NYAYA DEEP

The Official Journal of NALSA

Volume XVIII • Issue III & IV
• July - December, 2017

National Legal Services Authority

Editorial Committee

Hon'ble Mr. Justice K. M. Joseph Judge, Supreme Court of India	**Chairman**
Hon'ble Ms. Justice H.N. Devani Judge, Gujarat High Court	**Member**
Hon'ble Ms. Justice Hima Kohli Judge, Delhi High Court	**Member**
Mr. P. S. Narasimha Sr. Advocate, Supreme Court of India	**Member**
Mr. Alok Agarwal Member Secretary, NALSA	**Member**

NYAYA DEEP

The Official Journal of NALSA
Vol. XVIII ● Issue III & IV ● July - December, 2017

National Legal Services Authority
12/11, Jamnagar House, Shahjahan Road, New Delhi-110011
Phones : 011-23386176, 23382778 Fax : 23382121
Website:www.nalsa.gov.in

Disclaimer: The views expressed in the articles published in this Journal are those of the respective authors and do not reflect the views of the Editorial Committee or of the National Legal Services Authority.

Printed at : SMAT FORMS
3588, G.T. Road, Old Subzi Mandi, Delhi-110007
Tel. : 0112385373, 9810530802

Justice K. M. Joseph
Judge
Supreme Court of India

6, Moti Lal Nehru Marg
New Delhi-110011
Ph.: 23013454

FOREWORD

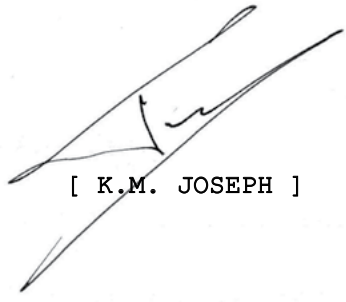
It gives me immense pleasure to invite you to a veritable feast of ideas and ideals that run through the articles which have been included in this edition.

The vital role envisaged for National Legal Services Authority (NALSA) and indeed all the State Legal Services Authorities is to create awareness of the laws and to provide a forum for dissemination of laws and discussing their actual working. A society which is governed by the rule of law and a nation which is imbued with constitutional values is the ultimate goal which is sought to be achieved. The publication of Nyaya Deep done under the auspices of NALSA can have no other desideratum. Held close to the hearts of the members of the Editorial Committee is the ideal of dissemination of information about laws which empower the poorest of the poor, the marginalised, the hardly remembered and easily forgotten. Concerns about the environment, the plight of the prisoners, healthcare for women, compassion for animals; womens right to privacy, and law relating to drinking water and women

Justice K. M. Joseph
Judge
Supreme Court of India

6, Moti Lal Nehru Marg
New Delhi-110011
Ph.: 23013454

empowerment are among the significant subjects which have been explored in the articles. I hope that the publication will go a long way in reaching knowledge to the sections where it is direly needed.



[K.M. JOSEPH]

New Delhi
October 14, 2019

INDEX

VOLUME-XVIII - ISSUE-III & IV - JULY-DECEMBER, 2017

ARTICLES **Page No.**

Access to Justice and Effective Delivery of Legal Services

*– Justice V.K. Tahilramani**

"Access to justice and effective delivery of legal services" is an important aspect of the challenge of social justice. As Prof. Potter said, "Justice is a facet of truth, and justice itself has many facets as a result of which it has assumed many epithets, e.g. economic justice, democratic justice, moral justice and social justice." Social Justice itself is a very comprehensive term, the content of which may vary according to the ideology pursued and the political set up of a country. In a country governed by rule of law, it is and in any case, it must be an all-embracing concept. Whatever ideology a country may profess, all have one common object, justice – social, political and economic, equality before the law and equal protection of the laws. Only the means of achieving that objective differ.

However, in the process vast disparities emerge and take deep root in the society resulting in concentration of economic power which ultimately paves the way for taking hold of the body politic itself. Laws which declare equality before the law and assure equal protection of the laws begin to operate unequally in varying degrees from period to period, extending over decades sometimes. Where there is a large percentage of illiteracy among the masses and vast disparity, both social and economic, in the various sections of the society, this problem assumes serious dimensions. In practice, it often deprives a citizen of equal protection of the laws and equality before the law. While all persons are given equal access to courts to vindicate their rights guaranteed to them under the Constitution and the laws, the lack of awareness of their rights due to illiteracy and want of necessary funds deprive them access to justice.

Goldsmith wrote long long ago which rings true even today: "Laws grind the poor and the rich men rule the law". Some cynics may rightly join Anatole France in his satirical statement that "the law in its majesty equally forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread".

* Chief Justice, Madras High Court

Francis Bacon's words: "In a large number of societies laws were like cobwebs where the small flies were caught and the great break through," may still seem to hold good today.

If social justice is to be a reality and is to be achieved by peaceful means and in an orderly manner, access to justice must be within the reach of the common man, the lowliest and the lost. As Limen Abbot wrote: "If ever a time shall come when only the rich can enjoy, when the poor who need it most cannot have it, when only a golden key will unlock the door to the court room, the seeds of revolution will be sown, the firebrand of revolution will be lighted and put in the hands of men and they will almost be justified in the revolution which will follow". Legal assistance by the State to the poorer sections of the society, therefore, is a constitutional imperative.

Equality before the law in a true democracy is a matter of right. As the former Attorney General, late Sri M.C. Setalvad, adverting to protection of the laws in the Constitution of India, said: "The Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Equal administration of justice can be said to form the basis of our Constitution. The essential need for legal aid can be based on yet another imperative consideration. No true democracy can endure without a system of administration of justice of which the poorest are able to take advantage. It would not be an exaggeration to say that the very existence of free government depends upon making the machinery of justice available to the humblest of its citizens. The concept of access to justice and effective delivery of legal services through legal aid and advice schemes now does not require to be canvassed for acceptance. The International Covenant on Civil and Political Rights recognizes the accused's right to legal assistance without payment by him if he does not have sufficient means, where the interests of justice so require.

This is recognized under our own Constitution under Article 39A. Justice Bhagwati, former Judge, Supreme Court of India, Justice V.R. Krishna Iyer, former Judge of the Supreme Court, have given concrete shape to the legal aid and advice schemes in this country. Almost all States in the country are implementing these schemes. Moreover, there is NALSA to guide and direct the implementation of the schemes.

In an adversarial system of justice, the need for legal aid and assistance

is all the more. This is necessary to enable the parties to vindicate their rights before the courts of justice on equal terms irrespective of their financial resources. Mere pronouncement that all are equal before the law would not in reality ensure equality unless all of them have equal resources to approach the court. Of course, the problem is so vast that even the advanced countries have not been able to achieve the desired objective of placing the adversaries on equal footing in the matter of providing financial resources to fight out their causes in courts. There is a need for greater involvement of the State and scope for more and more voluntary organizations to shoulder this responsibility. Legal aid must encompass not merely legal assistance of lawyers in courts but spread of legal literacy as well. Making millions of illiterate or semi-literate citizens aware of their legal rights, conferred under various socio-economic measures must be an integral part of any effort to ensure access to justice.

Access to justice must be provided through legal aid clinics not merely to protect properties but to safeguard personal liberties and inalienable fundamental rights. Legal services of course must be rendered on a case to case basis. But it should be further geared to vindicate the rights of the socially deprived and for the transformation of the society itself into an egalitarian society that must be established. For judicial activism the Supreme Court in our country has given the right direction by freeing the judicial process from the straight-jacket of locus standi and establishing the right of every citizen to initiate public interest litigation, of course on public issues, and by liberalizing, if not dispensing with, procedural constraints. Parliamentary legislation recognizing the right to legal aid, social activists to make the poor and illiterate sections of the society realize their rights, dedicated legal aid clinics to advise and secure settlement of disputes and lawyers with a social purpose to fight for the causes when taken to court for ensuring equality before the law and equal protection of the laws, is the imperative need.

As one of our former Judges of the Supreme Court, late Justice Vivian Bose said, "the Constitution is not for the exclusive benefit of the governments and the State. It is not only for lawyers and politicians and officials and those highly placed; it also exists for the common man, for the poor and the humble, for those who have business at stake, for the butcher, the baker and the candle stick maker." For ensuring access to justice, effective delivery of legal services is indispensable.

"Living Wage" as Found in Article 43 of The Constitution of India, 1950

*– Mahanthagowda Basavanna Biradar**

Article 43-including marginal note reads as Under:

Living wage, etc. for workers:- The state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Besides the above definition given under Article 43 of the The Constitution of India, I have gone through the definition of the term "**wage"** and remuneration as defined under the major labour legislations, both of the center and the Karnataka state.

It is pertinent to note that none of the above labour and industrial legislations define the word living wage as found in Article 43 of the Constitution of India, under Part IV, of the Directive Principles of State Policy.

I am aware that the Directive Principles of State Policy are not Fundamental Rights. In other words, the Directive Principles of State Policy like Fundamental Rights are not enforceable, much less directly as that of Fundamental Rights. But that does not mean that the Directive Principles of State Policy can be ignored and lightly considered by the sovereign State and its instrumentalities. In fact, it is said that the Directive Principles of State Policy are more fundamental than the Fundamental Rights in the Governance of the Nation. In the noble and grand view point of the makers of the Constitution in general and particularly, Dr. Baba Saheb Ambedkar, the Directive Principles of State Policy are essential

* Retired Judge and Legal Expert, The Karnataka Building and Other Construction Workers Welfare Board

elements and ingredients of good Governance and without which there cannot be a welfare State in constitutional and democratic sense and also social and political justice. The Fundamental Rights enables the citizens and non-citizens to enforce their Fundamental Rights if violated by the State and its instrumentalities. Whereas the Directive Principles of State Policy mandates the sovereign State to formulate welfare laws enabling and empowering its citizens to lead a respectable, healthy, sustainable and enduring life as human beings with dignity as human right. A constitutional duty and moral obligation is cast on the sovereign State to fulfill the desires of the Constitution and to ensure constitutional governance and peaceful co-existence of citizens with human dignity coupled with the rule of law with the help of legislature, executive and judiciary as the watch dog of the Constitution, including the fourth estate, that is, media. In a democracy, the Constitution is the supreme and sovereign though legislative, executive and judiciary share power in their respective sphere of responsibilities.

(Vide page No-13, Estrangement to Engagement, A Chronicle on Indo-US Relations, by Dr. K. Shanker Shetty)

Now coming back to the core concept of **"living wage"** as per the wordings of Article 43, let me refer to the definition part of the term wage used in labour legislations of center and State.

To begin with, under The Industrial Disputes Act, 1947, the word "wage" is defined as under.

In section 2 of The Industrial Disputes Act, clause (rr) "Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-

i) Such allowances (including dearness allowance) as the workman is for the time being entitled to;

ii) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

iii) Any travelling concession;

iv) Any commission payable on the promotion of sales or business or both;

but does not include-

a) any bonus;

b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

c) any gratuity payable on the termination of his service;

Likewise, in The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the term "wages" in section-2 and clause (n) defined that it shall have the same meaning as assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936).

As per Section 2(n), "Wage Worker" means a person employed for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be. (Vide the Unorganized Workers' Social Security Act, 2008, (Central Act, No.33 of 2008)

Accordingly, in section 2 clause (vi) of The Payment of Wages Act, 1936, "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

a) any remuneration payable under any award or settlement between the parties or order of a Court;

b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

e) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

1) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

2) The value of any house accommodation, or amenities

3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

4) any travelling allowance or the value of any travelling concession;

5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

So also, in section 2 clause (h) of the Minimum Wages Act, 1948 (Act No, XI of 1948) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include-

i) The value of-

a) any house-accommodation, supply of light, water, medical

attendance; or

b) any other amenity or any service excluded by general or special order of the appropriate Government;

ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance

iii) any travelling allowance or the value of any travelling concession;

iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

v) any gratuity payable on discharge.

Likewise, The Industrial Employment (Standing Orders) Act, 1946, in section 2 clause (i) defined as "wages" and "workman" have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947. Finally in The Workmen's Compensation Act, 1923, in section 2 (m) it is defined that " wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment. The Service Rules provides for pay or wage but certainly not as to living wage or living pay.

It is to be noted that each word or phrase used in the Constitution has got its own legal and constitutional significance. Even the arrangement of Articles in various chapters and parts of the Constitution, in my personal view, has got its own great deal of importance. In other words, it cannot be said that a word or phrase or expression found in the Article or Articles have been used by the makers of the Constitution without any purpose or object or meaning. Thus, when the makers of the Constitution have used the word "living wage" in Article 43 they must have in their mind a specific and definite reformative and progressive idea or policy or philosophy or principles in relation to the realities of life and the need of workers. The term "wage" has been qualified by the preceding word "living". If at all the makers of the Constitution had in their minds to confer the benefit of wage only through the Constitution, to the agricultural, industrial or otherwise workers to whom there is express reference in the Article, nothing had prevented to use the word wage, minimum wage, fair wage, basic wage or

moderate wage or reasonable wage or variable wage, or considerable wage instead of living wage. Thus it is clear that the makers of the Constitution were sensitive to the plight of the working class, particularly, agricultural and industrial workers and to their basic needs and requirements to ensure a decent standard of living etc. But all most all the labour laws define the word only wage and not living wage. Living wage, according to me, is something more than wage or mere wage. Considering the words used in the preceding Article 39(a) and the Preamble relating to the dignity of the individual and Article 21 of the Constitution that agricultural and industrial workers should have a dignified life means and imply that the living wage means adequate means of livelihood etc. Living wage is opposed to starving wage as prevailed during the regime of colonial era and immediately before and after the Independent India and at any rate prior to the enforcement of the Constitution of India on 26-01-1950. It is a known fact that before Independent India, the condition of the working class or labour class was very pathetic and inhuman. The exploitation of the working class by the rich people, affluent class, zamindars, jaghirdars, private money lenders and ruling class was the rule of the day and also the rule of law. The makers of the Constitution realizing the inhuman and vulnerable conditions in which the workers particularly, the agricultural and industrial, were living and working, there appears the thought of providing succor, consolation and justice to them by incorporating the concept of living wage in the Constitution way back in the year 1950. Pursuant to that concept in Article 43 the State Governments and the Central Government brought legislations to improve the conditions of the agricultural and industrial working class by providing **better wage and not living wage** as desired by the makers of the Constitution of India. Though in principle and theoretically one may feel little satisfied having nearly fulfilled one of the desires of the Constitution, a lot of improvement and reformation is required to be done both through the labour and welfare legislations and the implementing officers of the State. Even in this 21st century and civilization of society still there is exploitation of the working and labour class by under payment and not providing safer conditions to work and environment conducive to work, more particularly, the women labour. Where a person is compelled by the force of circumstances like penury, hunger or poverty to provide labour or service to another for wages which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "Forced Labour" under Article 23 of the Constitution. Mere passing of

laws is of no use unless there is a change in the mindset and attitude of the employers, masters and management. It is said that "more the laws, less the justice". And further over legislation on a particular subject or issue is more dangerous than no legislation.

One may conveniently argue that besides basic pay, other elements, such as, house rental allowance, city compensatory allowance, maternity allowance and medical allowance, etc, together may constitute living wage as found in Article 43 of the Constitution of India, 1950. But, in my personal view, living wage is something more than that in terms of Article 43. The makers of the Constitution might have broader vision and meaning than mere allowances as components of wage. In the context, I feel it is difficult to comprehend, understand and perceive their sage wisdom as to what constitutes "living wage". However, it is good to note that the sovereign state is moving forward from meagre wage – minimum wage –fair wage-better wage if not living wage through welfare legislation, governance and its implementing bureaucrats.

Very recently, the Honorable Supreme Court of India, in Civil Appeal No. 213 of 2013 on 26-10-2016[1] after survey of earlier cases and case laws under various labour legislations held that:- "Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in

1 State of Punjab & Ors. v. Jagjit Singh & Ors.

time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent–employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.

Thus, in this particular case, the Apex Court of India, considered the legal provision of the equal pay for equal work in relation to temporary employees. It appears that living wage was not canvassed at bar before the Apex Court of India. By this judgment the Apex Court of India enforced the legal provision of equal pay for equal work for both men and women found in Article 39(d) of the Indian Constitution. The State by passing the Equal Remuneration Act, 1976 complied with Article 39(d) of the Constitution, as directed by the Constitution in Article 39. Thus the Apex Court did legal justice coupled with social justice at a time to a large number of temporary employees without infringing the rights of others.

The Directive Principles of State Policy are in the nature of legal and moral instruments of instructions to the members of the Government and legislatures. The Fundamental Rights and Directive Principles of State Policy are not mutually exclusive. In other words, they are supplementary to each other. And further, both are not hostile to each other. All the concerned authorities and law makers should look at the concept of living wage with reference to the dignity of individual as per the Preamble and

dignity of labour as postulated by Dr. B.R Ambedker as an essence of life and human right under section 2 (d) of the Protection of Human Rights Act, 1993. At the same time, a corresponding duty and moral obligation is casted on the labours and workers to render quality service to the community. Even the courts refer to the Directive Principles of State Policy for interpreting the Fundamental Rights and to render social justice for furthering the objects and to achieve the goal enshrined in the Constitution. And further throughout the Constitution of India and particularly the Directive Principles of State Policy, the concept of social justice is deeply rooted. The Hon'ble Supreme Court of India defined "social justice", that, "it is nothing but doing greater good to larger number of people without infringing the rights of others or regular employees".

Besides all that, through the Directive Principles of State Policy, one can perceive that the ideologies of Gandhism, that is, fairness (or truth), non-violence, simplicity, cleanness, empowerment of villages and village and small scale industries and judicious and economic use of natural and material wealth and resources and 'socialism', mooted, preached and practiced with zeal of a mission by Bharat Ratna, Dr. Baba Saheb Ambedkar, such as, Human Equality, liberty, fraternity, human dignity, dignity of labour, equal distribution of wealth and social justice are ingrained in the Constitution. On this line of ideologies of the two national visionaries, major policies are formulated both by the Central and State Governments, even now.

The working or labour force is the real strength of developing India. In other words, they are ground level builders of the nation. Without their contribution, involvement and active participation it is difficult to expect and achieve the material and physical development of infrastructure, buildings and projects etc. within the timeframe. Thus, one cannot undermine the contribution of the workers in a developing country like ours even in the digital age.

Hence, it is my humble suggestion to give effect to the concept of **"living wage"** as found in Article 43 of the Constitution of India for enabling and empowering the agricultural, industrial and other workers of both the organized and unorganized sectors and ensure a decent standard of life in terms of Article 43 by suitable administrative, executive and legislative measures.

Women's Right to Privacy : Post Justice K.S PuttaSwamy Case

*– Prof. Dr. Nuzhat Parveen Khan**

Abstract

The Supreme Court of India recently pronounced a verdict in Justice K.S. Puttaswamy v. Union of India[1], declaring that the right to privacy is a fundamental right under the Indian Constitution. The said verdict will have a significant impact upon our legal and constitutional jurisprudence for years to come. Recognition of privacy as a fundamental right has been an age-old demand in India and its recognition will cherish & touch every aspect of human life. Freedom of speech, surveillance, same-sex rights all will draw some analogy from the verdict. But most importantly, its implication on the women's rights draws the attention of the women right's activists.

The current paper attempts to examine the changing meaning of the right to privacy in India dealing with the case laws since its inception. It also proposes to examine the impact of the recent judgment of the Supreme Court of India of the right to privacy on the varied meaning of 'Gender'.

1. Introduction:

Right to privacy is not a specifically guaranteed fundamental right under the Indian Constitution. However, the Apex Court of India in a series of cases[2] has held that it is implicit under *Article 21* of the Constitution guaranteeing the right to life and personal liberty. So far as right to privacy of women is concerned, the judiciary has dealt with this aspect in a number of cases.

In ***T. Sarithav. VenkataSubbaiah,***[3] *Hon'ble Justice P.A. Chowdhary* of the Andhra Pradesh High Court extended the application of the principle

* Professor and Dean , Faculty of Law, Jamia Millia Islamia, New Delhi-25

1 Available at http://supremecourtofindia.nic.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf

2 *Kharak Singh* V. *State of U.P*. AIR 1963, SC 1295, *Govind* V. *State of M.P*. AIR 1975 SC 1378.

3 AIR 1983 AP 356

of reasonableness to matrimonial matters and invalidated *Section 9* of the *Hindu Marriage Act, 1955* dealing with the restitution of conjugal rights and found that "the remedy of restitution of conjugal rights provided for by that section is a savage and barbarous remedy, violating the right to privacy and human dignity guaranteed under *Article 21*[4] of our Constitution". Even though, the Supreme Court has disagreed with Saritha as to the validity of *Section 9* of the said Act in a subsequent[5] judgment it has by implication accepted the principle that the right to privacy is a fundamental right under *Article 21*.

In ***State of Maharashtra and Another* v. *Madhukar Narayan Mardikar***[6] the Supreme Court has emphatically observed that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. In another case, the Supreme Court has held that the right to privacy of women would preclude such questions to be put to female candidates as modesty and self respect may preclude an answer".[7] In the instant case, the petitioner, a probationer Assistant in L.I.C. gave a false declaration regarding the last menstruation period, during her medical examination, since the clauses in declaration were indeed embarrassing if not humiliating like the regularity of menstrual cycle, the term therefor, the number of conceptions taken etc. The Supreme Court found that such embarrassing questions violate the right to privacy of the lady employees and further directed the corporation to delete such columns in the declaration.

The Supreme Court has consistently maintained that the offence of rape is violative of the right to privacy of the victim. In ***State of Punjab* v. *Gurmit Singh***[8] the court observed that:

> *"It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A*

4 *Supra* note 4.

5 *Saroj Rani* v. *Sudarshan Kumar*, AIR 1984 SC 1562.

6 AIR 1991 SC 207.

7 *Mrs Neera Mathur* v. *Life Insurance Corporation of India and Another,* AIR 1992 SC 392.

8 AIR 1996 SC 1393

murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female."

In ***Ms. X v. Mr Z,***[9] the wife filed a petition for dissolution of marriage on the ground of cruelty and adultery against her husband under *Section 10* of the Indian Divorce Act. The husband also asserted that his wife had adulterous affairs with one person which resulted in family way. The pregnancy of the wife was terminated at All India Institute of Medical Sciences and records and slides of tabular gestation were preserved in the hospital. The husband filed an application for seeking DNA test of the said slides with a view to ascertain if the husband is the father of the foetus. The court held that the right to privacy, though a fundamental right forming part of right to life enshrined under Article 21, is not an absolute right. When the right to privacy has become a part of a public document, in that case a person cannot insist that such DNA test would infringe his or her right to privacy. The foetus was no longer a part of body and when it has been preserved in AIIMS the wife who has already discharged the same cannot claim that it affects her right to privacy. When adultery has been alleged to be one of the grounds of divorce in such circumstances the application of the husband seeking DNA test of the said slides can be allowed.

In ***Surjit Singh Thind v. Kanwaljit Kaur,***[10] the Punjab and Haryana High Court has held that allowing medical examination of a women for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Article 21 of the Constitution. In this case the wife had filed a petition for a decree of nullity of marriage on the ground that the marriage has never been consummated because the husband was impotent. The husband had taken the defence that the marriage was consummated and he was not impotent. In order to prove that the wife was not a virgin the husband filed an application for her medical examination. The court said that the allowing of medical examination of women's virginity violates her right to privacy under Article 21 of the Constitution. Such an order would amount to roving enquiry against a female who is vulnerable even otherwise. The virginity test cannot constitute the sole basis, to prove the consummation of marriage.

9 AIR 2002 Delhi 217.

10 AIR 2003 P&H 353.

2. Right to Privacy and Pregnant Women:

In the Indian subcontinent, the proposal for reforming the restrictive law on abortion was made way back in 1964 by the *Central Family Planning Board* of the Central Government with the enactment of the *Medical Termination of Pregnancy Act, 1971 (MTPA)*. However, the MTPA is not so generous and thus operates with a rider under which an abortion may take place. However, there lies a contradiction between MTPA and the *Indian Penal Code, 1860*. Under the MTPA only a doctor can terminate pregnancies, while under *Section 312* of the Indian Penal Code, abortions can be made/done by any one with the object of saving the life of the mother.

Indian law allows abortion, if the continuance of pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health. Abortion was being practiced earlier by many. Because it was illegal, it was practiced in a clandestine manner. The passing of the Act made medical termination of pregnancy legal, with certain conditions for safeguarding the health of the mother. Abortion is severely condemned in Vedic, Upanishad, the later Puranic (old) and Smriti literature.[11] The Supreme Court has said that the right to privacy is implicit in Article 21 of the Constitution and a right to abortion can be read from this right.

3. Right to Privacy and Abortion:

Abortion has become a very controversial issue in the modern world of today, since the recent movements towards liberalization of abortion in the western countries. It contests the prevalent view of abortion solely as private matter. It involves competing interests of pregnant women, father, foetus, state and the society at large.

The abortion has become a controversial and debatable issue among legislatures, planners, women groups, religious denominations, and media as well as, in courts. The dilemma touches the most sensitive aspects of human life. It stirs strong emotions and brings fundamental changes to the day to day life of the society.

Article 1 of the *American Declaration of Rights* and Duties of Man and

11 Paragraph 3 of the Code of Ethics of the Medical Council of India says: I will maintain the utmost respect for human life from the time of conception.

the Inter American Commission of Human Rights legalized abortion until the end of first trimester from conception. The right to life of the foetus has to be balanced with the rights of the mother.

The right of a woman to her private life is inherent in the right of a woman to have an abortion. But Indian law allows abortion with certain conditions for safeguarding the health of the mother. The Supreme Court widened the scope of Article 21 and recognised the right to privacy as a fundamental right read with right to abortion.

In 1971, India liberalized its abortion law. It enacted the *Medical Termination of Pregnancy Act, 1971* and remodelled *Section 312* of the *Indian Penal Code, 1860* which exclusively prohibited abortion except for the purpose of saving the life of the mother.

In ***D Rajeshwari* v. *State of Tamil Nadu,***[12] an unmarried girl of 18 years who was praying for issuing of a direction to terminate the pregnancy of the child in her womb, on the ground that bearing the unwanted pregnancy of three months made her to become mentally ill and the continuance of pregnancy has caused great anguish in her mind, which resulted in a grave injury to her mental health, since the pregnancy was caused by rape. The Court granted the permission to terminate the pregnancy.

