making primary education a fundamental right under the Constitution is a leaping step to empower children as education is the tool for development. The implementation of this right will have a bearing on other kinds of victimization such as child labour. Strengthening the Noon Meal scheme in the schools for the children in Tamil Nadu and the introduction of this scheme in other states will attract more children from the disadvantaged sections of the society to schools to pursue study.

- Legislature being a convenient shield

Surprisingly, the current law goes overboard in offering protection to those convicted of criminal offences. Section 8(4) of the Representation of People Act, 1951⁴⁸ allows a Member of Parliament (MP) or a Member of a State Legislature (MLA or MLC) to retain his or her seat in

⁴⁷AJAY K MEHRA, PARTY SYSTEM IN INDIA, Pg 75 (2011)

⁴⁸Representation of People Act, 1951, No 8(4), Acts of Parliament, 1951 (India)



the House even when convicted, if he or she appeals against the conviction. The Supreme Court is currently in the process of hearing two Public Interest Litigations (PILs) that challenge this section on the ground of violating the right to equality under the Constitution of India. While the Representation of People Act, 1951⁴⁹ debars candidates convicted of serious offences from contesting elections for six years after their release from prison, Section 8 (4) of the same Act makes an exception for sitting legislators. This grants an unfair advantage by allowing convicted legislators to contest elections, while at the same time denying the right to those who are convicted but do not hold office.

The Major challenge is

- Implementation

Transparency and honesty among the politicians who make policies and the commitment of government officials who are charged with the responsibility for implementation are the big challenge. Whereas the situation of victims has not been satisfactory in India, developed countries, including the United Kingdom, have gone far ahead to render victim justice, but the expectations and aspirations of victims remain high even in those countries which do not match the accomplishments made elsewhere. Justice: The Way Ahead”, in 2001, found that “many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings”. During the long proceedings of investigation and trial, victims are not kept informed or provided with a sense of security. Very often,

victims are expected to appear in courts for cases, which are adjourned even without their notice, or they are subjected to unnecessarily stressful courtroom experiences. The agencies meant to help victims do not always understand and respond effectively to their needs.

Proposals

There is an urgent need to break the criminal-political nexus. Unless some decisive action is taken soon, the public will lose all faith in politics, politicians and democracy itself. This will do irreparable damage to our republic. It is recognised that Private Members’ Bills haven’t been passed by our Parliament in decades. Nevertheless, they serve as useful tools to build awareness, gather public support and pressurise the government.

- 3 Private Member’s Bills

Three Private Members’ Bills in the Lok Sabha that aim to attack the roots of this problem. The first Bill proposes to amend the Representation of People Act, 1951⁵⁰ to remove the exception that allows MPs & MLAs/ MLCs to continue in the Legislature even after conviction. The second would set up Fast Track Courts for speedy trials (within 90 days) of criminal cases against all elected representatives. This would expedite criminal cases against all MPs, MLAs/ MLCs and elected members of Panchayats and Municipalities established under the State Panchayati Raj Legislations. The third would amend the Code of Criminal Procedure to empower independent and effective prosecutors. To ensure that

⁴⁹ Id

⁵⁰ Id 22



proceedings don't suffer due to ineffective or biased prosecution, third Bill proposes to increase accountability and transparency in the appointment of prosecutors so as to shield them from political interference. Though the current Code of Criminal Procedure calls for 'consultation' with the judiciary for all appointments to the post of public prosecutor, the requirement has been diluted through amendments in many states. Often, special public prosecutors are appointed at the whims and fancies of the government, without adequate reasoning, to suit special interests.

RECOMMENDATION OF COMMITTEES AND COMMISSIONS ON JUSTICE TO VICTIMS OF CRIMINALISATION OF POLITICS IN INDIA

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The concern of the courts and the judicial commissions and committees about the need to have a law on victim compensation or a comprehensive law on victim justice has been reflected in their judgments and reports.

1. The Law Commission of India, 1996
The Law Commission, in its report in 1996, stated that, "The State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) also in cases when the offence is proved" (Law Commission of India Report, 1996).