In ***Dr. Nisha Malviya and Anr.*v. *State of M.P.,***[13] the accused had committed rape on a minor girl aged about 12 years and made her pregnant. The allegations are that two other co-accused took this girl and they terminated her pregnancy and so they were charged with causing miscarriage without the consent of the girl. The Court held all the three accused guilty of termination of pregnancy which was not consented by the mother or the girl.

In ***Shri Bhagwan Katariya and others* v. *State of M.P.,***[14] the woman was married to Navneet. Applicants were younger brothers of said Navneet while Bhagwan Katariya was his father. After the complainant conceived pregnancy, the husband and the other family members took an exception to it, took her for abortion and without her consent got the abortion done.

12 (1996) Cri LJ, 3795.

13 (2000) Cri LJ, 671.

14 2001 (4) MPHT 20 CG

The Court opined that "Referring to *Section 3* of the *Medical Termination of Pregnancy Act, 1971,* it provides that a doctor is entitled to terminate the pregnancy under particular circumstances and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that without the consent of the woman it could not be done…….. Present is a case where a permanent scar has been carved on the heart and soul of the woman by depriving her of her child and the Doctor will be liable".

In ***Murari Mohan Koley* v. *The State and Anr.,***[15] a woman wanted to have abortion on the ground that she had a 6 months old daughter. She approached the petitioner for abortion. And the petitioner agreed to it for a consideration. But somehow the condition of the woman worsened in the hospital and she was shifted to another hospital. But it resulted in her death. The abortion was not done.

The petitioner who was a registered medical practitioner had to establish that his action was done in good faith (includes omission as well) so that he can get exemption from any criminal liability under *Section 3* of the MTP Act, 1971.

In ***Nand Kishore Sharma & Ors* v. *Union of India & Anr,***[16] the validity of the Medical Termination of Pregnancy Act was challeneged. The court held that the Act is valid as the object of the Act was to save the life of the pregnant woman from any injury to her physical and mental health and apparently it is not in conflict with Article 21 of the Constitution of India.

In the case of ***V. Krishnan* v. *V.G. Rajan,***[17] the court held that for an abortion, though the guardian's consent is required, the minor's consent is also important and should be taken. Case law shows that the woman's consent is of utmost importance and no one can take this right away from her.

The above few instances/cases prove emphatically that a woman's right to abortion is absolute and no one can take away this right from her.

15 (2004) 3 CALLT 609, HC

16 2005 INDLAW RAJ 142

17 H.C.M.P. No. 264 of 1993

4. Implication of *Puttasawmy case* on women's Right to Privacy:

Undoubtedly, the verdict recognising right to privacy as fundamental right will have a profound impact on women's right by giving a remedy to the aggrieved women for reaching the court directly to enforce their right to privacy against the state. But this right like any other right is not absolute. For instance, Justice Sapre observed that reasonable restrictions can be in the form of 'social, moral and compelling public interest in accordance with the law[18]. Justice Chelameswar also held that in instances where 'strictest scrutiny' is required, there can be a compelling state interest to infringe on the Right to Privacy[19].

Moreover, the curse of evil like 'Marital Rape' shall also cease to exist from this verdict as privacy promotes autonomy over body. Sexual assaults cannot be tolerated in the name of institution of marriage and cannot go hidden. The Indian Penal Code can no longer protect the marital rape and stand overruled since the recognition of this right to privacy as a fundamental right. Autonomy over the body should take precedence over a broken reading of the institution of marriage.

Women's right to choose has been specifically strengthened in this judgment. Justice Chelameswar said emphatically in his judgment that "the right to terminate life of the foetus sits squarely within the purview of the right to privacy. The divergence here, however, is a matter of degree. The recognition of the woman's right to her body is significant, as this could potentially form the basis for enlargement of this strictly regulated right in days to come. In a nation where misplaced patriarchy manifests itself through judgements disallowing abortion of foetus conceived through rape, an unambiguous declaration in favour of individual privacy-of which bodily autonomy is the essence-might just prove to be a major milestone towards securing gender justice for the historically suppressed half of our population"[20].

Therefore, majorly, the judgment is likely to have twofold implications on women's right firstly, in the institution of marriage women enjoy the right to privacy which has been considered as a fundamental right including physical privacy and autonomy over her body. Secondly, this

18 Available at http://supremecourtofindia.nic.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf

19 Ibid.

20 Ibid.

right to privacy is not absolute or unqualified. The state has all the right to prevent the coercive sexual behaviour on its female citizens within the four walls of their home.

5. Conclusion:

The recent verdict on privacy will likely to have many extra-ordinary achievements. It also shows the strength of our judiciary in acknowledging that errors of the past can and will be corrected. The verdict reinforces our belief regarding the supremacy of the rule of law and it is comforting that the law continues to protect individual rights and liberties against unreasonable state action. It's reassuring for the citizens that the Supreme Court agrees that the state should not tell individuals what they should eat or how they should dress or whom they should be associated with either in their personal, social or political life. It is a vindication for the ordinary people that the highest court of our land seeks to actively protect the minorities from the dangers of discrimination either on account of their views, gender or religious practices.

Judicial Intervention and Evolution of Environmental Principles and Doctrines

*– Dr. Saroj Bohra**

Abstract

Every breakthrough in science and technology, one way or the other, affects the society, its social institutions and the surroundings i.e. environment. In modern India, failure of the state agencies in effective enforcement of the environmental law, non-compliance of the polluters, degrading norms has resulted in degradation of the environment which casts a responsibility of environmental protection upon the Judiciary. Hence, there has been a sustained focus on the role played by the higher judiciary of India in devising and monitoring the implementation measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been triggered by the persistent incoherence in policy-making as well as, the lack of capacity-building amongst the executive agencies. In determining the scope of the powers and functions of administrative agencies and in striking a balance between the environment and development, the courts have a crucial role to play. In some instances, the judiciary has not only to exercise its role as an interpreter of the law but also play a key role in protecting the environment through Judicial Activism. The concept of Public Interest Litigation, initiated in various courts, has gained importance. The main objective of this paper is to identify the present scenario and study the nature and extent of the latest developments through environmental protection laws, convention and various issues regarding the court decisions and judicial process.

Introduction

Meaning of environment: In India, the notion of environmental protection can be seen springing from the period of Vedas. The conception of ecological protection and preservation is not modern. It has been intrinsic to many ancient civilizations. It was emphasized in ancient Indian texts that it is the '*Dharma*' of each individual in the society to protect nature

* Associate Professor & Head, School of Law, IMS Unison University, Dehradun.

and the term 'nature' includes land, water, trees and animals which are of great significance to beings. Environment is our surrounding, which gives a person a fresh atmosphere to grow faster. It is the need of a common man to live in a healthy atmosphere. It includes circumstances, objects and conditions by which all are surrounded. According to "Merriam Webster"[1] 'It includes the complex of physical, chemical, and biotic factors (as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival'. The Environment (Protection) Act, 1986 defines under Section 2(a) 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."

Development of Environmental Protection laws: The first effort came in the form of Stockholm Conference, 1972 from where the protection of environment, legislation started in India. Wild Life Protection Act, 1972, Water Act, 1974, Air Act, 1981 and finally the Environment (Protection) Act, 1986 were enacted. The Government also announced key policies regarding environment some of which are the National Forest Policy of 1988, Pollution Statement for Abatement of Pollution (1992). The Department of Environment was established in the year 1980 to ensure a healthy environment in the country which later became the Ministry of Environment and Forest in 1985. The Environment Protection Act came into force in the year 1986, after the Bhopal Gas Tragedy. Later on, the National Environmental Tribunal Act, 1995, created for making an award for compensation for damages to person, property and the environment arising from any activity involving hazardous substances.

There are two obvious questions, first how the Indian Judiciary has tackled the environmental issues before 1972 without having direct enactments? And second how far the direct enactment after 1972 helped the Indian Judiciary to deal with the environmental issues?

Role of judiciary: Before 1972

The Public Interest Litigation (PIL) is a new jurisprudence and is called the "Jurisprudence of Masses". It is one of the main progresses in the Indian Judiciary which started in the year 1970. Writ petitions in the form of PILs have been accepted by the High Courts under Article

1 https://www.merriam-webster.com/dictionary/environment

20, Article 47, Article 32 which is a right to constitutional remedies and Article 226 (Power of High Courts to issue certain writs) of the Indian Constitution. The PILs got constitutional sanction in the 42nd Constitution Amendment Act, 1974, which introduced Article 39-A in the Indian Constitution to provide equal justice and free legal aid. The remedies available in India for environmental protection comprise of tortuous as well as statutory law remedies. Under I.P.C. Offences affecting public health, Section 268-278 (Chapter XIV) provides punishment to persons who pollute the environment. Chapter X (Sections 133-146) and Chapter XI of Cr.P.C. also provides certain provisions for granting punishment to those who damage the environment. The C.P.C. which contains specific provisions like section 91 which provides for remedy for performing public wrong and another one is under section 92 which deals with remedy for breaches of public interest. On the other hand, for the civil law dealing with nuisance, trespass, negligence and strict liability as tort, the remedies was not adequate. In Madras Railway Co. v. Zamindar[2] and K Nagireddi v. Govt. of AP[3], the Court declined to recognize the principle of 'Strict Liability' laid down in Ryland v. Fletcher[4] which makes a person strictly liable for non-natural use of the land. The concept of environmental pollution and environmental protection had not found any place under the Indian jurisprudence. No remarkable contribution was made before 1972.

Role of judiciary: After 1972

International Conventions which supported Judiciary actions:

- United Nations in International Stockholm Conference, 1972 laid down its agenda as 'to defend and improve the human environment for a present and future generation has become imperative goal for mankind'. This conference was the turning point for the development of environment jurisprudence.

- General Assembly Resolution, 1972[5] emphasized the need for the active cooperation among the states in the field of human environment.

2 (1947) 1 IA 364 (PC)

3 AIR 1982 AP 11

4 (1868) LR 3 HL 33

5 General Assembly's Resolution of 5th December 1972 later designated June 5th as World Environment Day

- United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, 1992 also known as Earth Summit - Twenty years after the first global environment conference, the UN sought to help the Governments rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet. It led to the adoption of Agenda 21, a wide-ranging blueprint for action to achieve sustainable development worldwide.

Legislative and executive efforts have been made in the field of environmental law. Right to healthy environment was established in the constitutional interpretations of Article 21 which was inserted[6] in the Constitution relating to the protection of environment. It is the part dealing in Directive Principles of State Policy as Article 48A[7] and Article 51A (g)[8] which imposes a duty on the citizens to protect the environment and improve it. The Forty-Second Amendment has also expanded the list of concurrent subjects by incorporating 'Population Control and Family Planning' and bringing 'Forests' and 'Protection of Wild Animals and Birds' from the 'State List' to the 'Concurrent List'.

The Stockholm Conference, 1972 worked as a catalyst in development of environmental jurisprudence in India. The Wildlife Protection Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980 the Air (Prevention and Control of Pollution) Act, 1981 and the Environmental (Protection) Act, 1986, Protection of Plant Variety and Farmers Right Act, 2001, Biological Diversity Act, 2002, Wild Life (Protection) Amendment Act, 2002 and National Green Tribunal Act, 2010 (NGT) were enacted. But in majority of the Acts, the individual was assigned very little role and the complaints in respect to the environmental pollution, generally, only can root through governmental authorities[9].

An independent Department of Environment was established by the Government of India in 1980 to impart environmental awareness by encouraging research on environmental problems. But this department

6 Incorporated in Indian Constitution by Forty-Second Amendment in 1976

7 "The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country."

8 "To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for the living creatures"

9 For example, Section 19 of Environment Protection Act, 1986; Section 5 of Environment Protection Act, 1986

is merely an administrative set up and lacks power to prosecute the defaulters. In these circumstances the role of Indian judiciary needs special reference in the development of environmental jurisprudence in India. Though an organ of the Indian State, the Indian judiciary has shown far greater sensitivity and concern for environmental issues than, the other two organs, viz., the 'Executive' and the 'Legislature'. In this context, the recent spurt of 'judicial activism' assumes significance, particularly when the processes of globalization, liberalization and privatization have accentuated environmental degradation. Judicial activism in the field of environmental protection has been applauded by people like M.C. Mehta, Satyaranjan Sathe, Justice Kuldeep Singh and Justice Ashok Desai. The Judiciary has come up with the judge-driven implementation of environmental administration in India like Public Interest Litigation which is the result of the relaxation of the *locus standi* rules by the Judiciary, being the characteristic features of environmental litigation in India. The disputes relating to the environment are treated as cases related to violation of fundamental rights rather than claiming under torts. The policy statements of the Government which are observed to be enforceable in courts have been used as aids by the Judges for interpreting environmental statutes and for spelling out obligations of the Government. Some of the cases that makes remarkable judgments regarding the environment are M.C Mehta v. Kamal Nath[10], M.I Builders Pvt. Ltd v. Radley Shyamsalu[11], M.C Mehta v. Union of India[12] on impact of the emissions from the Mathura Oil Refinery on the Taj Mahal. The Supreme Court applied the principle of sustainability development to these cases apart from passing various directions for execution.

The phenomenal task of the Indian Judiciary in respect of environmental protection may be premeditated under the following heads:

Evolution of Legal Principles & Doctrine in Environmental Jurisprudence by Judiciary:

The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement.

10 1996 1SCC 38

11 AIR 1996 SC 2468

12 AIR 1997 SC 734 (Taj Trapezium case)

Doctrine of Absolute Liability

It was held by the court in the Bhopal Gas case[13] that, 'where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement coming about, for instance, in getaway of poisonous gas, the enterprise irrespective of their negligence, motive or intention is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions'. Accordingly, the Supreme Court created another trend of Absolute Liability without any exemption for harm caused by hazardous and inherently dangerous industries by interpreting the scope of the power under Article 32 to issue directions or orders which ever may be appropriate in appropriate proceedings.

Polluter Pays Principle

The concept of compensation for environmental degradation has evolved at a snail's pace over a period. It started with the strict liability principle followed by the absolute liability principle and then compensation under Article 32 and finally the polluter pays principle. The fundamental basis of this slogan is -'If one makes a mess, it's your duty to clean it up'. It should be mentioned that in environment law, the 'polluter pays principle' does not allude to "fault." Instead, it supports a remedial methodology which is concerned with repairing natural harm. It is a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment. Thus, under this principle the responsibility of repairing the environment is put on the shoulder of the offending industry. The polluter pays principle means two things; Firstly, the polluter should pay for the administration of the pollution control system; Secondly, the polluter should pay for the consequences of the pollution.

The Supreme Court in, Indian Council for Enviro-Legal Action v. Union of India[14] & Vellore Citizens Welfare Forum v. Union of India[15] not only reiterated the same doctrine but moved a step ahead by laying down the 'Polluter Pays' principle. This concept was elaborated in the

13 Union Carbide Corporation v. Union of India (AIR 1990 SC 273)

14 AIR 1996 SC 144

15 AIR 1996 SC 271

Vellore Tanneries Pollution case, by courts by stating that the Polluter Pays Principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of Sustainable Development and as such, the polluter is liable to pay the cost to the individual sufferers as well as, the cost for reversing the damaged ecology.

Precautionary Principle

The Supreme Court[16] pointed out that the traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. The Supreme Court after explaining the salient principles of sustainable development expressed the view that *"The Precautionary Principle"* and "The Polluter Pays Principle" are essential features of sustainable development and that they have been accepted as a part of the law of the land. The Supreme Court explaining the precautionary principle held that the concerns engaged industries not only to take measures for environmental protection but also to anticipate, prevent and attack the cause of environmental pollution and degradation.

The Supreme Court of India, in Vellore Citizens Forum Case[17], developed the concepts for the precautionary principle or precautionary approach and stated that if an action or policy has a suspected risk of causing harm to the public or to the environment then in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.

Public Trust Doctrine

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. In, M.C. Mehta v. Kamal Nath[18] the Supreme Court laid down the Public Trust Doctrine. The Supreme Court held that the state is the trustee of all natural resources. The natural resources are meant for public use & enjoyment and it cannot be given into private

16 M.C. Mehta v. Union of India AIR 1997 SC 734

17 Supra 13

18 1997 1 SCC 38

ownership.

Doctrine of Sustainable Development

The World Commission on Environment and Development (WCED), the mission of Brundtland Commission is to unite countries to pursue sustainable development together. The Brundtland Commission officially dissolved in December, 1987 after releasing Our Common Future, also known as the Brundtland Report, in October, 1987, a document which coined, and defined the meaning of the term "Sustainable Development". As per Brundtland Report, Sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.[19]"

In Rural Litigation and Entitlement Kendra v. State of UP,[20] the court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and are not intended to be exhausted in one generation. Later in Vellore Citizen's Welfare Forum[21] case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system.

Right to a wholesome environment

In Charan Lal Sahu v. Union of India[22] the Supreme Court stated that the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment. Later, in Damodhar Rao v. S.O. Municipal Corporation, Hyderabad[23] the Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution[24].

19 S .Shanthakumar, ENVIRONMENTAL LAW :AN INTRODUCTION, pp. 122, 123, Chennai: Surya Publication

20 AIR 1985 SC 652

21 AIR 1996 5 SCC 647

22 1990 AIR 1480

23 AIR 1987 AP 171

24 C. M. Abraham and Sushila Abraham, THE BHOPAL CASE AND THE DEVELOPMENT OF ENVIRONMENTAL LAW IN INDIA p.362, Vol. 40International and Comparative

Conflicting Interest and Social Value

The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. In CERCs[25] case, Labourers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards, which were detected after retirement. Whenever industries are closed or relocated, labourers losing their jobs and people who are thereby dislocated were directed to be properly rehabilitated.

Rural Litigation and Entitlement Kendra, Dehradun v. *State of U.P*[26], popularly known as *Doon Valley Case* was the first case of its kind in the country involving issues relating to environment and ecological balance which brought into sharp focus the conflict between development and conservation and the court emphasized the need for reconciling the two in the larger interest of the country. The Court was also conscious of the consequences of the order which rendered workers unemployed after the closure of the limestone quarries and caused hardship to the lessees. The Court observed 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 affectation of air, water and environment".

Tribal people used to have many traditional rights over forests. They earn their livelihood from forests. They depended on forests for almost everything. They protected the forests and forest protected them. Illegal felling, smuggling, grazing, forest fire and cutting of branches of trees for fuel are some of the examples of the activities of the tribals which have adverse impact on the ecosystem. In the case of *Banwasi Sewa Ashram* v. *State of U.P.*[27], the *Adivasis* and other backward people (tribal forest dweller) were using forests as their habitat and means of livelihood. Part of the forest land was declared as "reserved forest" and in respect of other part acquisition proceedings were initiated as the government had decided that a super thermal plant of the National Thermal Power

---

Law Quarterly April 1991, available at http://heinonline.org

25 CERC v. Union of India AIR 1995 SC 92

26 1985 AIR 652

27 AIR 1987 SC 374

Corporation Ltd. (NTPC) was to be located there. In order to protect the environment and wildlife within the protected area, the Supreme Court issued directions in the case of Tarun Bharat Sangh v. Union of India[28] that no mining operation of whatever nature shall be carried on within the protected area.

The Glitches in Law & Administration

Indian Council for Enviro-Legal Action v. Union of India[29], is a monumental judgment on environment protection and sustainable development. In this case, a PIL was filed alleging environmental pollution caused by private industrial units. The PIL was filed not for issuance of writ, order or direction against such units but against the Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on ground and that their failure to carry out their duties violated the right to life of citizens under Article 21 of the Constitution. The Supreme Court held that the contention that the respondents being private corporate bodies and not "State" within the meaning of Article 12, a writ under article 32 would not lie against them, cannot be accepted. In if the Court finds that the government or authorities concerned have not the action required of them and their inaction has affected the right to life of the citizens, it is the duty of the Court to intervene and the Court can certainly issue the necessary directions to protect the life and liberty of the citizens.

The Court has also considered the effect of *Idgah* Slaughter House on ecology. In Buffalo Traders' Welfare Association v. Maneka Gandhi[30], the court considered it as one of the hazardous industries operating in Delhi and directed it to stop functioning in the city of Delhi in the interest of environment protection. It was allowed to operate only for a certain period provided certain conditions were fulfilled and that the slaughter houses were kept clean and till the alternate site was arranged. Even though section 3(3) of India's Environment Protection Act, 1986, allows the Central Government to create an authority with powers to control pollution and protect the environment, it has not done so. Thus, the Court directed the Central Government to take immediate action under the provisions of

28 1992 Supp (2) SCC 448
29 (1996) 3 SCC 212
30 (1996) 11 SCC 35

this act[31]. In L.K. Koolwal v. State of Rajasthan[32], the Court observed that a citizen's duty to protect the environment under Article 51-A(g) of the Constitution bestows upon the citizens the right to clean environment. The judiciary may go to the extent of asking the government to constitute national and state regulatory boards or environmental courts. In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

Environmental Education and Awareness

There is no meaning of any law, unless it is an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness. This contention is additionally maintained by the Apex Court in the instance of M.C. Mehta v. Union of India[33]. In this case, the Court directed that the Union Government was obliged to issue directions to all the State Governments and the Union Territories to enforce through authorities, as a condition, for license on all cinema halls, to obligatory display free of expense no less than two slides/messages on environment amid each show. It further stated that "In order for the human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measures to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law." Consequently, 'Environmental Studies' was introduced and made part of the curriculum at every level of education. Even Bar Council of India introduced 'Environmental Law' as a compulsory paper for legal education at the graduate level.

Conclusion

The Indian judiciary plays a remarkable role in uplifting the goal of preservation through its various landmark decisions and the Acts and laws which provides a platform so as that one cannot exploit the nature

31 Vellore Citizens Welfare Forum v. Union of India (AIR 1996 SC 271)

32 AIR 1997 SC3297

33 AIR 1992 SC 36

and its gift for his or her greedy needs. Of course, the initiative for the protection of environment came from the legislature but the failure of the executive to implement the environmental laws in India created the ground for the intervention of the judiciary. The activism of the higher judiciary regarding the cases related with violation of environment and human rights has acquired the name of judicial activism. The judiciary made several attempts to resolve the conflict between the development and environment. It has expanded and stretched the existing legal provisions to address the environmental issues. It has evolved new doctrines and principles to deal with the conflicting interests of various groups of the society. It gave various directions, guidelines and orders from time to time to check the menace of environmental pollution. The rules and regulations, protection and preservation of the environment are still a pressing issue. Hence, there is a need for an effective and efficient enforcement of the constitutional mandate and other environmental legislations. A strong foundation for environmental jurisprudence in India helped in the protection and preservation of its environment as well as, its people. The judiciary is also criticized for overstepping the administrative function and for lack of expertise on the environmental matters. In the past few years, there are several judgments which have not been implemented for lack of political or administrative will or because of other lacunae. Nevertheless, the Judiciary is actively playing its role inspite of repetitive failure of other organs.

Rights of Prisoners

*– Dr. D. V. Guruprasad**
*– Samhitha Sharath Reddy***

Abstract

"Prisoner" is a legal term for a person who is imprisoned. Prisoners are a neglected group of people. Prisoner in many third world and developing countries are neglected and denied their basic human rights. It is accepted that these people have committed crimes and other offences and hence deserve to be in prison but they are still human beings and deserve certain basic rights such as right to food, water and protection from violence in prison. In many cases, these rights are overlooked or forgotten and prisoners live in highly deplorable conditions. Human Rights are the inalienable rights to which every human being is entitled to as a part of the human society. It enables human beings to live a dignified and respectful life and provides equal rights, freedoms and justice to all. The aim of this paper is to look at the various basic human rights to which a prisoner is entitled to, within the purview of the rules and regulations of the law and the prison and to discuss the various problems faced by the prisons in our country, today.

RIGHTS OF PRISONERS

It is a common perception that a person convicted of any crime loses all his rights. Although going to prison involves restriction of ones rights, a prisoner, irrespective of the crime he or she has committed, deserves certain basic rights as a human being. Over the years, 'rights of prisoners' are being taken more seriously consequent to the involvement of Governments, NGOs and the public. From being treated in a barbaric manner with minimum or no rights, today, there are organisations working tirelessly for the recognition of rights of prisoners and even the governments of different countries have come up with laws to protect

* Retired Director General of Police (Home Guard, Civil Defence and Fire Force), Karnataka, Chief Executive, Gokula Education Foundation (Medical). The author can be reached at drdvg@yahoo.com.

** B. A., LL. B. (Hons.), 3rd year, Tamil Nadu National Law School. The author can be reached at samhithasreddy@gmail.com

these rights.

There is a broad agreement now that prisoners must be allowed to live with dignity and must be granted certain basic rights such as protection from cruel and harsh punishments, torture, sexual harassment and mental and medical health care. Every human being is entitled to some inalienable rights and these cannot be taken away merely because of incarceration.

Rights of Prisoners came into focus recently when their plight and the deplorable conditions that they live in, forced the Supreme Court and High Courts to comment on the pitiable state of prisoners in their judgements.

In a number of judgements on prison administration, the Supreme Court has laid down three broad principles:

(i) A person in prison does not become a non-person.

(ii) A person in prison is entitled to all human rights within the limitations of imprisonment.

(iii) There is no justification in aggravating the suffering already inherent in the process of incarceration."[1]

The Supreme Court ruled that the compulsion to live in a prison entails by its own force the deprivation of certain rights, like the right to move freely or to practice a profession of one's choice. A prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.[2]

It is also essential for one to understand that a convicted person goes to prison *as* punishment and not *for* punishment.[3] Hence, the person cannot be inflicted with extra punishment and the orders of the court have to be followed.

But this is not usually the case. Rights of prisoners are mostly

1 Manual, M. P. (2003). For the Superintendents and Management of Prisons In India, Formulated By Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi.

2 Charles Sobhraj v. Superintendent, Tihar Jail, AIR 1978, SC 1514.

3 Vagg, J. (1994). *Prison systems: A comparative study of accountability in England, France, Germany, and the Netherlands*. New York: Clarendon Press.

overlooked or not bestowed. This is due to the deep rooted belief among people that the prisoners do not deserve any rights as they have committed crimes and wronged the society.

There are national and international laws governing and ensuring rights of prisoners. Apart from various National and International laws, Rights of prisoners are enumerated in the Model Prison Manual and the report of the All India Committee on Jail Reforms 1980-1983. These rights have been discussed in detail below.

1. Right to Human Dignity

Right to Human Dignity is a basic right. Prisoners must be treated as human beings and not as non-persons. "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person."[4] The rights of a prisoner may be curtailed but some of his fundamental rights continue to be valid even while in prison.

2. Right to Equality:

Every prisoner has a fundamental right to equality. But there have been cases in which prisoners have alleged that other prisoners with money got better food, clothing and cells to stay in. They were better taken care of and were provided with better medical care as compared to a prisoner with lesser or no money to spare.[5] This is a gross violation of the prisoners' fundamental right to equality.

3. Right to Freedom of Speech and Expression:

The prisoners must be allowed to voice their opinions including the conditions of the prisons or the treatment meted out to them.

In Charles Sobraj v. The Suptd., Central Jail, Tihar,[6] it has been stated that "Imprisonment does not spell farewell to fundamental rights" and "Prisoners retain all rights enjoyed by free citizens except those lost

4 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly, 1998, Principle 1.

5 Report based on the proceedings on the workshops organised at Bhopal by the Commonwealth Human Rights Initiative (CHRI) in collaboration with the Madhya Pradesh Human Rights Commission (MPHRC)- Prisons and Human Rights, 1998.

6 AIR 1978 SC 1514

necessarily as an incident of confinement. Rights enjoyed by prisoners under Arts 14, 19 and 21 though limited are not static and will rise to human heights when challenging situations arise."

4. Right to Life and Personal Liberty:

No person shall be deprived of his life or personal liberty except according to procedure established by law. In Sheela Barse v. State of Maharashtra[7] on 18 September, 1987, Justice M. Ranganath stated that "The term 'life' in Article 21 covers the living conditions of the prisoners, prevailing in the jails. The prisoners are also entitled to the benefit of the guarantees provided in the Article subject to reasonable restrictions."

5. Right to Speedy Trial:

In the case of Hussainara Khatoon & Ors v. Home Secretary, State of Bihar[8], the Supreme Court has stated that "The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people as a sentinel on the qui-vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, appointment of additional judges and other measures calculated to ensure speedy trial."

To ensure that speedy trial takes place, the Supreme Court directed that:

"On the next remand dates when the under-trials are produced before the Magistrates or the Sessions Courts the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail and opposing remand provided that no objection is raised to such a lawyer on their behalf."

It is however seen that trials are usually prolonged since the jurisdictional police are unable to provide escort parties to the prisoners

7 Sheela Barse v. State of Maharashtra, JT 1988 (3) 15.

8 Hussainara Khatoon & Ors v. Home Secretary, State of Bihar, 1979 AIR 1369 : 1979 SCR (3) 532.

who have to be taken to the courts. This results in unnecessary adjournments of cases. It is worth considering setting up of courts in the premises of the prison itself. A number of high profile cases have been heard in makeshift courts within the jail premises itself. On the other hand, it may also be worthwhile to have a separate cadre of Prisoners' escorts created in the State Police force.

6. Right to Humane Treatment in Prisons:

In Sunil Batra v. Delhi Administration[9], the Supreme Court opined "It behoves the court to insist that, in the eye of law, prisoners are persons not animals, and to punish the deviant 'guardians' of the prison system where they go berserk and defile the dignity of the human inmate. Prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials 'dressed in a little, brief authority'. When a prisoner is traumatized, the Constitution suffers a shock." It also goes on to say that "Protection of the prisoner within his rights is part of the office of Article 32." and "A prisoner wears the armour of basic freedom even behind bars".

The Court has the power to intervene and enforce prisoners' rights and protect the prisoner from "mayhem" with the help of the writ of Habeas Corpus[10].

"No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. *No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."[11]

---

9 Sunil Batra v. Delhi Administration, 1980 AIR 1579 : 1980 SCR (2) 557.

10 Habeas corpus is a Latin term meaning "you [shall] have the body". It is a writ (court order) which directs the law enforcement officials who have custody of a person to appear in court with the person in order to determine the legality of the person's confinement. Habeas corpus petitions are commonly used when a prisoner claims illegal confinement, such as holding a person without charges, when due process obviously has been denied.

11 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly, 1998, Principle 6.

* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

7. Right Not to be Handcuffed, Fettered or put in Solitary Confinement:

Unless a prisoner is dangerous to himself or to those around him/ her, he must not be handcuffed, fettered or put in solitary confinement.

In Prem Shankar Shukla v. Delhi Administration[12], the Supreme Court said, "Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to zoological strategies repugnant to Article 21." The court also goes on to say "Since there are other ways of ensuring safety as a rule handcuffs or other fetters shall not be forced on the person of an under-trial prisoner ordinarily….. It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe keeping."

8. Right against Custodial Violence and Doctors Assistance:

Right to Human Dignity can also be interpreted as right to integrity of body and mind. This involves freedom from mental and physical torture and abuse of the prisoner by any person which includes the other inmates and the prison personnel. In Sunil Batra v. Delhi Administration[13], the Supreme Court states that "The most important right of a prisoner is to the integrity of his physical person and mental personality. No prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of court."

Unfortunately this is one right which usually gets trampled upon inside prisons, not only in India but elsewhere too. Any number of cases can be cited to show that the prisoners are subjected to violence like sodomy, physical assault and other inhuman acts by their fellow inmates and the jail authorities do precious little. There was a case in which a prisoner was murdered by his fellow prisoner after taking "supari" or contract and the murder was hushed up by the prison authorities. When the Post Mortem Report of the murdered prisoner reached National Human Rights Commission, some suspicion arose and this resulted in a CID enquiry. It

12 Prem Shankar Shukla v. Delhi Administration, 1980 AIR 1535, 1980 SCR (3) 855.

13 AIR 1980 SC 1579

was later established to be a clear case of murder in which jail authorities had colluded. It is therefore very necessary that an independent body is entrusted with visiting prisons every week, inspect the living conditions of prisoners and also hear the grievances of prisoners.

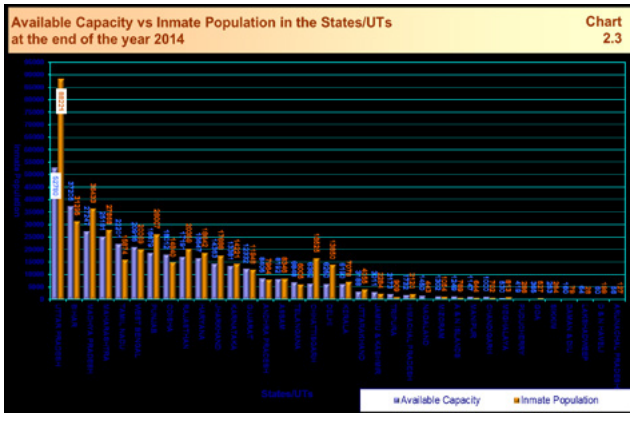
9. Right to Basic and Minimum Needs:

Right to Basic and Minimum Needs connotes "Right to fulfilment of basic minimum needs such as adequate diet, adequate potable water for drinking, bathing and cleaning purposes; recreation facilities; health and medical care and treatment, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment, and recreation."[14]

Unfortunately this is one of the rights that does not gets its due. There have been a number of riots in Prisons over the quality and quantity of the food served to the inmates. Supervisory authorities need to check the distribution of food to the prisoners regularly.

It is a prisoner's right to receive proper accommodation.. But this is not the case in many Indian prisons. Overcrowding is a very pressing issue in India today.

The following bar graph and table very accurately show the extent of overcrowding of prisons in India.[15]



14 National Human Rights Commission of India. (2013) Living Conditions and Human Rights of Inmates, Volume I.

15 Prison Statistics of India 2014.

Capacity of Jails, Inmate Population and Occupancy Rate at the end of 2014[16]

Sl. No.	State/UT	Available Capacity			Inmate Population			Occupancy Rate (In %)		
		Male	Female	Total	Male	Female	Total	Male	Female	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	Andhra Pradesh	7607	798	8405	7601	363	7964	99.9	45.5	94.8
2	Arunachal Pradesh	44	12	56	123	4	127	279.5	33.3	226.8
3	Assam	7606	586	8192	8052	294	8346	105.9	50.2	101.9
4	Bihar	35916	1289	37205	30204	1091	31295	84.1	84.6	84.1
5	Chhattisgarh	5848	534	6382	15726	799	16525	268.9	149.6	258.9
6	Goa	340	25	365	500	27	527	147.1	108	144.4
7	Gujarat	11359	973	12332	11426	522	11948	100.6	53.6	96.9
8	Haryana	15179	1468	16647	17858	784	18642	117.6	53.4	112.0
9	Himachal Pradesh	1594	138	1732	2043	77	2120	128.2	55.8	122.4
10	Jammu & Kashmir	2840	171	3011	2202	82	2284	77.5	48	75.9
11	Jharkhand	13646	717	14363	16823	865	17688	123.3	120.6	123.1
12	Karnataka	12188	1193	13381	13632	589	14221	111.8	49.4	106.3
13	Kerala	5773	417	6190	6907	171	7078	119.6	41	114.3
14	Madhya Pradesh	25597	1650	27247	35283	1150	36433	137.8	69.7	133.7
15	Maharashtra	23562	1619	25181	26438	1430	27868	112.2	88.3	110.7
16	Manipur	1037	110	1147	607	37	644	58.5	33.6	56.1
17	Meghalaya	485	45	530	810	3	813	167	6.7	153.4
18	Mizoram	1102	200	1302	994	60	1054	90.2	30	81.0
19	Nagaland	1290	160	1450	433	10	443	33.6	6.3	30.6

16 Ibid.

20	Odisha	16371	1641	18012	14302	538	14840	87.4	32.8	82.4
21	Punjab	17091	1588	18679	24703	1304	26007	144.5	82.1	139.2
22	Rajasthan	15982	1209	17191	19665	694	20359	123	57.4	118.4
23	Sikkim	206	47	253	258	6	264	125.2	12.8	104.3
24	Tamil Nadu	19760	2441	22201	15266	608	15874	77.3	24.9	71.5
25	Telangana	6169	679	6848	5559	446	6005	90.1	65.7	87.7
26	Tripura	2051	122	2173	881	28	909	43	23	41.8
27	Uttar Pradesh	49642	3138	52780	84649	3572	88221	170.5	113.8	167.1
28	Uttarakhand	3065	123	3188	3893	162	4055	127	131.7	127.2
29	West Bengal	19393	1523	20916	18752	1317	20069	96.7	86.5	96.0
Total (States)		**322743**	**24616**	**347359**	**385590**	**17033**	**402623**	**119.5**	**69.2**	**115.9**
30	A & N Islands	1209	40	1249	764	5	769	63.2	12.5	61.6
31	Chandigarh	940	60	1000	670	32	702	71.3	53.3	70.2
32	D & N Haveli	50	10	60	198	1	199	396	10	331.7
33	Daman & Diu	120	40	160	78	1	79	65	2.5	49.4
34	Delhi	5850	400	6250	13248	602	13850	226.5	150.5	221.6
35	Lakshadweep	64	0	64	28	0	28	43.8	0	43.8
36	Puducherry	373	46	419	279	7	286	74.8	15.2	68.3
Total (UTs)		**8606**	**596**	**9202**	**15265**	**648**	**15913**	**177.4**	**108.7**	**172.9**
Total (All-India)		**331349**	**25212**	**356561**	**400855**	**17681**	**418536**	**121**	**70.1**	**117.4**

As it can be seen, the number of prisoners in the prisons far exceeds the number of prisoners which the prisons are actually allowed to hold. This is a clear violation of the rights of prisoners as it is a prisoner's basic right to have proper accommodation but in most jails, that there are so many prisoners that this right is not realised.

Even during times of outbreaks of epidemics in prisons, the required medical attention cannot be given to each individual prisoner as there are too many prisoners and not enough medical staff and resources to take care of the needs of all the prisoners. The condition of the prisoners hence becomes deplorable.

Health care and mental and medical care facilities must be available

to all prisoners without any discrimination. It is their right to receive medical attention and check-ups on a periodic basis. The prisoner has to be fully examined on admission into the jail and has to be periodically examined after. In case of any medical ailment, steps have to be taken to allow the prisoner to live in the premises in a dignified manner.

Due to overcrowding or negligence of the prison staff, the prisoners live in highly unhygienic conditions.

10. Right to Communication:

It is imperative that the prisoners are well informed about their families and in turn, their families are also informed about the whereabouts of the person in prison. Neither one of the parties is supposed to be kept in dark about the other.

Meeting people is a form of communication. Hence, prisoners must be allowed to meet their family members as per the prison regulations. In Sunil Batra v. Delhi Administration[17], the Supreme Court states that "Visit to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep."

Prisoners must also be able to gain knowledge about the affairs of the country through various communication media such as newspapers. They must be allowed to keep in touch with the current affairs of the country and the world, if they so please.

11. Right to Access to Law:

The Right to Access to Law is the right to receive information regarding the legal provisions pertaining to a prisoner's imprisonment. This also includes their legal right to receive information regarding the appeal, revision and review of their conviction or sentence. In Madhav Hayawadanrao Hoskot v. State of Maharashtra[18], the Supreme Court held

17 AIR 1980 SC 1579

18 Madhav Hayawadanrao Hoskot v. State of Maharashtra, 1978 AIR 1548 : 1979 SCR (1) 192.

that "Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the jail administration."

Secondly, the prisoners have the right to consult a lawyer and the right to access legal aid. The Supreme Court in the above cited case held that "provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service" is a State responsibility under Article 21.

Guideline 6, Section 47 (a), states that "…….. manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access"[19]

12. Right against Arbitrary Prison Punishment:

In case of any violation of prison rules by any prisoner(s), he/she must be informed of the nature of violation of Prisons Act and Rules. They must be heard in fair and impartial manner. The decision of this hearing must be communicated to them and an appeal as provided by the rules under the Act can be filed.

13. Right to Meaningful and Gainful Employment:

Prisoners who volunteer and are given work, must be paid wages as per the rules. It is their right to be paid for the work they do in prison while serving time.

No prisoner can be made to do any form of domestic work for any prison official and "No prisoner shall be employed, in the service of the institution, in any disciplinary capacity."[20]

---

19 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, prepared by the United Nations Office on Drugs and Crime, Guideline 6, Section 47(a).

20 United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955, Section 28(1).

14. Right to be released on the Due Date:

Prisoners must be released exactly on the due date. It is imperative that this is done as the prisoners have served their time in prison as per their conviction and they do not deserve to stay in prison even a minute longer than the minimum requirement. Even the slightest delay in the release of the prisoners on the due date is a violation of their rights.

CONCLUSION:

Prisoners are human beings and their rights can be curtailed but not completely taken away from them. Awareness of 'rights of prisoners' is necessary to protect the rights of the prisoners which they deserve as a part of their basic human rights However, conditions of prisoners in many jails in the country are very deplorable. It is very much necessary that the directives by the Supreme Court must be enforced in a stringent manner.

Also, prisoners need to be aware of their rights so that they can exercise them. Not only the prisoners, but also their families need to be aware of the laws and the various rights that a prisoner is entitled to. Only then can these rights be exercised properly.

The frequency of jail inspections must be increased so as to keep a check on the proper maintenance of prisoners in the prisons and all the rules in the Prison Manual must be followed properly.

REFERENCES

1. Implementation of the Recommendations of All-India Committee on Jail Reforms (1980-83), Bureau of Police Research and Development, Ministry of Home Affairs, New Delhi, 2003, available at http://mha1.nic.in/PrisonReforms/pdf/Mulla%20Committee%20-implementation%20of%20recommendations%20-Vol%20I.pdf.

2. Manual, M. P. (2003). For the Superintendents and Management of Prisons In India, Formulated By Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi.

3. National Policy on Prison Reforms and Correctional Administration (2007), Formulated By Bureau of Police Research and Development,

Ministry of Home Affairs, New Delhi , available at http://www.bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf.

4. Prison Statistics of India, 2014 available at http://ncrb.nic.in/StatPublications/PSI/Prison2014/PrisonStat2014rev1.htm.

5. Report based on the proceedings on the workshops organised at Bhopal by the Commonwealth Human Rights Initiative (CHRI) in collaboration with the Madhya Pradesh Human Rights Commission (MPHRC) - Prisons and Human Rights, 1998.

6. Vagg, J. (1994). *Prison systems: A comparative study of accountability in England, France, Germany, and the Netherlands*. New York: Clarendon Press.

Home-Based Workers in India: Need for Protection under Law

*– Dr. Balwinder Kaur**

Abstract

India is well-known as a middle-income country; around 350 million people live below the poverty line. In 2011 an affidavit was presented to the Supreme Court of India by the Justice Tendulkar Committee, in which it was mentioned that 30 percent of the people in India are poor.[1] There are almost 35 million home-based workers in India, most of them women. They are an essential part of the country's Make in India programme and are stretched across different industry sectors. Yet, they are never considered as a part of the workforce, resulting in lack of opportunities and exploitation. Home-based workers survive across 22 industry sectors identified for the government's flagship Make in India programme, from pharmaceuticals, electronics to automobile parts. The workers produce under subcontracts for global and domestic value chains. They frequently do the most solid work and are at the base of the pyramid.[2] Home-based work is a significant and speedily growing part of the world economy. The Census of India does not identify these workers as an independent category, and includes them in those working in household industries. Workers in household industries includes both main and marginal workers, with marginal workers defined as those working for a period of less than six months in the year preceding and main workers as having worked for the greater part of the year, i.e., more than six months. Household industries are defined as 'an industry conducted by one or more members of the household at home or within the village in rural areas, and only within the precincts of the house where the household lived in urban areas.'[3]

This article focuses on the home-based workers in India and their

* Assistant Professor (Law) Hidayatullah National Law University Naya Raipur, Chhattisgarh

1 "New food scheme based on Tendulkar report likely - Economic Times". Economictimes. indiatimes.com. 2010-04-09. Retrieved 2012-05-08.

2 http://everylifecounts.ndtv.com/home-based-workers-await-recognition-1543 accessed on 18.6.17.

3 Census of India 2001, Series 8, Paper 3, Table 3.

condition. The paper also examines different initiative taken by ILO and Government of India to provide social security and minimum standard of living to the home-based workers.

Introduction

The estimates of the number of home-based workers from NSS data,[4] at a total of more than 12 million (12,301,400) women, and close to 35 million men (34,830,400), appears as substantially larger than the Census figure for household industry. There are two main categories of home-based workers: self-employed and sub-contracted (often called home workers). The data elements required for a full identification of home workers were not included in the survey so only a few home workers were identified. A home-based worker contributes immensely in the overall social and economic development of any region and country.

Home-based worker refers only to those worker who carry out remunerative work within their homes or in the surrounding grounds or premises. There are two broad types: independent and dependent or sub-contracted (or piece-rate workers) workers. The general term "home-based worker" refers to both categories. The more specific term "home workers" refers to subcontracted/dependent home-based workers who carry out paid work for firms/businesses or their intermediaries, typically on a piece-rate basis. Separate identification, counting and profiling of the two categories of home-based workers is of crucial importance as policy implication relating to the two categories are noticeably different. The use of the term "informal employment" is relatively recent, dating back to the 1970s. A clear definition of "home-based work" is even more recent. Home-based work is not a sector of production; it cuts across the systematic categories of "industry," "occupation" and "activity status" by which workers are classified.

According to Unni and Rani: "The employment status of the home-based workers can be seen along a continuum of dependence, from being completely independent to being fully dependent on the contractor/ middleman for design, raw material and equipment and unable to negotiate price of the product. They constitute a separate production system forming a different layer or segment both in the product and

4 Calculated from NSSO, Report No. 460(55/10/3), Non-agricultural workers in informal sector based on Emploment Unemployment survey, 1999-2000.

labour markets".[5] The reason for seeking to define and visualize the group is because they have specific vulnerabilities. The NCEUS[6] in India agreed that HBWs deserve to be separated out from the broad category of the "self-employed" where they usually get placed, because "They want separate treatment from a policy point of view".[7]

Definition of home-based worker: The first such definition of home-based worker in India is found with reference to the beedi sector. Indirectly, the term "home worker" has been defined in the Beedi and Cigar (Conditions of Employment) Act[8] and in the Contract Labour (Abolition and Regulation) Act[9] and the Minimum Wages Act[10], all of which recognize the existence of outworkers who do not work from any establishment.[11] 'Home-based worker refers to the general category of workers, within the informal or unrecognized sector, which carries out remunerative work within their homes or in the surrounding grounds. The range of activities is rather large, home-based workers "sew garments, embroider, make lace, roll cigarettes, weave carpets, peel shrimp, prepare food, polish plastic, process insurance claims, edit manuscripts, and assemble artificial flowers, umbrellas, and jewelry".[12]

The Ministry of Labour, Government of India has adopted a broader definition and identified the basic criteria to define home-based workers for the purpose of the national policy framework as:

- Persons working in the unorganized sector irrespective of whether self employed or in piece rate employment
- Location of work being home
- Low income

5 Jhabvala, Renana, Jeemol Unni and Shalini Sinha. 2007. "Overview and Journey of Home Based Workers in South Asia," presented at SEWA-UNIFEM Policy Conference on Home Based Workers of South Asia, January 2007, New Delhi.

6 http://nceuis.nic.in/

7 (GOI 2007: 5).

8 Beedi and Cigar (Conditions of Employment) Act 1996

9 Contract Labour (Abolition and Regulation) Act 1970

10 Minimum Wages Act 1948

11 See Mukul 1998

12 Prugl, Elisabeth, 1999. The Global Construction of Gender: Home-Based Work inthe Political Economy of the 20th Century, Columbia University Press7.

- Outside the social security net.[13]

The term "home-based worker" has been used by organizations in Asia to cover a range of people, mainly women, who work at home regardless of their exact conditions of employment. In industrialized countries, the term "home workers" has generally been used in reference to "piece-rate" workers who complete specific steps in the production process for an employer or subcontractor in their homes.[14]

In 2007, the Ministry of Statistics and Program Implementation of the Government of India developed one independent group on Home-based workers .According to whom the following is the definition of Home-based workers.

Home-Based workers are defined as (a) Own account workers and contributing family workers helping the own account workers involved in the production of goods and services, in their homes, for the market and, (b) Workers carrying out work in their homes for remuneration, resulting in a product or service as specified by the employer(s) irrespective of who provides the equipment, materials or other input used, and those contributing family workers helping such workers.

International Labour Organization Convention on Home Work (1996) defined, *Home workers as people working from their home or from other premises of their choosing other then the workplace, for payment which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and economic independence necessary to be considered an independent worker under national laws, regulations or court decisions.*[15]

Convention No 177 of the ILO (1996)[16], which defines homework as:

(a) Work carried out by a person, to be referred to as a home worker,

- In his or her home or in other premises of his or her choice, other than the workplace of the employer;

13 http://pdf.usaid.gov/pdf_docs/PNACG556.pdf lastvisitedon 29.3.17.

14 http://www.wiego.org/informal-economy/definition-home-based-workers

15 International Labour Organization Convention on Home Work (1996).

16 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C177

- For remuneration;

- which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, as long as this person does not have the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) The term "employer" means a person, natural or legal, who either directly or through an intermediary, if any, gives out home work in pursuance of his or her business activity (ILO 1996).

The Home Work Convention does not apply to actually self-employed home workers. An employer has to be recognized. In many cases the employment relationship is unclear, disguised or triangular (or even involving multiple parties), thus difficult to make clear.

According to the Unorganized Workers Social Security Act 'An unorganized worker is a home-based worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts pertaining to welfare schemes as mentioned in Schedule-II of the Act.[17]

According to Unorganized Workers Social Security Act, 2008 "Home-Based worker refers to one who engages in production at his own home or at premises of his choice but not at the employer's work place, even if the employer might have provided him material or equipments for his work."

According to Unorganized Workers Social Security Act, 2008 "Self employed worker refers to one who is not working for an employer and is engaged in an unorganized sector job earning an income below a threshold or owing land below a notified limit."

Challenges faced by Home-Based workers

Like other informal workers, most home-based workers do not enjoy adequate economic opportunities, legal rights, social protection or representative voice - referred to by the ILO as the four pillars of decent

17 Section 2 (m) of the Unorganized workers Social Security Act 2008.

work.[18]

It is almost universally true that in all economies the earnings of home-based workers are lower than other workers, and often less than the minimum wage.[19] In a study done by the Self Employed Workers Association Academy in India, it was found that 85 percent of the workers sampled in 14 trades were earning 50 percent below the official poverty rate. According to a study, in 2011 – 12, 77.5% of the total workforce in the organized manufacturing sector had no written contract; another 2.43% had a written contract for only less than a year. Only 17.41% of the total workers had a written contract for more than three years. More than 70% of all regular salaried workers in the organized sector had no written contract. The condition of women workers was worse. 91% had no written contract in 2011 – 12; only 6.3% had written contract for more than three years. 60% of the regular workers were not eligible for social security benefits like provident fund, pension, health care etc with women workers being in a worse condition than male workers. Inequalities between the workers and the supervisory staff have increased in the organized manufacturing sector during the 2000s. It was found that the salaries of the managerial staff have increased sharply compared to those of the workers. The profile of employment relations has vastly changed under neoliberal policies. There is no clearly defined and identifiable employer-employee relationship for vast sections of workers, not only in the private sector but also in the public and government sectors. The proportion of workers in the unorganized segment of the organized sector, i.e. workers with precarious working conditions, with no job security, no income security, no social security and no legal protection has increased under the neoliberal regime. However, these workers cannot be considered as unorganized sector workers. The burdens as a result of market fluctuations are being shifted on to the workers through various methods - contractorisation, outsourcing, casualisation, job-contracts, getting the same work done by temporary, daily wage workers, apprentices or trainees, home-based work etc.

According to the National Commission for Enterprises in the

18 ILO (2002), Decent Work and the Informal Economy, Report VI, International Labour Conference 90th Session, International Labour Organization, Geneva.

19 http://www.wiego.org/informal-economy/ratification-countries-home-based-workers-c177.Accessed on 17/5/10.
Jhabvala, Renana, Rahima Shaikh and SEWA Academy Team. 1995. Wage Fixation for Home-Based Piece Rate Workers. (Ahmedabad: SEWA Academy).