2. The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim's right to participate in cases and to adequate compensation. Some of the significant recommendations include:

- The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years' imprisonment or more;
- In select cases, with the permission of the court, an approved voluntary organization shall also have the right to implead in court proceedings;
- The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
- The victim's right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor's arguments;
- The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation;
- Legal services to victims may be extended to include psychiatric and



medical help, interim compensation, and protection against secondary victimization;

- Victim compensation is a State obligation in all serious crimes. This is to be organized in separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration;

- The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India, 2003).⁵¹

3. The National Commission to Review the Working of the Constitution The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

RECENT LAWS TO CARE FOR AND PROTECT VARIOUS CATEGORIES OF VICTIMS OF CRIMINALISATION OF POLITICS IN INDIA

There are also significant developments in the form of new laws to promote the cause of victims and to mitigate the sufferings of potential victims of vulnerable sections of the population such as women, children and elders. The recent enactments passed by the

Parliament have a significant bearing on preventing victimization and giving relief to victims:

A. The Protection of Women from Domestic Violence Act, 2005⁵²

“The Protection of Women from Domestic Violence Act, 2005” is a major achievement of the women’s movement towards protection of domestic violence victims after a struggle of 16 years. This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is that it prohibits denying the victim “continued access to resource or facilities which the aggrieved person (victim) is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household”. A police officer, protection officer or a magistrate who has received a complaint of domestic violence has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief, a custody order, a residence order, a compensation order or more than one such order and the availability of the services of service providers, protection officers, and the right to free legal services under this Act. A violation of the protection order by the respondent is an offence which can result in imprisonment for one year or a fine up to Rs.20,000 or both. If the protection officer refuses to discharge his duties, he shall be punished with imprisonment for one year or with a fine of 20,000 rupees or with both.

⁵¹SHEFALI ROY, SOCIETY AND POLITICS IN INDIA UNDERSTANDING POLITICAL SOCIOLOGY, Pg 117-221 (2nded 2014)

⁵²Protection of Women from Domestic Violence Act, 2005, Acts of Parliament, 2005 (India)



B. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007⁵³

This is also an innovative law aiming to protect elders and prevent elder abuse and victimization, which is a growing problem in many countries, including India. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance.

C. Prevention of Child Abuse and Victim Protection

Empowering the child is the road to prevention from abuse and victimization. To empower the child, education is the tool. Therefore, primary education for children has been made a fundamental right as per the decision of the Supreme Court of India in Unnikrishnan's Case⁵⁴ (1993). Article 21-A of the Constitution states that "The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may by law determine". The proposal also will have a positive impact on eradication of child labour. The spread of elementary education through constitutional measures would have a good impact on other social indicators like population growth, health and women's development as well as enhancement of

productivity of the economy and reduction in unemployment.

1. The National Commission for Protection of Child Rights (NCPCR) This Commission was set up in March 2007 and its mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (see at Government of India, 2009). India ratified the United Nations Convention on the Rights of the Child in 1992 and this Act was passed as one of the necessary steps to protect the rights of children in the country. After inquiry, the National Commission can recommend initiation of proceedings for prosecution or any other action it may deem fit.

D. Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989⁵⁵ This is an act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity. The victims are entitled to receive monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.

CONCLUSION

Criminalization of politics in India is an extremely serious problem, which has

⁵³The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Acts of Parliament, 2007

⁵⁴Unni Krishnan, J.P. & Ors. V State of Andhra Pradesh, AIR 217 1993 SCC (1) 645 (India)

⁵⁵Prevention of Atrocities Act, 1989, Acts of Parliament, 1989 (India)



already reached dangerous levels. This evil of Criminalization of Politics calls for special attention of the people because the subject revolves around the vested interests of politicians of all hues as such the people can never hope that the politicians would take any initiative to rectify this evil. The prevailing trend is spreading like cancer. It is nullifying all the constitutional safeguards of democracy; that is, it is spoiling bureaucracy by making it partial; it thwarts press; and even threatens judiciary; and thus is destroying the foundation of democracy. So the people should wake up at once and force the political parties to mend their ways. The political parties do not pay attention to inculcate noble political values and principles of citizenship in the people. They do not promote patriotism and commitment to nation-building. They do not want to unite the people of nation by stressing the importance of harmonious living. On the contrary, they perpetuate the differences among the people and make full use of those differences for creating conflicts among them. The British followed the policy of 'divide and rule'; after India became independent, our politicians have become past masters of the art of creating groups and inciting them against one another. They want to fish in the troubled waters and when the water is placid, they trouble it to achieve their selfish ends. The corner-stone of democracy is objective discussion of the public issues by the people. The representatives of the people are expected to encourage such discussions, generate valuable ideas and take decisions in the larger interests of the people. But even the democratic forums like legislative assemblies and Parliament are not used for sincere discussions.

Thus it could be concluded that the criminalization of politics pose a threat to the very democratic foundation of our country. And the disappointing reality is that no political party is taking measures towards the reduction or elimination of criminal members in their parties as they eventually prove to be beneficial for them. But for the democratic principles to sustain and prove beneficial for the masses there is a pressing necessity for de-criminalisation of politics in the country