Unorganized Sector report[20], the employment generation that took place in the organized sector post economic reforms has been largely informal in nature. Several studies have shown that the increase in employment in the manufacturing sector during the early 1990s was mainly of non permanent nature. It is also shown that the share of contract as well as temporary workers in the manufacturing sector in the country, excluding administrative and managerial workers, has doubled over the period 1992 – 2001. Despite the existence of labour laws that provided job security to the workers, directly employed permanent workers are being substituted by workers with informal and precarious work relations. Between 2003-04 and 2009-10, the employment of directly employed workers grew by only 5.1% while that of the contract workers grew by 12.4%. The share of contract workers in total organized employment has increased from 10.5% in 1995 – 96 to 25.7% by 2009 – 10, while the share of directly employed workers has declined from 68.3% to 52.4% in the same period. Significantly, the practice of employing more contract workers increased in the larger companies, employing more than 50 workers, by the end of the 2000s compared to earlier. By 2009 – 10, nearly half of the total workers employed by companies with more than 5000 workers were contract workers. The estimates by the NSS 55th round, on the other hand, indicate that this number in the non-farm informal sector is around 28.7 million (2006). However, unofficial sources indicate that their number may be between 30-50 million or more.[21] "There are about 100 million home-based workers around the world, with 50 million of these living in South Asia.[22] Home-based workers are most vulnerable of all informal workers and remain invisible to policy makers and the public. They work in the bottom links of supply chains and are often exploited. There is sufficient evidence which shows that Home-Based workers of the informal economy are unprotected and open to exploitation and marginalization. They are very vulnerable and often suffer harassment in the society. Their earnings are lower than the other workers unlike other industrial workers or other workers .Home-Based workers hardly ever have any access to social security benefits such as child-care, health-care, and old age pensions.

20 National Commission for Enterprises in the Unorganised Sector report (2009)

21 Jhabvala, chairperson of HomeNet South Asia while announcing an international conference "Celebrating Home- based Workers:Twenty years and Time for Action" to be held in Ahmedabad on March 20.

22 Gopal, Meena (2005), "In Demand in a Globalised World: Women Home Based Workers", Samyukta: a Journal of Women's Studies Vol 5, No 1, pages 135-146.
HomeNet South Asia (2014), Asian Cities Declaration on Homebased Workers, 2014, 3 pages, available at http://www.homenetsouthasia.net/pdf/ASIAN%20.

They need recognition as they are least paid."[23]

International policies and home-based workers

In order to bring Home-Based workers into the national economic mainstream and in the development of policies for home-based workers the ILO came up with the Convention No. 177, which mandates that all home workers should have basic labour rights - irrespective of the sector in which they work and guarantees the applicability of core labour standards and other standards to all home workers. The ILO Convention No.177 recommended the following:

1. Formulation of National Policy and Plan of Action on home-based workers.

2. Incorporation into official statistics baseline data the various categories of workers in the informal sector, particularly the home-based workers and their income to national economies.

3. SAARC to address the issue of home-based workers in the region and take measure to enable them to deal with the risks and opportunities of globalization.[24]

C177 is an attempt to make sure that home workers across the world are treated equally with other workers, and have the same rights to:

- Set up, join and take part in workers' organisations of their own choosing
- Protection against discrimination in employment and occupation
- Occupational safety and health protection
- Pay
- Statutory social security protection
- Maternity protection

23 http://www.wiego.org/informal-economy/ratification-countries-home-based-workers-c177Accessed on 17/5/11.

24 http://www.itcilo.org/en/the-centre/programmes/workers-activities/actravenglish/telearn/global/ilo/law/iloc177.htm Accessed on 17/5/11.

- Access to training
- Minimum working age

Many Articles recognized under this Convention discuss the rights of home-based workers; many international labor standards that are exclusively for HBWs have been adopted by the member states of the ILO. In 2015, the International Conference adopted recommendation No.204 to guide the transition from the informal to the formal economy.[25] 2016 marks the 20th anniversary of Home Work Convention No.177[26] and Home Work Recommendation No-184,[27] which were adopted in 1996 to protect and support the development of subcontracted home workers. A number of ILO recommendations and conventions have specifically mentioned the rights and needs of informal workers. Convention 189 on Domestic Work in 2011[28] followed by the more binding Recommendation 201[29] on the same topic in the same year. More recently, Recommendations 202 and 204[30] on the social protection for and formalizing the informal economies, adopted in 2012 and 2015, respectively, are important instruments that have also informed the development of the new Sustainable Development Goals (SDGs). Ten countries have ratified the Home Work Convention (C177) of 1996, which aims to promote and protect the rights of those who work at home to create products specified by an employer. Albania (2002), Argentina (2006), Belgium (2012), Bosnia/Herzegovina (2010), Bulgaria (2009), Finland (1998) Ireland (1999), Macedonia (2012), Netherlands (2002), Tajikistan (2012)[31] are the countries that have ratified the convention and are responsible for ensuring that their laws meet the Convention requirements. India has not ratified the convention, so this manual has been produced at the request of the South Asian network of home-based

25 http://www.ilo.org/ilc/ILCSessions/104/texts-adopted/WCMS_377774/lang--en/index.htm accessed on 18.6.17.

26 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C177 accessed on 18.6.17.

27 http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312522 accessed on 18.6.17.

28 http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C189 Accessed on 17/5/18.

29 http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CO Accessed on 17/5/18.DE:R201 accessed on 17/5/18.

30 http://www.ilo.org/ilc/ILCSessions/104/texts-adopted/WCMS_377774/lang--en/index.htm

31 http://www.wiego.org/informal-economy/ratification-countries-home-based-workers-c177.Accessed on 17/5/12.

workers' organizations, called HomeNet[32] South Asia, to encourage more home workers and their organisations and supporters across the world to mobilize to get C177 into their own country's national laws. Knowing how to distinguish between different types of home-based workers is vital to build a successful campaign for more countries of the world to adopt (or 'ratify') the ILO Convention on Home Work C177.This is because this ILO Convention applies only to those who are home workers, who are working on contract for others. If activists and organisations are not clear on this, it could seriously undermine the campaign for ratification.[33]

Kathmandu Declaration: Adopted by the South Asian Government, United Nation agencies, Trade Unions, and NGOs in 2000, the Kathmandu Declaration enumerates the rights of South Asian home-based workers. Developed by various stakeholders including organizations for home-based workers, policymakers, and researchers, the declaration calls for the following: the formulation of a national policy for home-based workers in each country; minimum social protections including the right to organize, minimum remuneration, occupational health and safety, maternity leave, child care, skill development, and literacy programmes; access to markets, social funds, and incorporation into official statistics. Following adoption of the Declaration, a proposed policy was generated, which called for better working conditions, social welfare measures, and the development of a legal framework to address the problems the home-based workers face.[34]

Legal and Policy Framework in India:-

As far India is concerned there is no specific law relating to home-based workers. The work conditions from all available evidence are quite poor.[35] Low rates, lower than minimum wages, lower incomes than those required to sustain minimum consumption requirements, uncertainty in incomes, exploitative informal contracts, little investment in improving work conditions on the part of the contractor, unethical practices, little

32 HomeNet South Asia (HNSA) and ISST. 2006. Social Protection for Home Based Workers in South Asia, supported by the Ford Foundation.

33 ILO and WIEGO (2013), Women and Men in the Informal Economy: A Statistical Picture, 2nd edition, International Labour Organization, Geneva, 205 pages, available at http://www.ilo.org/wcmsp5/ groups/public/---dgreports/---stat/documents/ publication/wcms_234413.pdf.

34 http://pib.nic.in/archieve/others/2014/nov/d2014112801.pdf Accessed on 17/5/17.

35 NCAER 2001).

regard to basic labour and work related laws, etc.[36] In 2012, there were 37.50 million home-based workers in India of which 16.04 million workers were women. Between 2000 and 2012 almost half a million home-based workers were added to the workforce, comprising more than one-third of the non-agricultural employment which was largely concentrated in three industries: beedi, textiles and apparel manufacturing. The National Commission for Enterprise in the Unorganized Sector reports that there is a lack of comprehensive and appropriate regulations in India and that even where regulations exist; there are inadequate and ineffective implementation mechanisms. There is no policy or act in India which covers home-based workers as a whole, though some provision has been made in certain labour laws. Significant laws and policies in reference to home-based workers are outlined below:

It is true that when independent India's constitution was drafted, social security was specially included in List III to Schedule VII of the constitution and it was made as the concurrent responsibility of the Central and State Governments. A number of Directive Principles of State Policy relating to aspects of social security were incorporated in the Indian Constitution. Article 39 calls for the provision of an adequate means of livelihood for all citizens, equal pay for equal work for men and women, and proper working condition. Articles 41-43 issue guidelines for the State to secure for all citizens the right to work, a living wage, social security, maternity relief, and a decent standard of living.

There are certain legislations in India which are applicable to home-based workers such as Employees' Provident Fund and Miscellaneous Provisions Act,1952, Beedi Workers Welfare Fund Act,1976; Minimum Wages Act,1948; Beedi and Cigar workers (Conditions of Employment) Act,1996; Beedi Workers Welfare Cess Act,1976; Maternity Benefit Act,1961; Unorganized Workers Social Security Act 2008;etc.

There are few schemes which are introduced by the Government of India for the welfare of the home-based workers;

36 See Menon-Sen andKumar 2001, and Singh, Raj and Sekar, 2002 Mahadevia, Darshini, Aseem Mishra and Suchita Vyas (2014), Home-based Workers in Ahmedabad, India, WIEGO, Cambridge, MA, 55 pages, available at http://wiego.org/sites/wiego.org/files/ publications/files/IEMS-Ahmedabad-Home-Based- Workers- City-Report.pdf. Raveendran, Govindan, Ratna Sudarshan and Joann Vanek (2014), "Home-Based Workers in India: Statistics and Trends", WIEGO Statistical Brief No 10, Cambridge, MA, 9 pages, available at http:// wiego.org/sites/wiego.org/files/publications/files/Raveendran-HBW-India-WIEGO-SB10.pdf.

Labour Welfare Funds: - The Ministry of Labour is also operating Welfare Funds for some definite categories of workers in the unorganized sector like beedi workers, cine workers and certain non-coalmine workers. The funds are used to make available different kinds of welfare activities to the workers in the field of health care, housing, education assistance for children, water supply etc. The Government of India established five Welfare Funds between 1946 and 1981.These funds are administered by the Ministry of Labour and Employment, Government of India in certain occupations where employee-employer relationships are not clearly visible. Also, by its very nature, the scheme of welfare funds is outside the framework of specific employee-employer relationship in as much as the resources are raised by the government through a cess under a statutory provision and not through donations/voluntary contributions from any employer. Further, delivery of services, specified under the funds, is effected without linkage to worker's contribution[37]. It may be noted that the Welfare Funds set up by the Central Government for mine and beedi workers do not provide for social security, such as invalidity benefit, old-age benefit, survivor benefit or unemployment benefit. These Welfare Funds cannot be deemed to be providing social security but have the capacity and the prospective to become instruments of social security if suitable amendments are made to the laws. These funds provide following benefits:--

-- Immediate financial assistance in case of accident

-- Payment of pension

-- Payment of premia for group insurance schemes

-- Payment of maternity benefit.[38]

Rashtriya Swasthya Bima Yojana- This is a government-run health insurance scheme for the Indian poor. The scheme aims to provide health insurance coverage to the unrecognized sector workers belonging to the BPL category and their family members shall be beneficiaries under this scheme. It provides for cashless insurance for hospitalization in public as well as private hospitals. The scheme started enrolling on April 1, 2008 and has been implemented in 25 states of India. A total of 36 million

37 Sodhi et.al. 2008: 1

38 http://www.naukrihub.com/industrialrelations/labor-welfare-fund.html last accessed on 17.6.17.

families have been enrolled as of February 2014. In the starting RSBY was a project under the Ministry of Labour and Employment, now it has been transferred to the Ministry of Health and Family Welfare from April 1, 2015. RSBY has been extended to building and other construction workers registered under the Building and other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996 and street vendors, beedi workers, domestic workers and MGNREGA beneficiaries who are involved in work for more than 15 days during the preceding financial year and domestic workers. Keeping in view to provide death and disability cover to rural landless households between age 18- 59 years, the Aam Aadmi Bima Yojana has also been launched on 2nd October, 2007. Under this scheme, the head of the family or any earning member in the family will be insured. The Central Government will bear 50% of the premium of Rs.200/- per year per person and the remaining 50% of the premium will be borne by the State Government. The benefits under the scheme include a cover of Rs.30, 000 in case of natural death and Rs.75, 000 in case of death due to accident or total permanent disability (loss to two eyes or two limbs or loss of one eye and one limb in an accident). In case of partial permanent disability (loss of one eye or one limb in an accident), the insurance cover would be Rs.37, 500/. The Scheme also envisages an add-on benefit of providing scholarship upto a maximum of two children of beneficiary studying 9th to 12th Standard at the rate of Rs.300/- per quarter per child. Approximately 4.32 crore lives were covered under AABY as on 31.03.2015.[39]

Janshree Bima Yojana:-This scheme is a government sponsored insurance scheme. It is an effort of the central government and life insurance corporation together. The scheme offers life insurance protection to rural and urban people below and marginally above the poverty line. Almost 45 occupational groups are covered under this plan.[40]

Unorganized Workers' Social Security Act, 2008- In order to ensure welfare of workers in the unorganized sector, the Ministry of Labour & Employment has enacted the Unorganized Workers' Social Security Act, 2008. The Act has come into force with effect from l6.05.2009. The Central Rules under the Act have been framed. This Act covered weavers, handloom workers, fisherman, toddy tapers, plantation laborers', beedi

39 http://www.rsby.gov.in/ accessed on 17.6.17

40 http://www.indianyojana.com/vikas-yojana/janashree-bima-yojana.htm accessed on 20.6.17.

workers. The Act provides for the constitution of National/State social security board at the Central/State level to recommend social security schemes like life and disability cover, health and maternity benefits, old age protection and any other benefits. The Unorganized Workers' Social Security Rules, 2009 under the Act have been framed and the National Social Security Board was constituted on 18.08.2009. The National Board shall advocate social security schemes like life and disability cover, health and maternity benefits, old age protection and any other benefit as may be resolute by the Government for unorganized workers.[41]

The Government of India has reshaped the National Old Age Pension Scheme. The new Scheme "Indira Gandhi National Old Age Pension Scheme (IGNOAPS)" was launched on 19.11.2007. Old age pension is now beneficial not only to aged needy but to all citizens above the age of 60 years and living below the poverty line. Under this scheme the amount has been raised from Rs.200/- to Rs.500/- per month. The States have been asked to top up with the Central Government per capita grant of Rs.200/- per month. Approximately 2.18 crore persons have been covered under this scheme. To give confidence to the workers from the unorganized sectors to voluntarily save for their retirement and to lower the cost of operations of the New Pension Scheme (NPS) for such subscribers, the Central Government recently launched a co-contributory pension scheme called "Atal Pension Yojana" on 09.05.2015. The Subscribers would receive a fixed minimum pension of Rs. 1000 per month, Rs. 2000 per month, Rs. 3000 per month, Rs. 4000 per month, Rs. 5000 per month, at the age of 60 years, depending on their contributions, which itself would differ on the age of joining the scheme. The pension would also be offered to the spouse on the death of the subscriber and thereafter, the pension amount would be returned to the nominee. The minimum age of joining scheme is 18 years and maximum age is 40 years. The benefit of fixed minimum pension would be guaranteed by the Government.

Recently the Ministry of Labour and Employment ("Ministry") has issued the Draft Labour Code on Social Security and Welfare, 2017 ("Draft Code") thereby amalgamating the existing Labour Laws related to social security.[42]

41 http://www.ilo.org/dyn/travail/docs/686/Unorganised%20Workers%20Social%20Security%20Act%202008.pdf accessed on 17.6.17

42 http://www.labour.nic.in/whatsnew/draft-labour-code-social-security-welfare accessed on 18.6.17.

The key highlights of the Drafts are as follows:

Under the Draft Code, an Employer means the employer of any entity that employs an employee or employees, either directly or through contractors.

Under the Draft Code, an Employee means a person who is employed for wages by the entity in accordance with the terms of contract of employment, whether written or oral and whether expressed or implied, in or in connection with the work of the entity.

The Draft Code is applicable to all the entities except for the entities specified in Part – I of the First Schedule. These entities include any establishment of the Central Government or State Government including departments of Central Government or State Government as the case may be.

The code applies to the following persons:

(a) Workers that are employed by any entity;

(b) Worker who may also be the owner or the proprietor of an entity or a self-employed unit;

(c) International workers; and

(d) Indian citizen, working outside the territory of India, who opt to become a member of social security schemes under this Code.

However, the Draft Code is not applicable to such class of workers that has been specified in Part- II of the First Schedule subject to the restrictions as mentioned in that schedule. The class of workers in Part -II of the First Schedule will be specified shortly.

The Draft code covers the workers from Organized as well as Unorganized Sectors of Employment.

The Draft Code proposes to constitute a National Social Security Council of India for reviewing and monitoring the implementation of the Draft Code, advising the Central and the State Governments in the matter of Social Security Administration etc.

The Draft Code proposes to provide a unique Aadhaar-based registration service for registration of workers and provide a portable Social Security account, to be named as Vishwakarma Karmik Suraksha Khata (VIKAS), which will be linked to Aadhar Number of the worker.

The Draft Code proposes allowing the benefits even when the Employer (including Principal Employer) fails or neglects to pay any contribution which under this Code he is liable to pay in respect of any employee.[43]

Conclusion

To conclude, approximately 93 per cent of the workers in the unorganized sector do not have any access to social security measures in India. There is no doubt that the government is concerned about home-based workers. We have mentioned legislations and few schemes and also the proposed draft code on social security, in spite of that a very small number of workers have access to the benefits provided by legislation and schemes, many of them are not even aware of the benefits provided by the government. In my opinion, I would like to suggest the Union Labour Ministry try to make people aware about the schemes first and also put pressure on the contractor to provide social security benefits to home-based workers and also monitor that contractors should not be exploitative. India has so far not ratified the ILO convention on home-based workers. With the numbers of home-based workers mounting because of globalization and the growth of the informal sector, it is the time that India should take a relook at the Convention.

43 http://www.labour.nic.in/whatsnew/draft-labour-code-social-security-welfare accessed on 18.6.17.

The Law Relating to Right to Safe Drinking Water in India: An Analysis on Constitutional and Legislative Framework

*– Abdul Jabbar Haque**

Abstract

Water is the most crucial need of mankind without which the human race cannot survive. It is nature's gift to all living beings on the earth. It also remains a common heritage and a privilege which must be enjoyed by all equally and without any discrimination. Under the Constitution of India water is a state subject. The relevant provisions are Entry 17 of the State list, Entry 56 of the Union List and Article 262. In India the Constitutional right to safe drinking water may be drawn from right to food, right to clean environment and right to health, all of which have been protected under the right to life guaranteed under Article 21. In addition to Article 21, Article 39(b) which declares to be non-justiciable recognizes the principle of equal access to the material resource of the community. While the right to safe drinking water has been accepted by the Hon'ble Court to be a fundamental right under Article 21 of the Constitution of India. The international treaties, conventions and agreements specifically guaranteeing the right to food, human health and development cannot be attained or guaranteed without guaranteeing the right to access safe drinking water.

I. Introduction:

"Neerindramaiyadhu Vulagu"
(Meaning without water world has no existence)
---- The Ancient Tamil Saint Thiruvalluvar

Water is the most crucial need of mankind without which the human race cannot survive. It is nature's gift to all living beings on the earth. All plants and animal must have water for survival. If there is no water there would be only a dream of life on earth. Amongst the numerous

* Assistant Professor -in- Law, Haldia Law College, Purba Medinipur, West Bengal.

uses of water, the most important is for drinking purpose. Even other than drinking, water has many uses which is essential in order to deal with day to day activities. The basic reason is that the body loses water through various activities such as breathing, sweating and most importantly digesting the food. That is why water is most important in order to rehydrate by drinking liquid and eating food containing water. Everybody needs water to maintain the temperature of the body by using it through cells, organs and all tissues and for the proper maintenance of the other functions of the body.

In a broader perspective, the following sources of drinking water are enumerated[1]-

(i) Well;

(ii) Tap;

(iii) Hand Pump or Tube Well;

(iv) River or Canal;

(v) Tank or Pond or Lake;

(vi) Spring and

(vii) Any other.

Although water from the above sources is used for drinking purposes in different parts of the country, yet the World Bank estimates that 21 percent households drink unsafe water in their daily use, which is considered to be disease prone and a health hazard. Further, more than 500 children under the age of five die each day from diarrhea in India alone.[2]

The earth covers two-third of its space with water but still people of various countries including India face water crisis in different parts. The Government of India having different schemes and policies through the Planning Commission (now replaced by a new institution named NITI

1 H. Chandrasekharan, R. K. Sharma and K. V. Sundaram (Edited); *Water Resources Development and Management*, p. 63 (New Delhi: Mittal Publications, 2004).

2 India's Water and Sanitation Crisis, *available at:* https://water.org/our-impact/india/ (Last Visited on November 5, 2018)

Aayog) are spending a large sum of money for providing safe drinking water to their citizens for survival. There are a number of projects going on for supply of safe drinking water both in urban and rural areas of the States or Union Territories but there are evidences which shows that people are still facing problems related to safe drinking water.

Though there are various rights under the Constitution of India like the fundamental rights but no express rights have been given so far as safe drinking water is concerned, provided in the interest of people at large. The judiciary in India actively took cognizance of this serious issue and extended an interpretation which protected it like any other rights. Therefore, judiciary in India played the utmost active role related to safe drinking water and tries to include it in the sphere of right as other rights given under the Constitution of India.

II. The Right to Safe Drinking Water in International Perspective:

The right to water finds itself in various International Treaties and Customary rules. It is in existence both in express and implied form. This right can be inferred from a number of International Conventions which are binding upon all states and is obligatory for them to respect the rights relating to water. Water has been recognized as one of the basic and fundamental rights in international law through various international instruments in the form of international human rights declarations, conventions etc.

Ever since the original Universal Declaration of Human Rights (UDHR), the right to water has been declared, explicitly or implicitly, as an essential component of right to life in particular and human rights in general in a number of international declarations over the years. In the international agreements, water was implicitly considered to be a fundamental resource. Moreover, several explicit rights especially under **Article 25** of the UDHR[3] guaranteeing the right to food, health and development cannot be attained without guaranteeing access to clean water.

The right to life is clearly set forth in ***Article 6(1)*** of the International

3 Dr. S. K. Kapoor, *Human Rights Under International Law & Indian Law,* p. 463 (Allahabad: Central Law Agency, 2014)

Covenant on Civil and Political Rights (ICCPR)[4] which states that 'this right shall be protected by law. No one shall be arbitrarily deprived of his life'. Since water is indispensable for life, the State policies that are likely to lead directly to diminished accessibility and affordability of water in effect will deprive people of life.

Article 11 of International Covenant on Economic, Social and Cultural Rights (ICESCR)[5] states that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The Declaration on the Right to Development adopted by the United Nations in 1986 and the Second United Nations World Conference on Human Rights in 1993 declared and reaffirmed that right to development is a universal and inalienable right and an integral part of fundamental human rights. Water rights remain the quintessential condition in international sphere for the successful enjoyment of the right to an adequate standard of living and health.[6]

III. The Right to Safe Drinking Water in Constitutional and Legislative Perspective:

The Constitution of India, which is the supreme law of the land, has imposed an obligation to protect the natural environment both on the State and on the citizens. It is called the "Bible" of Indian citizens because it ensures various fundamental rights of the citizens for the protection of their life and freedoms, Directive Principles of State Policy to make the state answerable for non-compliance of its duties towards citizens, fundamental duties of the citizens towards state and other human beings for assurance of fundamental rights in a better way.[7] The Constitution of

4 Dr. Paramjit S. Jaswal & Dr. Nishtha Jaswal, *Human Rights and the Law,* p. 304 (New Delhi: APH Publishing Corporation 1995)

5 Jatindra Kumar Das, *Human Rights Law and Practice,* p. 606 (Delhi: PHI Learning Private Limited, 2016)

6 The Right to Water: A Constitutional Perspective, *available at:* <http://www.ielrc.org/activities/workshop0612/ content/d0607.pdf> (Last Visited on November 1, 2018)

7 Right to Water as a Human Right and Indian Constitution: An analysis of Various

India is one of the very few documents of the world which has provisions about protection of environment which includes protection of water resources too.

The Constitution of India do not contain any express provisions as far as water is concerned, though the judiciary through its interpretation brought the provisions into right approaches. The constitutional and legislative framework of the water rights regime presents a complex picture of division of powers and responsibilities as regards to water resources in India. The State government has the power to make laws in respect of water resources existing in that state subject to conditions and limitations laid down by the Parliament of India from time to time.

A large number of enactments concerning water and water-based resources have been passed by the Union and State legislatures, in areas like water supply for drinking purposes, irrigation and rehabilitation of evacuees affected by the operation of the scheme for water resources management. Under the Constitution water is a state subject. The Constitutional authority is bestowed upon the State governments by virtue of **Entry 17** of the State List[8], **Entry 56** in the Union List[9] and also most important **Article 262** of the Constitution which states that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any Inter-State river or river valley. Further, **Article 262(2)** also states that notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

In the present constitutional framework, the legislative power in

Judgments of Apex Court of India, *available at:* http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2023%20Issue4/Version-3/F2304034548.pdf (Last Visited on November 13, 2018)

8 P. M. Bakshi, *The Constitution of India*, p. 368 (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2006)
Generally See, Entry 17 in List II (State List) in Schedule VII which inter alia reads as, *"Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List-I."* Although water is in the State List, this is subject to the provisions of Entry 56 in the Union List.

9 Ibid. at p. 364, Generally See, Entry 56 of List I (Union List) which *inter alia* reads as, *"Regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."*

relation to water is divided between the Union and the States, The Union has been empowered to legislate on the matters relating to regulation and development of Inter State River and river valleys. However, the power is limited to the extent by which such regulation and development under the control of Union is declared by the Parliament by law to be expedient in public interest. On the other hand, the states have been empowered to legislate in respect of water supplies, irrigation and canals, drainage and embankments, water storage and water power. The legislative competence of the States in these areas is subject to the legislative powers of the Union as provided under Entry 56 List I.

Apart from the Union and States, there is now a third tier in the Constitutional structure created by the 73rd and 74th Amendments, namely, local bodies of governance at the village and city levels, the village panchayats and nagar palikas. The Eleventh and Twelveth Schedules of the Constitution lay down subjects allotted to panchayats and nagar palikas. The Eleventh Schedule includes drinking water, water management, watershed development, sanitation, etc.

Article 39(b) of the Constitution of India provides that the State shall direct its policy "that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good." The term "material resources of the community" embraces all things which are capable of producing wealth for the community.[10] However, Article 39(b) is a very significant constitutional provision which talks about the distribution of the material resources of the community in such a way as to secure equitable distribution of community resources. The expression "material resources" includes precious element of the nature, i.e., 'water'.[11]

Article 47 of the Constitution of India provides that it is the duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious

10 *Assam Sillimanite Ltd. vs. Union of India, AIR 1992 SC 938*

11 Prof. Satish C. Shastri, *Human Rights, Development and Environmental Law- An Anthology*, p. 360 (Jaipur: Bharat Law Publications, 2007)

to health.

In the case of ***Municipal Council, Ratlam vs. Vardhichand***[12], the Hon'ble Supreme Court observed that the State will realize that Article 47 makes it a paramount principle of governance that steps are taken for improvement of public health as amongst its primary duties. The standard of living can only be improved by providing basic amenities to the citizens like employment, shelter and clean and safe water.

Article 48-A of the Constitution of India, a specific provision for environment which is added to the Constitution (42nd Amendment) Act, 1976 directs the State to protect and improve the improvement and to safeguard the forests and wildlife of the country.

Under fundamental rights in **Article 21** of the Constitution of India entitled protection of life and personal liberty states that *"No person shall be deprived of his life or personal liberty except according to procedure established by law."*[13]

The right to life under **Article 21** of the Constitution of India include the right to health and right to clean environment which may include right to safe drinking water. There has been significant development in the field of incorporating the right to food as a fundamental right under Article 21 of the Constitution of India.

Life is worth living only when a person has access to basic necessities of life. Central and State Governments have adopted various measures for the preservation and management of water and water related resources, but it has been found to be inadequate mainly because of the lacunae in laws and failure of proper implementation of laws. It is desirable to plug off loopholes for misuse of welfare funds and make adequate funds available so that basic necessitates of life are made available to people.[14]

Through various decisions, the right to safe drinking water has been protected by the courts only. Such protection has stemmed from the articulation of a fundamental right to a clean and healthy environment as part of the right to life guaranteed under Article 21 of the Indian

12 AIR 1980 SC 1622

13 Supra Note 9, at p.46

14 L. K.Thakur, *Comparative and International Human Rights*, p. 306 (Delhi: Authors Press, 2000)

Constitution.

In the case of ***F.K. Hussain vs. Union of India***[15], it was observed that the coastal water around the Lakshadweep islands is very limited. Potable water is in a short supply and large scale withdrawals with electrical and mechanical pumps can deplete the water source, causing stoppage or intrusion or saline water from the surrounding Arabian Sea. The Hon'ble Supreme Court held that the right to sweet water, and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself.

In the case of ***Andra Pradesh Pollution Control Board- II vs. Prof. M.V. Nayudu***[16], the Andhra Pradesh Government had granted exemption to a polluting industry and allowed it to be set up near two main reservoirs, i.e., The Himayat Sagar Lake and Osman Sagar Lake, in violation of the Environmental (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974. The Hon'ble Supreme Court struck down the exemption and held that "the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974 did not enable the state to grant exemption to a particular industry within the area prohibited for the location of the polluting industries. Exercise of such a power in favour of a particular industry may be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Article 21 of the Constitution of India. Such an order of exemption carelessly passed ignoring the 'precautionary principle' could be catastrophic". The Hon'ble Court referred to India's participation in the UNO Water Conference in 1977 and held that the right to access to safe drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to the citizens.

In the case of ***Voice of India vs. Union of India***[17] the Hon'ble Court made it clear that even after 60 years a citizen of the country is not getting clean potable water. In this case the petitioner sought relief essentially against municipal corporations, in each state because supply of clean potable water is the function of municipal corporations and other local bodies. Water being a state subject, it is the duty of the state to provide potable drinking water to the citizens.

15 AIR 1990 Ker 321

16 (2001) 2 SCC 62

17 Writ Petition No. 263 of 2010 Decided on 20/9/2010.

Article 51(A) (g) of the Constitution of India declared that it shall be the duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures". Thus, a citizen has a fundamental duty to preserve and protect water resources.

In addition to these above Articles, a Commission, i.e., The Constitution Review Committee[18] also known as Justice Manepalli Narayana Rao Venkatachaliah Commission has been constituted on February 22, 2000 by the Government of India to review the constitution by going through the amending process and proposed for a new **Article 30D**, which would have recognized that "Every person shall have right to safe drinking water". **Article 30D** of the Constitution would have given importance to right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. There remains no reason as to why "right to water" should not be included expressly in the Constitution paving a way for a better and guaranteed future to us and our next (future) generations.

The proposed Article 30D states-

"Every person shall have the right –

(a) To safe drinking water.

(b) To an environment that is not harmful to one's health and well-being.

(c) To have the environment protected, for the benefits of present and future generations so as to–

  (i) prevent pollution and ecological degradation

  (ii) promote conservation

  (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

The Right to access to water can be seen to place three inter related

18 National Committee to Review the Working of the Indian Constitution, Para 3.22.3.67 (2002). *available at:* http://legalaffairs.gov.in/ncrwc-report (Last Visited on November 13, 2018)

but distinct obligations on the state which are as follows[19]:

1. It must ensure that all people have physical access to water. It means that facilities that give access to water must be within safe physical reach of all sections of the population, especially the vulnerable and marginalized sections.

2. It must ensure that all people have economic access to water. This implies that the cost of accessing water should be at a level that would ensure that all people are able to gain access to water without having to forgo access to other basic needs.

3. Where water is provided, i.e. the right is guaranteed, they should be protected against undue infringement.

IV. Central Water Commission (CWC)

Central Water Commission (CWC) is a premier Technical Organization of India in the field of Water Resources and is presently functioning as an attached office of the Ministry of Water Resources, River Development and Ganga Rejuvenation, Government of India. The Commission is entrusted with the general responsibilities of initiating, coordinating and furthering in consultation of the State Governments concerned, schemes for control, conservation and utilization of water resources throughout the country, for purpose of Flood Control, Irrigation, Navigation, Drinking Water Supply and Water Power Development. It also undertakes the investigations, construction and execution of any such schemes as required.[20]

Central Water Commission is headed by a Chairman, with the status of Ex-Officio Secretary to the Government of India. The work of the Commission is divided among 3 wings namely, Designs and Research (D&R) Wing, River Management (RM) Wing and Water Planning and Projects (WP&P) Wing. Each wing is placed under the charge of a full-time Member with the status of Ex-Officio Additional Secretary to the Government of India and comprising of number of Organizations responsible for the disposal of tasks and duties falling within their

19 Right to Safe Drinking Water under the Constitution of India, *available at:* http://shodhganga.inflibnet.ac.in/bitstream/10603/97553/12/12_chapter%203.pdf (Last Visited on November 1, 2018)

20 Central Water Commission (Serving the nation since 1945), *available at:* http://www.cwc.gov.in/ (Last Visited on November 13, 2018)

assigned scope of functions.[21]

A separate Human Resources Management Unit headed by a Chief Engineer, deals with Human Resources Management or Development, Financial Management, Training and Administrative matters of the CWC. National Water Academy located at Pune is responsible for training of Central and State in-service engineers and it functions directly under the guidance of Chairman. Altogether there are nineteen (19) organizations located at headquarters in New Delhi and thirteen (13) organizations spread over various locations in India.[22]

V. Judicial Dynamism and the Right to Safe Drinking Water

The right to safe drinking water has been accepted by the Court to be a fundamental right under Article 21 of the Constitution of India and it has only been articulated as part of the guarantee of the right to environment. Right to life being the most important of all human rights implies right to live in a healthy environment. Similarly, Article 14 provides that right to equality is a fundamental right of the person. Fortunately, the higher judiciary of India has interpreted Article 14 and Article 21 of the Constitution in such a liberal and pragmatic manner that now it is well established that right to clean and wholesome environment which includes the right to access to clean and safe water is a fundamental right. The Hon'ble Courts have intervened by writs, orders and directions in appropriate cases and recognized the constitutional right to a healthy environment.[23]

The Hon'ble Supreme Court for the first time, in the case of ***Rural Litigation Entitlement Kendra vs. State of U. P.***[24], indirectly recognized the right to clean and healthy environment.

In the case of ***Subhas Kumar vs. State of Bihar***[25], a Public Interest Litigation filed against the pollution of the Bokaro River by the sludge or slurry discharged from washeries of the Tata Iron and Steel Company Ltd, it was alleged that the release of effluents into the river results in making

21 Ibid.

22 Ibid.

23 S. Shantha Kumar, *Introduction to Environmental Law,* p. 94 (Nagpur: Wadhwa and Company, 2005)

24 AIR 1985 SC 652

25 AIR 1991 SC 420

the water unfit for drinking purposes and for irrigation. The Hon'ble Supreme Court explicitly observed that "right to life is a fundamental right…. it includes the right to enjoyment of pollution free water and air for full enjoyment of life".

In the case of ***Attokoya Thangal vs. Union of India***[26] the Hon'ble Kerala High Court highlighting the importance of right to life observed that "the right to clean water and right to clean air are attributes for the right to life, these are the basic elements, which sustain life itself".

In the case of ***M.C. Mehta vs. Kamal Nath***[27] the Hon'ble Supreme Court held that our legal system based on English common law includes public trust doctrine as a part of jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The state as a trustee is under a legal duty to protect all the resources.

In the case of ***Vellore Citizens Welfare Forum vs. Union of India***[28] the Hon'ble Supreme Court expressly held that the constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution free environment.

In the case of ***M. C. Mehta vs. Union of India***[29], the Hon'ble Supreme Court of India recognized that groundwater is a public asset and that citizens have the right to the use of air, water and earth as protected under Article 21 of the Constitution of India.

In the case of ***Narmada Bachao Andolan vs. Union of India***[30] the Hon'ble Supreme Court observed that "water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in the Article 21 of the Constitution of India……and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life."

In the case of ***State of Karnataka vs. State of Andhra Pradesh***[31] the

26 (1990) KLT 580
27 (1997) 1 SCC 388
28 (1996) 5 SCC 647
29 (2004) 3 SCR 128
30 (2000) 10 SCC 664
31 [2000 (9) SCC 572]

sharing of water between three states, i.e., Karnataka, Andhra Pradesh and Tamil Nadu, the Hon'ble Court held that life cannot be sustained without water and the right to water has been declared as a part of right to life.

In the case of ***Hamid Khan vs. State of Madhya Pradesh***[32] the Hon'ble Court held that state has failed in its duty under Article 47 of the Constitution of India to improve public health and to provide safe drinking water.

In the case of ***Shailesh R. Shah vs. State of Gujarat and others***[33] the Hon'ble Court held that the state is a trustee of all natural resources including ponds and lakes.

In the case of ***Delhi Water Supply and Sewerage Disposal Undertaking vs. State of Haryana***[34] the Hon'ble Supreme Court held that drinking is the most beneficial use of water and this need is so paramount that it cannot be made subservient to any other use of water, like irrigation so that right to use of water for domestic purpose would prevail over other needs.

In the case of ***S.K. Garg vs. State of U.P.***[35] the complaint was made to ensure regular supply of water to the citizens of Allahabad. The Hon'ble Allahabad High Court reiterated the fundamental right to drinking water.

In the case of ***Chameli Singh vs. State of U.P.***[36]**,** the Hon'ble Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful.

In the case of ***Gautam Uzir & Anr. v. Gauhati Municipal Corporation***[37]**,** in regard to scarcity of water in the city of Guwahati, it was argued that the Municipal Corporation is liable for supplying sufficient and quality drinking water to all living in their jurisdiction. The Municipal Corporation contended that effective policies could not be adopted due to paucity of funds. The Hon'ble Court made it clear that water and

32 AIR 1997 MP 191
33 AIR 2004 NOC (Guj) 191
34 [1996 (2) SCC 572]
35 [1999 ALL. LJ 332]
36 AIR 1996 SC 1051
37 1999 (3) GLT 110.

clean water, is so essential for life. Needless to observe that it attracts the provisions of Article 21 of the Constitution of India.

In the case of ***Shajimon Joseph vs. State of Kerala***[38], the Hon'ble Kerala High Court made it clear that it was the duty of the State to provide safe drinking water to the citizens.

VI. Concluding Remarks

Water is the most important of the elements of nature. The importance of water, the renewable natural resources for human habitat has been well known since time immemorial. Over the years, the need for preserving and maintaining water resources has been made at various scientific events and the main impetus during the International Conference on Water and Environment (ICWE) held in Dublin in 1992 wherein a great deal of intensive and serious thought was given on the limited availability and possibilities of exploiting and managing the earth's fresh water resources.

All potable water is drawn from rivers, lakes or aquifers and the cost involved is only that of extraction since water itself is 'free'. Water resources are often outside urban areas and water is pumped to urban areas and purified and distributed through a piping system.

The statutory framework and the law governing water in India are fragmented and inadequate, there is no coherent water policy, and there is a lack of infrastructure and of water resources. India needs to develop a comprehensive approach to enforcing economic and social rights and to formulate public policy based on the understanding that access to water is an integral part of other social and economic rights.

The right to have access to safe drinking water and the right to use water are the very basic rights the protection of which is required at all expense. The Government of India must make policies towards realization of these rights and the judiciary must balance the rights of the citizens and must also take care of other aspects relating to water governance laws and regulations throughout the country.

Indeed, the higher jurisprudence of Article 21 of the Constitution of India embraces the protection and preservation of nature's gift without which life ceases to be viable and human rights denied. Water is a primary

38 (2007) 1 KLT 1

human need, to deprive which is to deny the right to life.

Through all these judgments the Hon'ble Supreme Court has tried to reiterate the concept of safe drinking water under Article 21 of the Indian Constitution. But there still exists water shortage and thousands are deprived of this basic human right. The state is not able to provide these natural resources to the needy citizens.

There is a scarcity of availability of safe drinking water to the households, scattered in different magnitude all over the country. All the states require special programmes to augment the availability and supply of safe drinking water. Undoubtedly they also require special action plan by the Central or State Governments and NGOs for providing safe drinking water to its people.

Seven Years Journey of National Green Tribunal with Special Reference To Sustainable Development: A Legal Analysis

*Dr. Anis Ahmad**
*Sonal Singh***

Introduction

The link between environmental degradation and economic development has become a matter of great concern at the international and national level over the past three and more decades. It is therefore futile to resolve the conflicts between environmental protection and economic development that led to the notion of sustainable development.[1] It was coined for the first time by the World Commission on Environment and Development (Brundtland Report) in 1987 at the international level.[2] But, the links between environmental protection and development issues are already articulated from Stockholm Conference on Human Environment in 1972. Thereafter, the Rio Declaration in 1992, Johannesburg Summit in 2002[3] and Rio+20 in 2012 strived continuously to renew global commitment to sustainable development. Further, the United Nations Conference on Sustainable Development, which is popularly known as Rio+20[4] addressed the global environmental challenges and economic crises and came out with certain new agendas for realizing the sustainable development goals. In post-2015, a development agenda known as 'Sustainable Development Goals 2030' was adopted by the countries to be implemented in the coming

* Assistant Professor, Department of Law, School for Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow. The author can be reached at anisbbau@gmail.com

** Student of LL.M, (3rd Semester) Department of Law, School for Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow

1 Philippe Cullet, *Intellectual Property Protection and Sustainable Development 34* (Lexis Nexis Butterworths, New Delhi, 2005).

2 World Commission on Environment and Development, Our Common Future (1987). *available at*: http://www.un-documents.net/our-common-future.pdf. (Visited on July 20, 2017)

3 Birnie Patricia W and Boyle Alan E, *International Law and the Environment*, 616 (Oxford University Press New York, 2009).

4 United Nations Conference on Sustainable Development available at https://sustainabledevelopment.un.org/rio20.html (Visited on July 20, 2017).

years.[5] One of the most important facets of the sustainable development is the disputes resolution mechanism for realizing environmental justice. The principles of the above Conferences, which provides for the protection and improvement of human environment as well as, access to judicial remedy and effective adjudication of environmental disputes by the national courts and the States to develop national law regarding liability and compensation for the victims of pollution and other environmental damages[6] in order to resolve all their environmental disputes peacefully and by appropriate means[7] and effective access to judicial and administrative proceedings, including redress and remedy.[8] Keeping in view the above development the Indian government has passed various socio-economic and environmental legislations and policies in tune with the three pillars of sustainable development in the post Rio period. There is no doubt that the Indian Judiciary particularly, the Supreme Court and the High Courts played an active role in developing the environmental jurisprudence since 1980.[9] Further, with the complex nature of environmental disputes which involves scientific and other issues, the Supreme Court expressed its desire in a number of cases for the need of a specialized court related to environmental matters.[10] Apart from that the Law Commission of India in its 186th Report, 2003 also proposed to constitute environment courts for achieving the objectives of Articles 21, 47, 48A, 51 A (g) by means of fast, fair and satisfactory judicial process.[11] Of late, only in 2010, the National Green Tribunal Act was enacted for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. The present article wishes to examine the role and contribution of National Green Tribunal as the green institution in the last seven years for ensuring the speedy disposal of cases and for realizing the access to environmental justice and goals of sustainable development.

---

5 Sustainable Development goals, available at http://www.un.org/sustainabledevelopment/sustainable-development-goals/ (Visited on July 10, 2017).

6 Rio Declaration on Environment and Development 1992, Principle 16, *available at*: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm (Visited on July 28, 2017)

7 *Ibid*. Principle 26

8 *Id*. Principle 10

9 S.N Dhyani, *Fundamentals of Jurisprudence(The Indian Approach)* 417 (Central Law Agency, Allahabad 2007).

10 A.P Pollution Control Board v. Prof. M.V.Nayudu AIR 1999 SC 812.

11 Law Commission of India, 186th Report on Proposal to Constitute Environmental Courts (September, 2003) http://lawcommissionofindia.nic.in/reports/186th%20 report.pdf (Visited on Nov 11 , 2015).

Sustainable Development: International and National perspective

In the international context, sustainable development law broadly refers to a corpus of international legal principles and conventions, which address the areas of intersection between international economic law, international environmental law and international social law aiming towards development. The journey began with the Stockholm Conference in 1972. This principle gained an international importance in 1987 through the World Commission on Environment and Development - '*Our Common Future'* a fundamental document that gave a new concept for the strategic framework for sustainable development across nations. That defines sustainable development in terms of "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[12] This discussion continued with United Nations Conferences on Environment and Development in Rio de Janeiro in 1992, in Johannesburg in 2002, and again in Rio+20 in 2012.[13] With the adoption of these instruments, sustainable development becomes a leading concept of international environmental policy and even after thirty years of Brundtland Report, we are treading slowly to achieving international consensus regarding sustainable development.[14] These aforesaid international documents also deal with access to justice in environmental matters,[15]social protection to all members of society and social justice,[16] ensuring equal access to justice and legal support,[17] and to develop a national dispute resolution procedure to deal with the settlement and land-use concerns.[18]

In 2015 the global community adopted another future agenda popularly known as Sustainable Development Goals 2030. It prescribes that at the international level, every developed, developing and in-

12 Tuula Honkonen, The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreement, Regulatory and Policy Aspect 59 (Kluwar Law International 2009).

13 Elizabeth Fisher and Bettina Lange, et.al., *Environmental Law Text, Cases, and Materials* 406 (Oxford University Press, United Kingdom, 1/2013)

14 Supra Note 3 at 53.

15 Rio Declaration on Environment and Development 2012, *The Future We,* Article 99, *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E (visited on August 4, 2017)

16 Id. Article 156

17 Id. Article 238

18 Rio Declaration on Environment and Development 1992, Article 28, *available at http://www.unesco.org/education/pdf/RIO_E.PDF* (visited on August 4, 2017)

transition nation has committed to provide access to justice for all and build effective, accountable and inclusive institutions at all levels[19] in which every nation has to promote the rule of law at the national and international levels and ensure equal access to justice for all.[20]

As far as the national perspective is concerned, the Indian Constitution is amongst the few in the world that contains specific provisions related to environmental protection and improvement.[21] The Constitution of India was adopted in 1950, but it did not have any specific provision with regard to the protection of the environment.[22] But through the judicial interpretation, the principle of sustainable development was embedded in the *fundamental rights* under Part III of the Constitution and the judicial remedies for the enforcement of fundamental right to wholesomeness of the environment have been expanded and liberally[23] construed to sustain the claim of the competing stakeholders of such rights in a number of cases as a part of Article 21 and in a number of judicial pronouncements by the Supreme Court and High Courts.[24]

Apart from that, the Central Government has passed number of legislations, rules, and policies related to environmental protection and implementing the three pillars of sustainable development.[25]

National Green Tribunal: Institutional Structure

The National Green Tribunal (NGT) was set up on 18th October, 2010 under the NGT Act, 2010, for the purpose of effective and expeditious

19 Transforming our world: the 2030 Agenda for Sustainable Development, Goal 16. *available at:* https://sustainabledevelopment.un.org/post2015/transformingourworld (visited on 10 August 2017)

20 Transforming our world: the 2030 Agenda for Sustainable Development, Goal 16.3. *available at:* https://sustainabledevelopment.un.org/post2015/transformingourworld (visited on 10 August 2017)

21 Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India: Cases Material and Statutes* (Oxford University Press, New Delhi, 2002) p. 41

22 Aruna Venkat, *Environmental Law and Policy* 51 (PHI learning Pvt.Ltd, New Delhi, 2011).

23 Swatanter Kumar , " Access to Environmental Justice in India and Indian Constitution" NGT International Journal of Environment Vol.1 (2014), *available at:* http://www.greentribunal.gov.in/Writereaddata/Downloads/NGT_Journal_Vol1.pdf (Visited on August 21, 2017)

24 Zafar Mahfooz Nomani, *Natural Resources Law and Policy* 18-20 (Uppal Publishing House, New Delhi, 2004).

25 Anis Ahmad, "Sustainable Development Law and Policies: An Assessment in Indian Context" 5 JMR 2 (2014).

disposal of cases relating to environmental protection and conservation of forests and other natural recourses including enforcement of any legal right relating to environment and giving relief relating to environment and giving compensation for damages to persons and property and for matters connected therewith or incidental thereto.[26]

NGT has five places of sitting, i.e. the principal Bench in Delhi and zonal benches in Pune, Kolkata, Bhopal, and Chennai. Apart from this, the tribunal holds three circuit benches at Shimla, Shillong, and Jodhpur. Since its inception and up to 31.8.2016, the tribunal received a total for 17,903 cases, against which 14,201 cases have been disposed of and 3,702 cases are pending.[27]

(A) Constitution of National Green Tribunal

A remarkable feature of the NGT is its composition. In view of the earlier debate as to the specialist nature of environmental law and the multidisciplinary issues relating to the environment, the Tribunal will consist of both judicial and expert members.[28] The Chairperson of the Tribunal will be appointed by the Central Government in consultation with the Chief Justice of India[29]. Members will be appointed on the recommendation of a Selection Committee in such manner as may be prescribed by the Central Government.[30] The judicial members will be persons who were or had been judges of the Supreme Court or Chief justice of a High Court of India.[31] This shows that for effective mechanism there is need of legal expertise and experiences. Expert members will include either technical experts from life sciences, physical science, engineering or technology.[32] Every expert member is from science background, and that ignores the participation of social scientists. Members are required to have administrative experience of 15 years including experience of five years in

26 The National Green Tribunal Act, 2010 (Act 19 of 2010) Preamble.

27 Annual report 2016-2017, Government of India, Ministry of Environment, Forest and Climate Change *available at* http://www.moef.nic.in/sites/default/files/Environment%20AR%20English%202016-2017.pdf (visited on July 28, 2017)

28 Gitanjali Nain Gill, "A Green Tribunal for India" 22 JEL 461-474 (2010) *available at* https://academic.oup.com/jel/article/22/3/461/395738/A-Green-Tribunal-for-India (visited on July 28, 2017)

29 The National Green Tribunal Act, 2010 (Act 19 of 2010) S. 6(1), 6(2)

30 Id. S. 6(3)

31 Id. S.5(1)

32 Id. S. 5(2)

dealing with environmental matters.[33] The minimum number of full-time judicial and expert members will not be less than 10 with a maximum of 20 to each bench.[34]

(B) Powers and Functions of National Green Tribunal

The Tribunal has original[35] and appellate jurisdiction[36] to settle environmental disputes. The original jurisdiction covers all civil cases in which a substantial question relating to the environment is involved and which arises out of enactments mentioned in Schedule - I of the NGTA.[37] The time limitation for adjudication of application is within a period of six months from the date on which the cause of action in such a dispute first arose; it may be extended for 60 days where there is sufficient cause.[38] The tribunal has its own procedure[39] and have the same powers as are vested in a civil court under the Civil Procedure Code, 1908[40], but neither it is bound by the procedure of the Civil Procedure Code, 1908[41] nor the rules of evidence[42]. It is obligatory for the Tribunal to apply the foundational principles of India's environmental jurisprudence, namely, the principles of sustainable development, precaution, and the polluter pay principle.[43] The Act provides for an appeal to the Supreme Court of India[44] by any aggrieved person concerning the award or order passed by the Tribunal. It can be on one or more grounds mentioned under Section 100 of the Civil Procedure Code, 1908.[45] The tribunal has a power to impose the penalty on individuals and companies for noncompliance of the tribunal's orders i.e. on the part of an individual the punishment shall be imprisonment for three years or a fine of rupees 10 crores or both[46] while the Corporate bodies are punishable by a fine of rupees 25 crores and relevant company

33 Id. S. 5[2(a),(b)]
34 Id. S. 4(1)
35 Id. S. 14(1)
36 Id. S. 16
37 Id. S. 14(1)
38 Id. S. 14(2)
39 Id. S. 19(2)
40 Id. S. 19(4)
41 Id. S. 19(1)
42 Id. S. 19(3)
43 Id. S. 20
44 Id. S. 22
45 Id. S. 22(1)
46 Id. S. 26

officials may face personal liability.[47] This Compensation is inadequate as harming the environment is an irreparable damage to the ecology. Therefore, there is a need to rethink this provision.[48]

Contribution of National Green Tribunal in Environmental Justice and Sustainable Development

The role of courts is emphasized because judicial decisions are viewed as (potential) means of furthering environmental protection.[49] An analysis of the NGT's role over the last seven years suggests that it has been progressive in its approach towards environmental protection in sustainable development concerns. NGTs first contribution Forest Clearance given for generating hydroelectricity power[50], Environment Clearance for Thermal Power Project in Nagpur[51], sometimes cracks occur in the tunnel based hydro power projects. If the construction of the dam is allowed, it may cause irreparable and irreversible loss to the environment. The Tribunal shall while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pay principle. It was stated in a case of Solid Bio-waste Treatment Plant that the Environmental Impact Assessment (EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development.[52]

In, ***Adivasi Majdoor Kisan Ekta Sangthan* v. *Ministry of Environment and Forests,***[53] The NGT observed :

> *"This is not a case where there are a few ignorable procedural lapses in conducting the public hearing. This is a case of a mockery of public*

47 Id. S. 27

48 Gitanjali Nain Gill, "A Green Tribunal for India" 22 JEL 461-474 (2010) *available at* https://academic.oup.com/jel/article/22/3/461/395738/A-Green-Tribunal-for-India (visited on July 28, 2017)

49 Elizabeth Fisher and Bettina Lange, et.al., Environmental Law Text, Cases, and Materials 368 (OXFORD university press, united kingdom, 1/2013)

50 The Sarpanch, Grampanchayat Tiroda, Tal. Sawantwadi, District Sindhudurg, Maharashtra, Vs. The Ministry of Environment and Forests MANU/GT/0009/2011

51 Krishi Vigyan Arogya Sanstha, Dhanwate Ashram, Shani Mandir Road, Sitabuldi, Nagpur Vs. The Ministry of Environment & Forests, Government of India MANU/GT/0013/2011

52 K.G. Mathew Aged 68 Years, S/o Late Gee Varghese Kottupallil House, Near Vs. State of Kerala MANU/GT/0019/2012

53 MANU/GT/0024/2012

hearing which is one of the essential parts of the decision making process, in the grant of Environmental Clearance. This is a classic example of violation of the rules and the principles of natural justice to its brim."

Accordingly, the Tribunal considered it appropriate to declare that the public hearing conducted in the case was invalid.

In another case,[54] *the Tribunal held that:*

"The doctrine of sustainable development has been accepted as an answer to balance on one hand the various developmental activities aimed at ensuring better living, and improving social and economic conditions of human beings. On the other hand ensuring that the consequence of development do not exceed the carrying capacity of the ecosystem but are compatible with the need to protect and improve the environment is also equally important."

With the change of time, the concept of Sustainable Development was dealt with by NGT which led every other authority or institution to focus on the same.

In 2013, ***Kehar Singh Vs. The State of Haryana, Through the Secretary,***[55] an application was filed that dealt with the fact that no environmental clearance is contemplated in law for establishing a Sewage Treatment Plant.

The NGT observed that:

"…..They can have a comparative study of the harmful effects of the project, considering it on the touchstone of sustainable development and human environment and welfare. Sewage itself is a very serious pollutant. It can result in tremendous health hazards and cause injury to the environment including intolerable odour. It carries pathogenic organisms that can transmit diseases to humans and animals, hold nutrients that may cause eutrophication of receiving water bodies and can lead to ecotoxicity. The purpose of the environmental legislations

54 Janajagrithi Samiti (Regd.) Through its Secretary Shri Jayanth Kumar Nandikur-574138, Udupi District, Karnataka Vs. The Union of India, Through the Secretary, Ministry of Environment & Forests Paryavaran Bhavan, MANU/GT/0006/2012

55 MANU/GT/0067/2013

referred to in the NGT Act is to prevent environmental degradation on the one hand and its improvement on the other….."

Here, the NGT has focused on protection of human health, which is also part of sustainable development, and again a consideration of ***Ratlam Municipal case***[56] *as well, observed by the Supreme Court:*

"…….Decency and dignity are non-negotiable facets of human rights……."

In ***Goa Foundation and Peaceful Society Vs. Union of India and Ors***[57] an applicant sought for protection of the ecology in the Western Ghats and for relief that the Respondents be directed not to issue any consent/ environmental clearance or permission under different laws within Western Ghat areas, by relying on an apex court judgment and argued that:

"…the Tribunal should not be driven away from the principle of ecocentric to anthropocentric sustainable development. Anthropocentrism is always human interest focused and non-humans have only instrumental value to humans. Ecocentrism is nature centered where humans are part of nature and non-humans have intrinsic value. Human interest does not take automatic precedence and humans have obligations to non-humans independent of human interest. Ecocentrism is, therefore, life-centered, nature-centered where nature includes both human and non-humans. The Public Trust Doctrine requires the authorities to maintain and ensure environmental equilibrium…"

Again in ***M/s. Sterlite Industries (India) Ltd. Vs. Tamil Nadu Pollution Control Board and Ors.,***[58] the appellant-company had been operating a copper smelter plant. The National Environmental Engineering Research Institute (for short the 'NEERI') had submitted a report in the year 2005 showing that the emission levels of the plant of the appellant-company were within the stipulated limits while some emissions did not conform to the standards prescribed.

"The most vital necessities, namely air, water and soil having regard

56 Municipal Council, Ratlam vs Shri Vardhichand & Ors, AIR 1980 SC 1622

57 MANU/GT/0057/2013

58 MANU/GT/0070/2013

to the right to life under Article 21 cannot be permitted to be misused or polluted so as to reduce the quality of life of others. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue. It is often said that development and protection of environment are not enemies but are two sides of the same coin. If without degrading the environment or by minimising the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue……it is an exercise in which courts or tribunals have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's test'"

In ***Wilfred J. Vs. Ministry of Environment & Forests,***[59] the present application was filed against Vizhinjam Port Project on the ground that the said project affects not only the ecology and the environment of that area but there would also be an adverse impact on the livelihood of the inhabitants – One of the issues was whether the NGT had jurisdiction to entertain said application. It was thus, held that:

"……The scheme of NGT Act clearly gives the Tribunal complete independence to discharge its judicial functions, have security of tenure and conditions of service and is possessed of complete capacity associated with Courts….. The presiding members of the NGT are not administrative officers but duly represent the State to administer justice and perform judicial functions…..any question relating to environment, falling within the Scheduled Acts would have to be examined by the Tribunal, subject to the provisions of the relevant Acts.

59 MANU/GT/0072/2014

It also observed that:

"…Intergenerational Equity is an integral element of ecological sustainable development and has been incorporated into international law as well. Applying that principle, it is the duty of all concerned with the present to ensure that the next generation is not exposed to undue hardship or ecological or environmental degradation."

In ***Kalpavriksh Vs. Union of India,***[60] a petition filed for challenging the Notification issued under the Regulations in relation to prescribing the eligibility criteria for the Chairperson and the Members of the Committee. The issue which arose was whether the Notification issued under the Regulations in relation to prescribing the eligibility criteria for the Chairperson and the Members of the Committee would fall under Section 14 of Act. It was thus, held that:

"The Chairperson or Members who are to deal with complex environmental issue while considering grant of Environment Clearance or otherwise to the proposed projects must be possessed of appropriate qualification and experience in that field…..The appointment of appropriate people with desired qualification thus would be of concern and within the jurisdiction of this Tribunal."

Evidently, the Central Government was vested with the power to take all such measures as it deemed necessary for protecting and improving the quality of the environment and preventing, controlling and abating pollution.

It was observed that:

"The Chairperson/members had to be outstanding and experienced ecologists or environmentalists or technical professionals in the relevant development sector having demonstrated interest in environment conservation and sustainable development…..Chairperson could be an outstanding and experienced ecologist or environmentalist or technical professional with wide managerial experience in the relevant development sector. The technical professional or any person with managerial experience in the relevant development sector was no longer required to have any relation with environmental conservation or development."

60 MANU/GT/0070/2014

In ***The Forward Foundation A Charitable Trust and Ors. Vs. State of Karnataka and Ors.,***[61] an application was filed for seeking restoration of ecologically sensitive land, as on-ground projects were implemented without following the environment norms. It was held that since the Environmental Clearance was granted to the Respondent on a specified date and all events had occurred thereafter till the institution of the petition, the applicant could not have availed of any remedy before the Tribunal prior to the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. Therefore, the application for the purposes of Section 15 of the Act had been filed within specified years therefrom and was within time and the application was disposed of.

The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had carried out a study and submitted a report on the need for *'Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity'*. This report had specifically dealt with the activity of the SEZ projects by Karnataka Industrial Area Development Board in six zones.

The Tribunal observed that:

> *"It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters…….The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits."*

In the case, ***S.P. Muthuraman Vs.Union of India and Ors.,***[62] *the NGT observed that:*

> ***"****The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed*

61 MANU/GT/0089/2015

62 MANU/GT/0146/2015

projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purpose always should be to avert the major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigors particularly when the faults or acts of omission, commission are attributable to the Project Proponent." **"** ***…..****The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle****."**

In ***Debadityo Sinha and Ors. Vs. Union of India and Ors***.,[63] the Environmental Clearance granted by the Ministry of Environment, Forest and Climate Change to M/S Welspun Energy (U.P.) Pvt. Ltd. for setting up of a Super Critical Coal based Thermal Power Project at Village Dadri Khurd, Tehsil Mirzapur, Uttar Pradesh was assailed in the present Appeal. It is true that there is ever growing demand for power/electricity for the development and to meet this demand the UP Power Corporation Ltd. entered into a power purchase agreement. However, any decision on the issue involving environmental concerns needs to be taken as warranted by the Section 20 of the National Green Tribunal Act, 2010. Principles of sustainable development, Precautionary Principle, and Polluter's Pay Principle are guiding stars in a journey towards such decision. It was held that:

"The development has to be a sustainable one for ensuring intergenerational equity."

In the case of ***M. Paul Rose and Ors. Vs. The Secretary to Government,***

63 MANU/GT/0148/2016

Department of Environment, Forest and Climate Change and Ors.[64]

It was observed that:

> *"…..The sustainable development is not for the purpose of scuttling any of public projects but it must be balanced with the public interest of course by following the best technology available in respect of the scheme with intent to preserve the environment. In any event, the development for social benefit shall not be curtailed…..before a project come into force a balance is to be stuck between sustainable development and environment"*

In the case of ***Udaya Suvarna and Ors. Vs. The Deputy Commissioner/ Chairman District Sand Monitoring Committee and Ors.,***[65] an application was filed on the claim that they are living on the banks of the river "Swarna" since childhood and having a substantial knowledge of the ecology and the environment of the area, to protect the ecology and environment of the area. The argument was that removal of sand deposits from the river is necessary and it was pointed out that:

> *"sand is a very useful commodity for the development of the nation and therefore for sustainable development and to safeguard the ecology and environment, sand deposits are to be permitted to be removed and the permits granted were all granted in compliance with the guidelines."*

The object of the Notification of Coastal Regulatory Zone, 2011 is to:

> *"…ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming,….."*

Recently in the case of ***Social Action for Forest and Environment (SAFE) Vs. Union of India and Ors.,***[66] it was prayed by the applicant that the Tribunal should direct closure and removal of the camps along the River Ganga from Shivpuri to Rishikesh as they were causing environmental and

64 MANU/GT/0009/2016
65 MANU/GT/0016/2017
66 MANU/GT/0019/2017

water pollution in River Ganga and the areas where they were located. The Tribunal had also noticed that the requirement of sustainable tourism had to be satisfied subject to compliance with the environmental laws. *The right to a decent and clean environment is a Fundamental Right under Article 21 and the Right to carry on business under Article 19 of the Constitution of India is subject to limitations imposed by law.* Development must be in strategic form to achieve a goal and to ensure the equitable and sustainable development for all.[67]

Conclusion

Development and the protection of the environment are not enemies to each other. If without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activity, applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. There is no doubt that the National Green Tribunal (NGT) is the most consistent and progressive environmental authority in India since its inception. It had redefined the role of environmental experts and the criteria to select such experts. It has been largely successful in implementing its orders, which usually relate to staying environmental clearances. Apart, from the existing laws, policies, institutions, and agencies, it is a duty of every citizen to protect and improve the natural environment; firstly, we have to focus on *duty-based approach,* along with *right-based approach*. Last, but not the least, there is an urgent need that every organ of the government has to play a supportive role for the effective enforcement of the laws and policies for realizing the goals of sustainable development.

67 M.C. Mehta and Ors. vs. Union of India and Ors. (13.07.2017 - NGT) : MANU/GT/0067/2017

Expanding Boundaries of Reproductive Rights and Women Empowerment In India

*– Dr. Sushma Sharma**

Abstract

There has been a neglect on the reproductive health and the consequences of this neglect have been un-redressable for women. There is a necessity for a change in the current health policies, programmes and laws in India. The health policies and programmes have to be shifted from its demographic target to a much wider aspect of the health concerning reproductive health needs of women and the services they require for the purpose. Taking into consideration, the present socio-cultural restraint that women are facing in acquiring health services, there is an urgent need for the government to take necessary steps.

There are many health programmes such as National Family Welfare Programme, National Family Health Survey etc. that have been launched for providing health care measures. But these programmes fail to focus on the health of women especially the reproductive health. What are the inadequacies in women's reproductive health and what are the priorities for reshaping the health programmes to respond to the present reproductive health needs of women? There is a need to introspect these issues deeply.

Introduction

Women's life has been revolving around the reproductive task mostly, and it is in this area where women have been facing critical problems not only relating to physical health but also social problems like gender discrimination, denial of health services etc. Even in the era of equality of sexes; equal status of women is a distant dream. Women's capacity to reproduce has become a reason for their dominant position in the society. Therefore, there is a need to protect and promote reproductive rights of women through proper legal framework.

* Assistant Professor, Sikkim Govt. Law College Burtuk East Sikkim India

The scripting of reproductive rights into international human rights instrument is a major gain. The effort to expand its range is still continuing. This constant effort towards recognition of reproductive rights has made the progress in women's movement to achieve their rights. The movement for emancipation of women from the human rights point of view has totally changed the perception of woman's rights and made reproductive rights of women an integrating part of human rights instruments. The right to life, right to privacy, right to health etc., has been woven in the supple hands of women's rights perspective.[1]

Reproductive Rights – A New Perspective

The reproductive health means that people have the capacity to reproduce and to regulate their fertility. It, moreover, implies that women have the right to undergo pregnancy and child birth safely. It further, provides that in case of any gynecological or other disorder there has to be a facility for medical services. The state must provide a condition where every individual can enjoy sexual relations free from the fear of disease.[2]

The fact that India's population has increased from 36 crores in 1951 to over 102 crores in 2001 has worried to everyone including politicians, administrators, development planners, public health experts, demographers, social scientists, researchers and even common people. An uncontrollable population explosion has become the obstacle for country's progress. The government was so much occupied with solving the issue of population explosion that it has totally forgot the importance of good health of the mother for the good health of the infant.

Reproductive health suffers by a variety of reasons such as poor health infrastructure, quality of the delivery system and its responsiveness to women's needs. There are various social, economic, cultural and biological factors which are responsible for the slow growth and development of the reproductive rights in India such as:-

a) Gender inequality

b) Population explosion

---

1 Upendra Baxi "*Gender and Reproductive Rights in India: Problems and Prospects for the New Millennium*" October Kali's yug 23 (2000).

2 Shireen J. Jejeeboy "*Addressing women's reproductive Health Needs*" March Economic and Political Weekly 475 (1997).

c) Lack of Health care facilities

d) Lack of Pre-natal and post-natal care to women

From Tehran to Cairo, Beijing and beyond, there has been a constant effort to establish the reproductive rights of women as a part of human rights. There has been an effort to create an environment favorable for women to take decisions in the matter of reproduction. It becomes essential to encourage and create a legal and social structure where women have freedom to take a decision whether to bear a child or not. It is the women who have to undergo a physical pain in their pregnancy and they have to bear and carry the pregnancy for nine gestational months. So, women's health and human rights are interconnected and the promotion of one depends upon another.

The Final Document of the Tehran Conference on Human Rights, 1968, provides the "basic *human right to decide freely and responsibly the number and spacing of children and the right to adequate education and information in this respect"*. The Cairo program further expanded the content of reproductive rights as a "*state of complete physical, mental and social well-being"*. The infant concept of reproductive rights matured with the Beijing Platform where it was held that "*the reproductive health to women's rights means to have control over matters relating to their sexuality free of coercion, discrimination and violence"*.[3]

In Vienna in 1981, there was a UN Symposium on Population and Human Rights which declares that *the compulsory use of abortion and its unqualified prohibitions would be a serious violation of human rights.*

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further provides, "*the obligation to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights of gender equality where man and woman have equal rights"*. There is a general obligation to respect, protect and promote human rights of women.

Similarly, the International Planned Parenthood Federation (IPPF) in its meeting in Manila in November, 1995, adopted a new Charter on *Sexual and Reproductive Rights* which is meant to promote and protect sexual

3 www.*reproductiverights.org* International Conference on Human Rights in Teheran in 1968.

and reproductive rights and freedom in political, economic and cultural aspect[4].

Reproductive rights are expressively the human rights and are inalienable and inseparable from basic human rights such as right to food, shelter, health, sexuality, livelihood, education etc. The sexual and reproductive rights included under the International Instruments are derived from universally recognized human rights instruments and have high ethical values.

The reproductive rights of women are increasingly used by women for their struggle for self-determination and has become an important concept in the women's movement, particularly since from the World Conference of the UN Decade for Women held in Nairobi 1985. The reproductive rights of women implies-

(a) the right of women to choose whether to have children or not, and the right to decide on the number of children they want, when and with whom;

(b) freedom to choose the means and methods to exercise their choice regarding fertility management, and

(c) access to good information on means and methods.[5]

This right is directly related to the women's autonomy and freedom. It is the extension of the principle of self-determination regarding one's body which provides that women must be able to decide about their own bodies and reproductive capacities. The social structure of the society has placed women in such a position where women generally take care of the children thus, women must have choice regarding reproduction. They should be the one to decide about the measures to prevent pregnancy and the time when they want to be pregnant. But the fact is that women hardly have their say in relation to reproduction.[6]

In recent years, there has been a rapid growth of medical technologies which have opened the way for intervention into the reproduction.

4 Subash Chandra Singh "*Reproductive Rights, A part of Human Rights*"3 Supreme Court Cases Journal 13 (2002).

5 Jyotsna Agnihotri Gupta, *New Reproductive Technologies, Women's Health and Autonomy* 22-26 (1st Edition 2000).

6 *ibid*

The technologies which facilitate such intervention and manipulate the reproductive functions are artificial insemination, in vitro fertilization pre-natal diagnosis, embryo transfer, cloning etc. These technologies offer benefits to the couples but however, its side effects are also not unknown. These technologies are prone to misuses and its impact on social relation is a disturbing element.[7]

There has been a debate about how far these technologies enhances women's right or whether it has turn out to be against women's autonomy? There is no denying that these reproductive technologies strongly affect women. At this juncture, it is important to analyse whether the reproductive technologies are a source of women' empowerment or their weaknesses.

Even so, these technologies have been commercially published through advertisement in newspapers, in trains, buses, on walls T.V. etc. But these techniques have exposed women to higher risk of reproductive health issues. The pre-natal diagnostic techniques involve the use of technologies such as ultra-sonography, amniocentesis, etc. These techniques help to detect foetal abnormalities and also facilitate the detection of sex of the foetus which may cause abortion of foetus especially female foetus.[8]

Another important aspect is that there is great difference between women who are affluent and can go for the services of qualified medical practitioners with handsome perk and the poor women with marginalized income who do not have financial assistance to do so. Consequently, chances are saying in case of abortion, poor section of the community hardly has any chance of safe and hygienic abortion.

It is no wrong to say that in the name of 'choice' the position of women is likely to be devalued as women hardly have the freedom to take decision in case of abortion or use of any other reproductive technique. In most of the families, decision as to the bearing of a child will be taken by the male member or husband. So, new reproductive technique rather works as an instrument of suppression to the feminism and further strengthened the control of man over reproductive rights of women in future.

---

7 Asim A. Khan Sherwani "*Illegal abortions and Women's reproductive Health*" 3 Supreme Court Cases Journal 116 (1997).

8 Shireen J. Jejeebhoy "*Reproductive Health Information in India- What are the gaps?*" October Economic and Political Weekly 3078-3081 (1999).

Reproductive rights have been a controversial issue on the face of the recent movements of liberalization of women. There has been a need for a sound atmosphere for pregnant women to take decision to carry her pregnancy or not. The dilemma touches the most sensitive aspects of human life as reproduction involves both husband and wife and the expectation of other family members as well. It stirs strong emotions and brings fundamental changes to the day to day life[9]. But at the same time, it is the woman who suffers the most so it is a woman who has to be mentally and physically prepared to have a child.

The social attitude has always impaired women's reproductive decision and the right to protect their lives and health. The recognition of reproductive rights by law is an essential starting point from which women may begin to exercise all other human rights.

The major question is does the State ensure women the freedom to enjoy reproductive rights? Do women enjoy the freedom to plan their own fertility? What are the reproductive health measures? Whether those health measures are available in India or not? However, the first and foremost necessity is to create an environment where women should be treated equally and they will have their choice in all the matters concerning them. There is a need for the change in the attitude and conservative thinking of the society.

Law and Issues relating to Reproductive Rights

The framers of the Indian Constitution were very much influenced by the Human Rights Instruments and have incorporated those provisions in the Constitution.[10] Health has been acknowledged as a fundamental right of the people. So, in various cases, judges have decided cases taking the plea of various provisions of the Constitution for instance, Fundamental Rights, Fundamental Duties, Directive Principles of State Policy, etc.

The Constitution of India guarantees various rights under Part III of the Constitution such as, Right to Equality under Article 14-16 as Fundamental Rights. It prohibits discrimination among the citizens on the ground of religion, race, caste, sex or place of birth (Article 15) and

9 Medani Abdul Rabman Tageldin "*Right to Privacy and Abortion- A comparative study of Islamic and Western Jurisprudence*" xii Alligarh law Journal 133 (1997).

10 Lina Gonsalves, *Women and Human Rights* 22 (1st edition 2001).

equal opportunity to them in matters of public employment (Article 16). Article 14 provides for equality before the law. Thus, the Constitution says that the state may make special provisions for the benefit of women and children.

It guarantees Right to Life under Article 21 which lays down that, "No person shall be deprived of his life or personal liberty except according to the procedure established by law." Right to life means right to live with human dignity and freedom from all kinds of exploitation.

With the liberal interpretation being given to the Right to Life, with passage of time, various new rights such as right to privacy, right to health, etc., which are basic human rights under international instruments hitherto not specifically granted under the Constitution, were included in the plethora of rights available under Article 21 of the Indian Constitution. Since Right to Life includes right to enjoy life with all the limbs and faculties, it implies therefore that right to procreation and right to have control over reproductive organs are included in the broader concept of Right to Life. Every person including a girl has a right to marry and thereby to conceive a child which is absolute.[11]

Beside that there are few specific Acts which spell out the reproductive rights of women. The Medical Termination of Pregnancy Act (MTP), 1971 has legalized abortion in India. The Act provides for termination of pregnancy (under certain conditions) where the pregnancy would involve risk to the life of the pregnant women or to her mental and physical health or where there are chances that if the child is born, it would suffer from such physical or mental abnormalities as to be handicapped.[12] But, the saddest truth is that the safe and hygienic abortion is hardly available in most parts of India, especially in the remotest areas.

Though, the Medical Termination of Pregnancy, (MTP) Act has permitted abortion but it does not recognize abortion as women's rights. Abortion is one of the important means to control one's own body and thus, women who shoulder the responsibility of child bearing and rearing should have the right to decide whether she is ready to have a child or not. Apart from this, new trend arises as regards women's career aspirations,

11 Manoj Sharma "*Right to Life vis-à-vis Right to Abortion: An Analytical Study*" 18 (3&4) Central India Law Quarterly 412(2005).

12 Subhash Chandra Singh "*Right to Abortion: A new Agenda*" AIR Journal 129 (1997).

their entry in the workforce and the responsibilities arising of that were also seen as a reason for women wanting to have reproductive rights.

Various studies show that abortion is the major cause of maternal mortality and the damage done to women's health is uncontrolled. It was found that termination of first pregnancy, pregnancy at later ages, at short interval and repeat abortion has caused health hazards to the women. There has been increase in the number of abortions and mostly women themselves are interested to limit the number of pregnancies and they will be ready to undergo abortion even though risking their health and lives.[13]

Although, the male dominated society does not allow them to act according to their desire when it comes to the exercising of reproductive rights. Therefore, how much women are involved in the decision-making process is an essential feature of expanding the horizon of reproductive rights.[14]

The maternal mortality rate is very high in India compared to other countries in the world. The official figure shows only data on legal abortions. But there is no denial that there are large numbers of illegal abortions. The death caused by such abortion on the health of women has not been taken seriously by the administration. It is so evident that women are undergoing abortions to terminate unwanted pregnancies and there is no adequate facility for safe abortions because of which the health of women is endangered.

In India, there is Maternity Benefits Act, (1961) which provides for maternity leave and job protection during maternity which is an important step to protect the reproductive roles of women. But in an unorganized sector, women are forced to avail of maternity leave without pay.

In a patriarchal society, women are not treated as equal partners in marriage and family life. Their status is restricted within the primary roles of mother, wife and daughter and their other role in the society is made secondary. The health services for women are only Maternal and Child Health services (MCH). These conditions largely prejudice the status of women in the society thereby causing restrictions on their reproductive freedom.

13 Malini Karkal "*Family Planning and Reproductive Health*" 2 April The Indian Journal of Social Work 299 (1993).

14 *ibid* at pg 304.

The family planning services targets women to go through family planning to limit the size of the family.[15] However, the risk of life and health which women undergo through these methods was never attended too. Most of the deaths of women are related to the general health of women, the ante-natal and post-natal care that she receives. These are clear indications of the denial of reproductive rights of women.[16]

Abortion has been used as a spacing method by women in cases where contraception fails or conception takes place by accident. Sometimes, there may be situations where even unmarried women undergo abortion as a result of rape or sometimes, they involve in sexual activities which resulted into pregnancy and to save themselves from the social stigma of being unmarried mother they rather prefer to go for abortion.

Though, Pre-Natal Diagnostic Technique (PNDT) Act is there to prohibit sex determination tests but so far, it has not succeeded in dissuading couples from seeking these tests or preventing the medical practitioner from performing them. So, on the one hand there is strong son preference, on the other hand, the well-being and the status of the girl is so uncertain once they get married, that couples avoid having girl child at any costs.

The reproductive rights ensure that a pregnant woman should not become the prisoner of a foetus which has no meaning for her since she has not accepted it. The majority of women believe that it is up to them to make the decision about bringing a child into the world or not[17]. There is a lacuna in the legal framework to answer the questions raised by the new reproductive technologies with the changing horizon of a woman's role in her reproductive capacity.

Issues relating to Reproductive Rights

There are numerous issues relating to the recognition of reproductive rights which are not yet addressed in any legal framework. There is a need to address these issues in proper legal framework in order to

15 K G Santhya, Shireen J Jejeebhoy "*Sexual and Reproductive Health Needs of Married Adolescent Girls*" Oct.11 Economic and Political Weekly 4370-4377 (2003).

16 Sunita Bandewar "*Abortion Services and Providers 'Perceptions' Gender Discrimination*" May Economic and Political Weekly 2076 (2003).

17 Shakeel Ahmad "*Freedom of Womb, a Human Rights*" 1 Supreme Court Cases Journal 43 (1996).

promote the rights of women. Though these issues are addressed under the international instruments but still those are not recognized under the national legal framework.

i) Population control

The reproductive health is enormously connected with the contraceptive behavior and the quality of contraceptive used by the women. More than two in five couples in the reproductive ages currently use methods of contraception. The dependable with programme priorities shows that couple largely ignored non-terminal female method and especially male methods, two out of three contraception couples are protected by female sterilization, and almost nine out of ten by a female method.[18]

The huge emphasis on terminal contraception has resulted into young and low parity women being unprotected from repeated and closely spaced pregnancies, only 16 percent of women below 30 years practice use any form of contraception, compared to 55 percent of all women aged to 30 to 44 years.

Here, the main issue to be pointed out is whether the contraceptive behavior is governed by informed consent or not? Very few women are fully informed of the methods which they choose and their side effects. These issues have never been addressed in any legal documents relating to the reproductive health of women. There has been an obstacle which women faces while exercising their choice in access to and the ability to take decision regarding reproductive health care, whether relating to pregnancy, childbirth, contraception or abortion.

ii) Awareness on reproductive health

Over the few years, the concept of women's health has been engrossed with the reproductive health of women. The reason for the slow progress in this area is women's own silence and their priorities. The women's health problems and the social constraint on women's lives left very less opportunity for

18 Shireen J. Jejeebhoy "*Reproductive Health Information in India- What are the gaps?*" October Economic and Political Weekly 3075 (1999).

women to express their needs especially health care needs[19]. The health of women is not of any concern to anyone, including women themselves.

iii) Son preference

There is one aspect of a women's health that is important and that is her son bearing. Other aspects of a women's health are invisible. If she gives birth to a daughter, then she will hardly get any attention or care from the family. Physically and mentally she can rest only if she bears a son.[20]

In such a situation, the reproductive illness is confined to the medical domain of infection, sexual or reproductive processes. At times, causes of reproductive illness are not just cured through medical treatment but require psychological treatment or counseling also as it leaves the women with a lifelong scar. There is still no means of awareness programme for the people as there is an inadequacy of knowledge in this area.

The couple sometimes takes protection measures where they adopt female sterilization. The sterilization results in ill health or the acceptance of sterilization may be forced. Sometimes there are chances of failure of sterilization also and in such cases, the burden of an unwanted baby is questionable. A permanent method of family planning may be desirable from the perspective of the family size limitation. It could be the only option available for avoiding unwanted pregnancy. High level of sterilization could be indicative of low quality of services with respect to other methods[21]. Another weak line of the reproductive right is the son preference in the society, the social condition of the society or the family forcing women to undergo abortion as their lives are put at stake if they do not produce a son. It is also true that unwanted girls run the risk of severe ill- treatment at their

19 Imrana Qadeer "*Reproductive Health- A Public Health Perspective*" October 10 Economic and Political Weekly 2675(1998).

20 Reema Bhatia "Health Policy, Plan and Implementation" in Tulsi Patel (ed.) *Sex – selective Abortion in India* 218 (2007).

21 Mala Ramanathan "*Reproductive Health Index*" December Economic and Political Weekly 3104 (1998).

natal homes, causing them emotional and mental distress.[22]

The son preference behavior forces couples to approach for sex determination tests and opt for sex selective abortion if it happens to be female foetus. Women also signify that when they already have a daughter and when they become pregnant again, there was always some pressure from the elders in the family that the next child should be a boy.[23]

iv) New Medical technologies

However, the advancement in science and technology has sharpened some of the old issues but has forced us to face new ones. A biological advancement has made it possible to take decision about the kinds of people who are to be born. Here, ante-natal test has made it possible to detect the foetus in advance.[24] Perhaps, in the absence of the decision making power of women these facilities are useless.

The medical science has made it possible to determine the genetic defects in advance. Through, prenatal diagnosis test, it is possible to detect the genetic or developmental abnormalities in the foetus. If the test reveals severe malformation or gross malfunctioning in the foetus, an abortion is considered. The methods include ultrasound scanning, analysis of foetus cells obtained either by amniocentesis or at an earlier stage of pregnancy by chorionic villi sampling, a maternal blood test to measure the level of alpha fetoprotein (which is abnormally high or low in certain congenital conditions) and foetoscopy in which a sample of foetus blood is examined for abnormal cells.

Today with in vitro fertilization, there is the possibility of transferring to the womb 'healthy' embryo rather than others. The childless couple with the problem of infertility can have baby with the virtue of reproductive technology. This advancement in reproduction has taken reproductive rights to

22 *ibid* at pg. 2077

23 Leela Visaria "Deficit of Girls in India in Tulsi Patel" (ed.) *Sex Selective Abortion in India* 73-74 (2007).

24 Dr Subash Chandra Singh "*Genetic Screening and Human Rights*, *The case of Engenics*" AIR Journal 286 (2003).

a different horizon. Though, these new techniques have raised many socio- legal and ethical issues still it has also relieved the infertile couples who could have faced the curse of incomplete married or family life.

It is not uncommon to have off springs by hiring in-vitro or donor who is unrelated to woman. It is also not unusual to hire women who contribute the egg or carry the foetus for gestational nine months and give birth to the child, though she may not have legal connection with either the father or mother but who offers to be a paid volunteer for such service. There is likelihood of commercialization of reproductive capacity like donation of egg or renting of womb is not uncommon in the society. This will mostly affect the grass root level woman as they may fall for such business to run their livelihood. They may be influenced by the elite class people who may offer huge amount of money for their services.

A single woman can have her own biological child with the use of artificial insemination. A single woman who has a desire to reproduce but does not wish to have any sexual involvement with, or a long-term commitment to a male partner, is provided an alternative solution through various techniques of reproduction. The legal status of such a single unmarried mother and her acceptance in society has been a serious question that has been knocking at the door of the judiciary.

There are chances of encouraging nontraditional form of family such as lesbian or homosexuals' family, as new reproductive technology helps such couple to have a child and complete their family. Such situation may give rise to many social and ethical questions.

Nature has imbibed women with the blessing to give birth to a new life. But, it is high time to change this belief and consider children as gift of god since children can be the gift of science also. Medical science has developed many ways to satisfy the parents who were disappointed by nature. The last two decades have witnessed a rapid increase in the number of technologies that assist reproduction by increasing the chances of conception

and carrying the pregnancy to term. Now, maternal health has been recognized as a crucial area of concern.

v) Women's struggle for empowerment

The reproductive right is about having full and complete autonomy over her body and there can be no second thought on that. Many times, a woman might become pregnant as a result of rape. She may not be in such an economic condition where she can take the responsibility to bring up the child and also that she may not be prepared for motherhood. In such a situation, if she wants to terminate her pregnancy then, there has to be an access to all such facilities which is required for doing so.[25]

The society has witnessed a rapid development of reproductive technologies which helps in conception and carrying a pregnancy to term. The "Assisted Reproductive Technologies" has become a household term. It provides for a variety of methods of reproduction from embryo transfer to in-vitro fertilization, egg transplant to artificial insemination. The advancement of such technologies has also influenced the way in which society views pregnancy, reproduction and motherhood.[26]

It has been now understood that women's empowerment is critical to human development. It is also necessary to improve people's access to quality health care, in particular, the need for essential and emergency obstetric care for women. Programmes that make contraceptives available to all the people should be enlarged and expanded and community-based health initiatives should be revitalized.

Thus, the reproductive rights have essential value and have elevated not only the level of reproduction but the value of women's life as well. Today, the new reproductive technology has delineated the boundaries of reproductive rights of women. There are legal concerns surrounding the uses of new reproductive technologies and its impact on the society. The upcoming reproductive technology has redefined reproduction

25 Ashok K. Jain, *The Saga of Female Foeticide in India* 56 (1st Edition 2006).

26 Sama Team "*Assisted Reproductive Technologies in India: Implications for Women*" June Economic and Political Weekly 2184 (2007).

and placed before us new challenges. The absence of a legal framework to suit the new changes brought about by the reproductive technology has been the fundamental issue before the law makers.

There is however, no denial that the institution of family is as old as humankind. The human civilization developed because of the concept of family. Earlier, there were large family units as men and women had no idea of family planning. But over the centuries, social, cultural, economic pattern has changed all over the world. People became conscious about the quality of life. This has led to the international and national concerns about the reproductive health especially of women and has led to including reproductive rights as an integral part of human rights. Today, the government has propagated the family planning programmes so as to raise the quality of life by raising the standard of living.

There has been a development of various reproductive technologies also. The new outlook towards the reproductive process of women and the advancement of reproductive technologies has made it important to study the real-life situations and its impact on women. It is of paramount importance that these technologies should be used for the betterment of women and thus, use as an instrument for the emancipation of women. Women's lives revolve around reproduction and they can have their autonomy in life only when their reproductive rights are guaranteed through a legal framework.

In the society where women live under a constant fear of being sexually molested both within or outside the family, where the evil of dowry still prevail despite the Dowry Prohibition Act, where daughters or daughters-in-law are thrown out of the house for giving birth to a girl child, where there are no social and economic security for women, where there are no emotional, financial and cultural security for them, reproductive rights can be a helpful tool for them to gain self-respect and status in the society.

Traditionally, women were always considered as the weaker

sex everywhere. Today, there has been a steady growth in the status of women and their rights. There is enactment of various laws and policies for the empowerment of women or perhaps to improve the condition of women in fact. There are gamut of laws for the protection of their interests, what is required is the honest intention to serve for the purpose and the serious enforcement of the existing laws. Though, international instruments, national instruments including population planning policies, judicial pronouncements, mass media and global human rights activism do enable reproductive rights, but not always in the manner or form that empower women.

Conclusion

It is viewed that women constitute the vulnerable section of the society thus, there is a need to develop a proper legal system for the protection of women. Though, there are laws for the protection of women but they are still inadequate as they do not address major issues relating to reproduction such as women's participation in the decision making process as to whether to give birth or not, whether to take contraceptive or freedom to control their bodies, their sexuality and fertility and freedom to take decision regarding reproduction. There is a need to draw attention to these issues and protect women perhaps from their age-old misery.

It is high time for the government to plunge into motion with a comprehensive action plan involving various ministries, departments and other non-governmental organizations for overhauling the existing social structure. To this end, it extols that the virtue of motherhood has been seen and still hope to continue to see as god's gift "as *a blessing and not as a curse*".

Above all, time has come where women would make great reaffirmation in the heart of the humanity where law and ideals are changing to give them new destiny; the environment where women live with dignity and respect. The moment has come where women have to demand for their respect and self-determination. There is a need for resolution on the part of women to demand that they are women of the highest status of their womanhood and proud to be a woman and conceited to have capacity to reproduce and that is the expanding boundaries of reproductive rights of women. If we really want to empower women we

must ensure that there should not be any hindrance at any level, especially in the reproductive health of women.

References

Books

Ashok K. Jain, *The Saga of Female Foeticide in India* 56 (1st Edition 2006) Jyotsna Agnihotri Gupta, *New Reproductive Technologies, Women's Health and Autonomy* 22-26 (1st Edition 2000).

Lina Gonsalves, *Women and Human Rights* 22 (1st edition) 2001

Chapters in Books

Leela Visaria "Deficit of Girls in India in Tulsi Patel" (ed.) *Sex Selective Abortion in India* 73-74 (2007).

Reema Bhatia "Health Policy, Plan and Implementation" in Tulsi Patel (ed.) *Sex – selective Abortion in India* 218 (2007)

Journal

Asim A. Khan Sherwani "*Illegal abortions and Women's reproductive Health*" 3 Supreme Court Cases Journal 116 (1997). Imrana Qadeer "*Reproductive Health- A Public Health Perspective*" October 10 Economic and Political Weekly 2675(1998).

K G Santhya, Shireen J Jejeebhoy "*Sexual and Reproductive Health Needs of Married Adolescent Girls*" Oct.11 Economic and Political Weekly 4370-4377 (2003). Malini Karkal "*Family Planning and Reproductive Health*" 2 April The Indian Journal of Social Work 299 (1993).

Medani Abdul Rabman Tageldin "*Right to Privacy and Abortion- A comparative study of Islamic and Western Jurisprudence*" xii Alligarh law Journal 133 (1997).

Manoj Sharma "*Right to Life vis-à-vis Right to Abortion: An Analytical Study*" 18 (3&4) Central India Law Quarterly 412(2005).

Sama Team "*Assisted Reproductive Technologies in India: Implications for Women*" June Economic and Political Weekly 2184 (2007).

Mala Ramanathan "*Reproductive Health Index*" December Economic and Political Weekly 3104 (1998).

Subash Chandra Singh "*Genetic Screening and Human Rights, The case of Engenics*" AIR Journal 286 (2003).

Upendra Baxi "*Gender and Reproductive Rights in India: Problems and Prospects for the New Millennium*" October Kali's yug 23 (2000).

Shireen J. Jejeeboy "*Addressing women's reproductive Health Needs*" March Economic and Political Weekly 475 (1997).

Shireen J. Jejeebhoy "*Reproductive Health Information in India- What are the gaps?*" October Economic and Political Weekly 3075 (1999).

Sunita Bandewar "*Abortion Services and Providers 'Perceptions' Gender Discrimination*" May Economic and Political Weekly 2076 (2003).

Shakeel Ahmad "*Freedom of Womb, a Human Rights*" 1 Supreme Court Cases Journal 43 (1996).

Subhash Chandra Singh "*Right to Abortion: A new Agenda*" AIR Journal 129 (1997).

Subash Chandra Singh "*Reproductive Rights, A part of Human Rights*"3 Supreme Court Cases Journal 13 (2002).

Shireen J. Jejeebhoy "*Reproductive Health Information in India- What are the gaps?*" October Economic and Political Weekly 3078-3081 (1999).

Reports

National Commission on Population Government of India National Population Policy, 2000

International Conference on Human Rights in Teheran in 1968

United Nations International Conference on Population and Development (ICPD) 5-13 September 1994

An Interim at the African Women's Development and Communication Networks

Website

www.*reproductiverights.org* International Conference on Human Rights in Teheran in 1968.

Impact of Technology on Health Care

– Dr. Kamya Rani
– Dr. Supinder Kaur

Introduction

Mental and Physical Health is the very basis of human personality. Diseases and mishaps have had their grip over humans ever since they came into existence. The disablement, disfigurement and loss of life caused due to illness has alarmed the human race. The multiple sources causing such agonies are both external and internal ranging from nature's wrath to lack of proper hygiene. If the human race is to survive and progress, preservation of good health is a must. Though personal hygiene can to a large extent ward off ordinary ailments caused due to lack of hygiene, there are many factors, over which an individual can have no control, which causes health problems. The state agencies are in such areas better equipped to prevent the causes and deal with the ailments in a more regulatory, effective and authoritative manner. The legal responsibility lies on the State agencies to take care of the Individual's right to health in a welfare state. Every sovereign state has plenary power to do all things which promote the health, peace, morals, education and good order of the people and tend to increase the wealth and prosperity of the State. Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society which the Constitution makers envisaged.

The widely acceptable definition of health is that given by the World Health Organisation (WHO) in the preamble of its constitution, according to which, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease".[1] In recent years, this statement has been amplified to include the ability to lead a "socially

* Astt. Prof. (laws) PUSSGRC, Hoshiarpur
** Assistant Professor, Department of laws, Panjab University Chandigarh

1 Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19–22 June 1946; signed on 22 July 1947 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100); and entered into force on 7 April 1948

and economically productive life". Through this definition, WHO has helped to move the thought on health beyond a limited, biomedical and pathology-based perspective to the more positive domain of "well-being". Also, by explicitly including the mental and social dimensions of well-being, WHO has radically expanded the scope of health and by extension, the role and responsibility of health professionals and their relationship to the larger society.[2]

From the definition of health provided by the WHO, it is clearly indicated that condition of life of the individual should incorporate physical, mental & social well-being & must be devoid of disease & infirmity. Thus, this pioneering institution (WHO) has played the best supportive role in guiding health policy development and action at the global and national levels, with an overall objective of ensuring & attaining the highest standards of health care to all the people around the world. WHO has not only given a wider definition to HEALTH but also brought about a vision of HEALTH CARE.

The human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed. The design of a health care system must be guided by the following key human rights standards:

Universal Access: Access to health care must be universal, guaranteed for all on an equitable basis.

Availability: Adequate health care infrastructure (e.g. hospitals, community health facilities, trained health care professionals), goods (e.g. drugs, equipment), and services (e.g. primary care, mental health) must be available in all geographical areas and to all communities.

Acceptability and Dignity: Health care institutions and providers must respect dignity, provide culturally appropriate care, be responsive to needs based on gender, age, culture, language, and different ways of life and abilities.

Quality: All health care must be medically appropriate and of good quality, guided by quality standards and control mechanisms, and provided in a timely, safe, and patient-centred manner.

2 Kumar Avanish, "Human Right to Health", Satyam Law International 2007 at 21

Non-Discrimination: Health care must be accessible and provided without discrimination.

Transparency: Health information must be easily accessible for everyone.

Participation: Individuals and communities must be able to take an active role in decisions that affect their health.

Accountability: Private companies and public agencies must be held accountable for protecting the right to health care.

Technology is rapidly changing how people do everything; from taxis to food delivery, from dating to media consumption and everything in-between. Healthcare is no exception. There have been many visible ways in terms of technology impacting healthcare. From microscopes & stethoscopes invented hundreds of years ago, to MRI machines today, to the goal of creating a Tricorder in a Star Trek-like future, technology is making sweeping changes in healthcare and undoubtedly India will be a big beneficiary. The main drivers, today and in the future, are smart phones, always-on connectivity, big data and artificial intelligence (AI).

In the way regular mobile phones became ubiquitous, soon most people in India will have powerful and connected supercomputers in their pocket, as prices for smart phones and internet access continue to drop and become more accessible. Already many Indians are becoming more and more health savvy using technology. From searching medical terms, to booking an appointment at a hospital, or even messaging or video-chatting with a doctor in another city or state, Indians have more options than ever to take charge of their health.[3]

Technology can have a large impact on users' mental and physical health. Being overly connected can cause psychological issues such as distraction, narcissism, expectation of instant gratification, and even depression. Besides affecting users' mental health, use of technology can also have negative repercussions on physical health causing vision problems, hearing loss, and neck strain. Fortunately, there are steps that can be taken to help alleviate these health issues.[4]

3 https://techstory.in/impact-technology-indian-healthcare/

4 http://www.digitalresponsibility.org/health-and-technology/

Negative Impacts of Technology on Health

Technology may have the following negative impact on health:

Psychological issues like:

a) Distraction

b) Expectation of instant gratification

c) Narcissism

d) Cognitive losses

Social issues like:

a) Deficit in social skills

b) Sense of isolation

c) Depression

Health issues like:

a) Vision problems

b) Hearing loss

c) Neck strain

d) Sitting too much

e) Emotional instability

f) Heart trouble

g) Obesity

h) Poor sleep habits

i) Lack of privacy

Positive impacts of technology on healthcare

With the application of technologies such as IT and machine learning, healthcare today has become more accessible, more efficient and more responsive. It should be noted that data and data analytics play a big role in this transformation. The collection of vast amounts of data by devices which are wearable is only the first step in holistic and real-time delivery of healthcare. This data once collected and analyzed, has the potential to empower doctors through medical devices in providing care to the patients and taking corrective measures in real time.

To better understand how IT devices, AI and machine learning can be applied together to provide improved care to patients, we can look at how diabetic patients are now being cared for. IT serves as the backbone to a connected device ecosystem, comprising a meter, an insulin pen and a remote safety monitoring setup. The meter has the ability to detect and automatically transmit data about the patient's health and requirements to a remote system. The system then processes the data in light of the patient's parameters and utilizes an algorithm to activate the insulin device with the correct dose.

While this may seem like a rudimentary understanding of how technology has impacted healthcare, it would be prudent to list out its key benefits to all stakeholders across the spectrum. For the patient, the need for human intervention and the possible impact of error or bias is reduced, ensuring a scientific and calculated approach to healthcare. When it comes to the medical practitioners, it reduces the time they spend on therapy and recommendations, by providing real time automation. As for the healthcare industry, it brings about standardization, improves operational efficiency and reduces costs in the long run.

It is imperative to highlight the myriad ways in which technology has improved healthcare from the patient's perspective. Something as basic as the use of handheld and connected devices by doctors and nurses, for instance, has the potential to transform patient care. The ability to collate lab results, records of vital signs and other such critical patient data in a centralized platform has enhanced the level of care and efficiency a patient can expect to receive when they enter the healthcare system.[5]

Robotics

5 http://bwdisrupt.businessworld.in/article/The-Impact-of-Technology-in-Healthcare/06-04-2018-145662/

The very first advantage of integrating technology into healthcare is an improved quality of life. Surgeries today are minimally invasive, there are systems for better monitoring procedures and conditions, and scanning equipment is available which can diagnose any condition in a better way. The merger of medical equipment technology and telehealth has paved the way for robotic surgeries. In such cases, there is no need for physicians to be present in the operating room during any surgery. They can "work out of home" and this technique enables patients to be at their nearest hospital or clinic for the surgery thus removing many barriers and travel stress. Then there are other kinds of robotic surgeries where the surgeon operates the robotic devices while still in the operating room. But because there is minimum invasion, there is lesser room for scarring and quicker recovery. Robots can do surgery by themselves in delicate areas like the brain while venture capitalists like Peter Thiel are aiming for nothing less than eternal youth. Humans have always been ambitious in their aims and now there is technology to support that.[6]

Technologies have shrunk in size and healthcare has integrated know-how from a variety of fields. This industry is therefore witnessing a revolution like never before. Some are willingly implanting devices that allow them to transform themselves from human to cyborg (called biohackers), while others are experimenting with foods that improve mental performance (nootropics) as well as enhance their physical capabilities. When the right analytics tools are paired with the right sensors and technology, the generated data is converted quickly and effectively into bits of information that different departments can use.

Nanotechnology

Nanotechnology is another promising area. Nanobots can unclog arteries and thereby prevent heart-attacks. Researchers are developing nano particles that can deliver drugs across the brain barrier to tackle neurological disorders. Trans human evolution is still being studied although implants that record and transmit data have exciting implications for preventive healthcare. Grow Fit, the company I founded, is a machine learning company that is at the intersection of data science, machine learning, and medical science. We are moving away from one-size-fits-all medicine to more personalized and targeted healthcare, which has been

6 https://tech.economictimes.indiatimes.com/news/technology/technology-revolution-in-the-healthcare-industry/57574499

made possible through technology.

Artificial intelligence

It is a known fact that humans have the capacity to analyse and deduce and that they are way superior to any other organism in this attribute. However, one limitation is the volume of information that the brain can process quickly. This is where artificial intelligence comes in. This science offers boundless possibilities in healthcare applications. One example from current trends includes assisting physicians and radiologists in making accurate diagnoses.

3-Dprinting

This technology has several existing applications in healthcare. This includes orthopaedic devices and implants. Research is also being carried out in the area of 3D-printed medicines and 3D bio printing, which will open up the possibility of "printing" tissues or even organs.

Telemedicine

The terms 'telemedicine' and 'telehealth' can be used to refer to two-way video consultations, or the transmission of healthcare data like electrocardiograms (ECGs). Telemedicine can be used in many fields, such as cardiovascular healthcare. Tele monitoring technology can monitor vital signs and symptoms remotely. There are even plans to develop remote ultrasound technology, which is exciting news for anyone interested in a career as a diagnostic medical sonographer. Telehealth is improving allied healthcare jobs, including some of the top-paying roles in the field, such as medical assistants. The implementation of these telemedicine options means less crowded waiting rooms and easing the pressure on front desk teams.[7]

Other benefits include:

- Shorter waiting times for patients
- Improved access for rural areas
- Improved efficiency leading to savings

7 https://www.aimseducation.edu/blog/the-impact-of-technology-on-healthcare/

The Digitalization of Health Records

The introduction of Electronic Health Records (EHRs) in replacing paper records has been a game changer for many allied healthcare professionals. Medical assistants, medical records and health information technicians (MRHITs), medical billing and coding professionals, and registered nurses are just some of the allied healthcare roles impacted by this implementation.[8]

Nurses and technicians are now responsible for inputting patient data such as vital signs, weight, test results, etc. into a central, digitized system. On the administration side of things, medical billers and coders use EHRs for scheduling appointments, updating patient records with diagnostic codes, and submitting medical claims.[9]

Conclusion

Technology has connected the world. Messaging applications, social media, broadcasting systems- the technical world is crucial to our knowledge of people around us. It has also made our life easier- we can pay bills and shop online, create and forward official data, and secure our knowledge for the future generations. Unfortunately, the world has now become obsessed with technology. Our dependence on technology has made us dumb, rather than more self- aware. Uncontrolled usage and ease of such usage has led to technology becoming a bane to us all. The consumption of technology amongst teens and youngsters is now equivalent to gluttony.

Technology has captured all- offices, homes, relationships, and academics. No sphere remains untouched by technology. Unabashed usage of the same in each sphere has led to hazardous consequences. Cyber-crime is ever on the rise, families are turning dysfunctional, and psychological issues are creeping into youngsters' minds. There is something known as 'too much' information, which confuses more than it teaches. Youngsters act naïve and gullible, as they end up believing anything they come across on the Internet simply because it suits them. The obsession with technology has turned fatal in many cases- we see road accidents occurring regularly because people drive and text

8 ibid

9 ibid

simultaneously. In one instance, a girl fell off a cliff as she tried to take a selfie, and met a tragic end. It is quite ridiculous as to how paranoid and wild technology has made us. Frustration and animosity is common as youngsters are becoming stressed with excessive use of technology.[10]

Our dependence on technology needs to be curbed, not technology itself. We need to control our own selves and limit the usage of gadgets and the Internet. Why must we let data and machines control our fully functional brains? It should be the other way around. Customise your routine and persevere to break against the shackles of technology. The aim is to build as well as maintain a healthy relationship with technology; it is our responsibility to let it remain a boon, and not turn into a bane.[11]

As technology continues to transform society, those responsible for our current systems of healthcare as well as education are facing overwhelming pressure to adapt. By embracing the power of ICT we can enhance our education and healthcare services to make a difference in our country. So, technology must be used, but in a smarter way.

10 http://www.indianyouth.net/impact-technology-good-bad-youth/

11 https://economictimes.indiatimes.com › Opinion › ET Commentary

Contempt of Court and Press Freedom in India

*– Kush Kalra**

Introduction:

It has been repeatedly held by courts that the rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. The confidence, which the people repose in the courts of justice, cannot be allowed to be tarnished, diminished or wiped out by contemptuous behavior of any person. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. It is for this purpose that the courts are entrusted with extraordinary powers of punishing for contempt of court, those who indulge in acts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalizing[1] it. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice.

Criticism of Judiciary:

The Law as it stands today is same as has been aptly put by Lord Atkin[2] in *Andre Paul Terence Ambard v. Attorney-General*[3]:

"No wrong is committed by any member of the public who exercises

* Advocate, Delhi High Court

1 **Meaning of Scandalizing:**
To dishonor; disgrace.

2 **James Richard Atkin, Baron Atkin**, PC, FBA (28 November 1867 – 25 June 1944), known as **Dick Atkin**, was a lawyer and judge of Irish, Welsh and Australian origin, who practised in England and Wales.

3 [AIR 1936 PC 141]

the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men".

If the publication of the disparaging[4] statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily, as contempt is a wrong done to the public. It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter[5] actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law.

In *Shri C.K. Daphtary and Ors. v. Shri O. P. Gupta and Ors.*[6] it was said that, a scurrilous[7] attack on a Judge in respect of a judgment or past conduct has adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary. If confidence in the Judiciary goes, the due administration of justice definitely suffers. There can be no justification of contempt of Court.

---

4 **Meaning of disparaging:**
1. To speak of in a slighting or disrespectful way.
2. To reduce in esteem or rank

5 **Meaning of deter:**
To prevent or discourage from acting, as by means of fear or doubt

6 1971CriLJ844

7 **Meaning of scurrilous:**
1. Given to the use of vulgar, coarse, or abusive language.
2. Expressed in vulgar, coarse, or abusive language.

In *R.C. Cooper v. Union of India*[8] giving a word of caution to those who embark on the path of criticizing the judgment of the Court, it was said:

"There is no doubt that the Court like any other institution does not enjoy immunity[9] from fair criticism. Courts does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves in possession of all truth or hold that whenever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a Judge but because of his training and the assistance he gets from learned counsel he is apt to avoid mistakes more than others. While fair and temperate[10] criticism of Supreme Court or any other Court even if strong, may not be actionable, attributing improper motives, or tending to bring Judges or Courts into hatred and contempt or obstructing directly or indirectly with the functioning of Courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant[11]. Those who err in their criticism by indulging in vilification[12] of the institution of Courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. We think this will be enough caution to persons embarking[13] on the path of criticism."

In re. S. Mulgaokar [14], a three-judge bench held, the judiciary is not immune[15] from criticism but when that criticism is based on obvious

---

8 [1971]1SCR 512

9 **Meaning of immunity:**
Exemption from certain generally applicable requirements of law or from certainliabilities, granted to special groups of people to facilitate the performance of their public functions.

10 **Meaning of temperate:**
Moderate in degree or quality; restrained

11 **Meaning of repugnant:**
Arousing disgust or aversion; offensive or repulsive

12 **Meaning of vilification:**
To attack the reputation of (a person or thing) with strong or abusive criticism

13 **Meaning of embark:**
1. To cause to board a vessel or aircraft.
2. To enlist (a person or persons) or invest (capital) in an enterprise.

14 [1978]3SCR 162

15 **Meaning of immune:**
Not subject to an obligation imposed on others; exempt

distortion[16] or gross misstatement and made in a manner which is designed to lower the respect of the judiciary and destroy public confidence in it, it cannot be ignored.

In *P.N. Duda v. P. Shiv Shanker and Ors.*[17] it has been held that administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability[18] to the society and their accountability must be judged by the conscience and oath to their office i.e. to defend and uphold the Constitution and the laws without fear and favour. Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of the Judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticized, motives to the Judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or Judges should be welcome so long as such criticism does not impair or hamper the administration of justice. In a democracy Judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court.

In Re. Roshan Lal Ahuja[19], a three judge bench held, judgments of the court are open to criticism. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language don't attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of the judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bester themselves to uphold their

16 **Meaning of distortion:**
The alteration of the original form of a signal representing an image, a sound, awaveform, or other information.

17 1988CriLJ1745

18 **Meaning of accountability:**
Expected or required to account for one's actions; answerable

19 1992(3)SCALE 237

dignity and the majesty of law. No litigant can be permitted to overstep the limits of fair, bona fide and reasonable criticism of a judgment and bring the courts generally in disrepute or attribute motives to the Judges. Perversity[20], calculated to undermine the judicial system and the prestige of the court, cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened and that would be bad not only for the preservation of rule of law but also for the independence of judiciary. Liberty of free expression is not to be confused with a license to make unfounded, unwarranted and irresponsible aspersions against the Judges or the courts in relation to judicial matters. No system of justice can tolerate such an unbridled license. Of course "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men", but the members of the public have to abstain from imputing improper motives to those taking part in the administration of justice and exercise their right of free criticism without malice or in any way attempting to impair the administration of justice and refrain from making any comment which tends to scandalize the court in relation to judicial matters. If a person committing such gross contempt of court were to get the impression that he will get off lightly it would be a most unfortunate state of affairs. Sympathy in such a case would be totally misplaced, mercy will have no meaning. His action calls for deterrent punishment so that it also serves as an example to others and there is no repetition of such contempt by any other person.

In Re. Ajay Kumar Pandey[21] , it has been held, any threat of filing a complaint against the Judge in respect of the judicial proceedings conducted by him in his own Court is a positive attempt to interfere with the due course of administration of justice. In order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity. If, however, litigants and their counsel start threatening the Judge or launch prosecution against him for what he has honestly and bona fide done in his Court, the judicial independence would vanish eroding the very edifice on which the institution of justice stands.

---

20 **Meaning of Perversity:**
1. The quality or state of being perverse.
2. An instance of being perverse.

21 **AIR 1998 SC 3299**

In *Dr. D.C. Saxena v Hon'ble the Chief Justice of India*[22], the Court while dealing with the meaning of the word 'Scandalizing', held that it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the courts and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes their mind to obey them. If the people's allegiance to the law is so fundamentally shaken, it is the most vital and most dangerous obstruction of justice calling for urgent action. The court further held that, "Scandalizing the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature[23] of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be Scandalizing the Judge as a Judge, in other words, imputing partiality, corruption, bias, improper motives to a Judge is canalizations of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or judiciary into contempt. Section 2(c)[24] of

22 1996CriLJ3274

23 **Meaning of caricature:**

a. A representation, especially pictorial or literary, in which the subject's distinctivefeatures or peculiarities are deliberately exaggerated to produce a comic or grotes que effect.

b. The art of creating such representations.

24 **Section 2(c) in the Contempt of Courts Act, 1971**

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner

the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.

In *J. R. Parashar, Advocate and Ors. v Prasant Bhushan*, Advocate and Ors.[25] the court has observed : "to ascribe motives to a Judge is to sow the seed of distrust in the minds of the public about the administration of justice as a whole and nothing is more pernicious in its consequences than to prejudice the mind of the public against Judges of the court who are responsible for implementing the law. Judges do not defend their decisions in public and if citizens disrespect the persons laying down the law, they cannot be expected to respect the law laid down by them. The only way the Judge can defend a decision is by the reasoning in the decision itself and it is certainly open to being criticized by anyone who thinks that it is erroneous"

In re, Arundhati Roy[26], the court held fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself.

25 2001CriLJ4207

26 2002CriLJ1792

Litigant losing in the court would be the first to impute motives to the Judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i.e. judiciary.

In *S. Abdul Karim, Appellant v. M.K. Prakash and Ors.* [27], a three judge bench held, the broad test to determine whether there is contempt of court or not, is to see whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law. The standard of proof required for establishing a charge of 'criminal contempt' is the same as in any other criminal proceeding. Even if it could be urged that mens rea as such, is not an indispensable[28] ingredient of the offence of contempt, the courts are loathe to punish a contemnor, if the act or omission complained of, was not willful.

In *M.R. Parashar and Ors. v. Dr. Farooq Abdullah and Ors*. [29], contempt petition[30] was filed against the Chief Minister of Jammu and Kashmir for making certain contemptuous statements against the judiciary and the Editor and the correspondent of a newspaper in which those statements were published. The Chief Minister denied to have made the statements, as the Editor asserted that the reports of the speeches published in his newspaper are true. The court held that in the absence of any preponderant circumstances which, objectively, compel the acceptance of the word of one in preference to the word of the other, it was unable to record a positive finding that the allegation that the Chief Minister made the particular statements is proved beyond a reasonable doubt.

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time- honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him.

27 1976CriLJ641

28 **Meaning of indispensable:**
Absolutely necessary; essential.

29 1984CriLJ337

30 **Meaning of petition:**
a. A formal written application seeking a court's intervention and action on a matter
b. A pleading initiating a legal case in some civil courts

But there must be some other evidence. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt.

Freedom of Press and Contempt of Court:

The reach of media, in present times of 24 hours channels, is to almost every nook and corner of the world. Further, large number of people believe as correct which appears in media, print or electronic. It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and subject, and high and law. The confidence of people in the institute of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of Rule of law. Therefore, any act which has such tendency deserves to be firmly curbed. For the rule of law and an orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected.

The judgments of courts are public documents and can be commented upon, analyzed and criticized, but it has to be in a dignified manner without attributing motives. Before placing it before the public, whether on print or electronic media, all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has, then resist every temptation to make it public. In every case, it would be no answer to plead that publication, publisher, editor or other concerned did not know or it was done in haste. Some mechanism may have to be devised to check the publication which has the tendency to undermine the institution of judiciary.

Regarding the general mechanism to be devised, it may be noted that in the United Kingdom, Robertson & Nicol on Media Law expresses the view that media's self-regulation has failed therein. According to the author, blatant examples of unfair and unethical media behavior like damaging reputation by publishing falsehoods, invasion of privacy and conducting partisan campaigns towards individuals and organisations have led to demands for more statutory controls, which media industries have sought to avoid by trumpeting the virtues of "self regulation". The media industry has established tribunals that affect to regulate media ethics through adjudicating complaints by members of the public who claim to have been unfairly treated by journalists and editors. Complaints

about newspapers and journals may be made to the Press Complaints Commission, a private body funded by newspaper proprietors. The Press Complaints Commission has formulated a Code of Practice to be followed by the press. It has no legal powers, but its adjudications will be published by the paper complained against, albeit usually in small print and without prominence. The Press Complaints Commission has been regarded as public relations operation, funded by media industries to give the impression to Parliament that the media organizations can really put their houses in ethical order without the need for legislation. Similarly, the National Union of Journalists has a code for its members, which they are all expected to follow. However, the code is seldom enforced.

Regarding an institution like the judiciary which cannot go public, media can consider having an internal mechanism to prevent these types of publications. There can be an efficient and stringent mechanism to scrutinize the news reports pertaining to such institutions which because of the nature of their office cannot reply to publications which have the tendency to bring disrespect and disrepute to those institutions. As already noted such publications are likely to be believed as true. Such a mechanism can be the answer to pleas like the one taken by the editor, printer, publisher and correspondent that either they did not know or it was done in a hurry and similar pleas and defences.

The power and reach of the media, both print as well as electronic is tremendous. It has to be exercised in the interest of the public good. A free press is one of the very important pillar on which the foundation of the Rule of Law and democracy rests. At the same time, it is also necessary that freedom must be exercised with utmost responsibility. It must not be abused. It should not be treated as a license to denigrate other institutions. Sensationalism is not unknown. Any attempt to make news out of nothing just for the sake of sensitization has to be deprecated. When there is temptation to sensationalize particularly at the expense of those institutions or persons who because of the nature of their office cannot reply, such temptation has to be resisted and if not, it would be the task of the law to give clear guidance as to what is and what is not permitted.

While the media can, in the public interest, resort to reasonable criticism of a judicial act or the judgment of a court for public good or report any such statements; it should refrain from casting scurrilous aspersions on, or impute improper motives or personal bias to a judge. Nor should

they scandalize the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge. It should be kept in mind that Judges do not defend their decisions in public and if citizens disrespect the persons laying down the law, they cannot be expected to respect the law laid down by them. The only way the Judge can defend a decision is by the reasoning in the decision itself and it is certainly open to being criticized by anyone who thinks that it is erroneous.

Conclusion:

Undoubtedly, judgments are open to criticism. No criticism of a judgment, however vigorous, can amount to contempt of Court, provided it is kept within the limits of reasonable courtesy and good faith. Fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to the law or established facts.

It is one thing to say that a judgment on facts as disclosed is not in consonance with evidence or the law has not been correctly applied. But when it is said that the Judge had a pre-disposition to acquit the accused because he had already resolved to acquit them or has a bias or has been bribed or attributing such motives, lack of dispassionate and objective approach and analysis and prejudging of the issues, the comments that a judge about to retire is available for sale, that an enquiry will be conducted as regards the conduct of the judge who delivered the judgment as he is to retire within a month and a wild allegation that the judiciary has no guts, no honesty and is not powerful enough to punish wealthy people would bring administration of justice into ridicule and disrepute. The speech that the judgment is rubbish and deserves to be thrown in a dustbin cannot be said to be a fair criticism of the judgment. These comments transgressed the limits of fair and bonafide criticism and have a clear tendency to affect the dignity and prestige of the judiciary. It has a tendency to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge and to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, it is also likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties.

When there is a danger of grave mischief being done in the matter of administration of justice, it cannot be ignored and viewed with placid equanimity. If the criticism is likely to interfere with due administration of justice or undermine the confidence which the public reposes in the Courts of law as Courts of justice, the criticism would cease to be fair and reasonable criticism but would scandalise Courts and substantially interfere with administration of justice.

It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

Legislative Framework Vis-A-Vis Animals: A Comparative Study

*– Bhumika Sharma**
*– Priyanka Sharma***

Abstract

A number of legislations exist in India dealing with the rights of animals. India's legislative framework regarding animals is one of the most progressive ones, being made as early as 1960. With time, a number of Allied Rules have been made by the Central Government to implement various provisions of the Prevention of Cruelty Act, 1960. Apart from the aforesaid said legislation, animals enjoy protection under manifold legislations.

A movement has been witnessed after 1970s, in which various countries around the world began incorporating provisions to confer protection to the animals under respective Constitutions. India is one of the first countries in the list.

The aim of this paper is to discuss the legislative provisions regarding animal rights in India and to suggest changes in them to address the current state of animal rights violations. There are direct and specific legislations along with general legislations to address rights of animals. The paper further draws a comparison of Indian laws on protection of animals against other countries.

1. Introduction

"He is a perfect yogi who, by comparison to his own self, sees the true equality of all beings, both in their happiness and distress." [1]

Animals are one of the important components of the environment. They have been relied upon by humans for food, used as research models, companions, working animals, for sport and in recreation. Once treated

* Research Scholar (PhD), Himachal Pradesh University, Shimla-5.
** Assistant Professor, Department of Laws, Manav Bharti University, Solan (H.P.).

1 Bhagavad Gita, (as translated by A. C. Bhaktivedanta Swami Prabhupada) Chapter VI, Verse 32.

as the property of humans, the status of animals has been improving over the centuries. Especially, during the past few decades, efforts for animal protection have expanded exponentially. There is no universal instrument declaring rights of the animals, adopted by United Nations.

In India, a number of changes i.e. developments with regard to rights of animals as well as disregard of their rights have taken place in the recent years. Central Zoo Authority banned the use of wild animals in circuses[2] ; all cetaceans, including captive dolphins recognised as non-human persons[3] etc.

Against this backdrop, the present Paper aims to explore the constitutional and legislative framework with regard to the rights of animals in India. The paper begins with a discussion of various legislations to protect the rights of animals. The paper is a purely analytical, descriptive and doctrinaire study as this is not based on any empirical data and field survey. It does not touch upon any judicial enumeration upon the rights of the animals.[4]

2. Efforts at the International level for Protection of Animals

United Nations has not accepted any formal document, recognising rights of animals or nature.[5]

Greater scientific knowledge and awareness have increased the understanding of the importance of animal welfare; and this in turn has moved it from a marginal local or national concern to become an important regional and international policy issue.

2 For details, see "In welcome move, no circus in India can now make wild animals perform tricks" October 27, 2017, available at http://indiatoday.intoday.in/story/wild-animals-performance-in-circus-ban-india-central-zoo-authority/1/1076376.html (accessed on 10 Oct, 2017) ; "Animal Personhood: Time to Push for Animals' Rights in India" Nov 17,2017, available at http://animalpeopleforum.org/2017/11/17/animal-personhood-time-push-animals-rights-india/ (accessed on 20 Nov , 2017).

3 "Dolphins gain unprecedented protection in India", available at http://www.dw.com/en/dolphins-gain-unprecedented-protection-in-india/a-16834519 (accessed on 10 Nov, 2017).

4 For details, see Bhumika Sharma & Priyanka Sharma, "Rights of Animals under Indian Legal System: A Judicial Perspection", *International Journal of Trend in Research and Development*, Vol. 4 Issue 5 Oct, 2017.

5 United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1963; World Heritage Convention, 1972; Convention on the Conservation of Migratory Species of Wild Animals, 1979 and Convention on Biological Diversity (CBD), 1992.

Table 1- International Instruments on protection of animals and environment

S. No.	Instrument	Objective
1.	International Standards of OIE (World Organisation for Animal)[6]	To provide a harmonised approach to disease diagnosis by describing internationally agreed laboratory diagnostic techniques; *They are regularly updated as new scientific information comes to light, following its established transparent and democratic procedures.*
2.	Universal Declaration on Animal Rights, 1977	It is designed to help humanity restore its harmonious relationship with the universe
3.	International Guiding Principles for Biomedical Research Involving Animals,1985	To provide useful criteria to which academic, governmental and industrial bodies may refer in framing their own codes of practice or legislation regarding the use of laboratory animals for scientific purposes
4.	Assisi Declarations on Nature,1986	To present multi-faith declarations on nature
5.	Universal Declaration on Animal Welfare, 2003 (UDAW) (Conceived in 2000)	To acknowledge the importance of the sentience of animals and human responsibilities towards them; to encourage and enable national governments to introduce and improve animal protection legislation and initiatives.

6 eg- Terrestrial Animal Health Code , 1968 ; Aquatic Animal Health Code, 1995 ; The Manual of Diagnostic Tests and Vaccines for Terrestrial Animals , 1989 ; The Manual of Diagnostic Tests for Aquatic Animals,1995

6.	*Earth Charter (also referred to as a Declaration of Interdependence), 2000*	To encourage a search for common ground in the midst of diversity and to embrace a global ethic that is shared by an ever-growing number of people throughout the world. Principle 15 calls to **treat all living beings with respect and consideration.**
7.	Draft Universal Declaration of Rights of Mother Earth, 2010	To reflect the vision of indigenous peoples of many parts of the world and to promote fundamental shift in decision-making about the utilization of natural resources
8.	Draft Declaration on Animal Welfare,2011	To develop the earlier draft arising from the Manila Conference on Animal Welfare (2003) and the Costa Rica Draft (2005) which incorporated suggestions made by the Steering Committee.

(Source – Compiled by Researchers)

Above efforts echo the need for a stronger international framework addressing the issue. There is a need for United Nations endorsed instrument on animal rights in particular.

3. Constitutional Philosophy in India with regard to Rights of Animals

Under the Government of India Act, 1935, Provincial Legislative List (List-II) of the Seventh Schedule had subjects - Forests[7], Fisheries[8] ; and Protection of Wildlife and Wild birds[9]. Constitutionally, "Environment" is a residual subject, with both the Central and the State Government responsible for regulation and enforcement. By 42nd Amendment Act, 1976, the subject of "forests and wildlife" was brought under the Concurrent List (List -III) in the Seventh Schedule.[10]

Both Parliament and the State legislatures have the authority to make

7 The Government of India Act, 1935; Seventh Schedule, Provincial Legislative List (List-II) , Entry 22.

8 *Id,* Entry 24.

9 *Id*, Entry 25.

10 Prior to 1976, the subject was Entry 20 of the State List.

laws on the following- "prevention of cruelty to animals,"[11] "protection of wild animals and birds,"[12] "prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants."[13] Both State and Centre Legislature are competent to enact on Fisheries.[14] State Legislature may enact on Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.[15] Panchayats may undertake certain duties with regard to "Animal husbandry, dairying and poultry". [16] Municipalities may undertake certain duties pertaining to the "Cattle pounds; prevention of cruelty to animals"[17] and "regulation of slaughterhouses and tanneries".[18]

The concern for the protection and conservation of animal lives is clearly reflected in various provisions of the Constitution. It is expressed in the Fundamental Duties and Directive Principles of State Policy.[19] *The question of banning cow slaughter was debated in the Constituent Assembly and a consensus emerged that there should be no national statute banning the consumption of beef. The goal was instead included in the (non-binding) Directive Principles of State Policy.* The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.[20] The State has to "endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."[21] Every citizen has the duty to "protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."[22]

---

11 The Constitution of India, 1950; Seventh Schedule; List III, Entry 17 read with Article 248.

12 *Id*, Entry 17B.

13 *Id*, Entry 29.

14 *Id*; Seventh Schedule; List II, Entry 21; List I, Entry 57.

15 *Id;* Seventh Schedule; List II, Entry 15. (Prohibition of slaughter of cow/calf, import or export of cow/calf, sale of beef or beef products falls under this subject).

16 *Id*; Eleventh Schedule; Entry 4, 5.

17 *Id* ; Twelfth Schedule; Entry 15 read with Article 243W

18 *Id*; Twelfth Schedule; Entry 18 read with Article 243W.

19 These provisions relating to environment (wildlife, animal etc.) were inserted in the Constitution vide 42nd Amendment Act, 1976. It was done in order to give effect to India's international obligations to the Stockholm Conference, 1972.

20 The Constitution of India, 1950; Article 48.

21 *Id*, Article 48A.

22 *Id*, Article 51A (g).

On the basis of the Constitutional directions, a strong legislative framework has emerged over the years to protect their rights. At the same time, numerous judgments of the higher judiciary in India reiterate rights of the animals.[23] Now, the need is to incorporate the directions of the Apex Court[24] in the form of constitutional and legislative mandates.

4. Legislative Framework in India with regard to Rights of Animals

"Animal" means any living creature other than a human being.[25] Animal includes mammals, birds, reptiles, amphibians, fish, other chordates and invertebrates and also includes their young and eggs.[26] The following Part enumerates the list of legislations providing for punishments for violation of the rights of animals; regulation of veterinary practice in the country; control of diseases in animals, etc. **Wild Birds and Game Act, 1887** was the earliest legislation in India to protect the animals. This was later on replaced by the **Wild Birds and Wild Animals Protection Act, 1912**[27] which was amended in the year 1935. It was followed by the **Indian Forest Act, 1927**[28] .The **Indian Board for Wildlife** was constituted in 1952 to push up and safeguard the cause of wildlife conservation in India.

Prevention of Cruelty to Animals Act, 1960 and Wildlife Protection

23 For details , see Animal Welfare Board of India (AWBI) v. A. Nagaraja and Ors (2014) 7 SCC 547; Angel Trust v. Union of India Writ Petition (Civil) No.296 / 2016 , decided on June 30, 2016 ; Ramesh Sharma v. State of Himachal Pradesh and others CWP No. 9257 of 2011 along with CWP No.4499/2012 and CWP No.5076/2012 decided on September 29, 2014 ; Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai , AIR 2015 NOC 1126 (Bom) ; Bhartiya Govansh Rakshan Sanverdhan Parishad v. Union of India CW 6631 of 2014 (Himachal Pradesh), decided on July 29, 2016 etc.

24 The Apex Court recognized five freedoms of animals in Animal Welfare Board of India v. A. Nagaraja and Ors. , (2014) 3SCC 143 at Paras 64 and 91. These freedoms are freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour.

25 Prevention of Cruelty to Animals Act, 1960 (No. 59 of 1960); Section 2(a); Indian Penal Code, 1860 (No. 55 of 1860), Section 47.

26 Wildlife Protection Act, 1972 (No. 53 of 1972); Section 2 (1).

27 It made better provision for the protection and preservation of certain wild birds and animals. It empowered Presidency Magistrate or a Magistrate of the second class to try any offence.

28 Wildlife Protection Act, 1972 (No. 53 of 1972); Section 4(b) (iii) include wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals within the meaning of forest produce. Section 75 prohibits trade of forest produce etc.

Act, 1972 are two most significant relevant legislations. Prevention of Cruelty to Animals Act,1960 along with its Allied Rules (around ten) cover extensively physical Abuse of Street Animals; cruelty against Pet , Draught & Pack Animals ; cruelty during transportation of animals ; cruelty during Slaughter of Animals; cruelty against Performing animals ; commercial exploitation of animals ; and Research and Experiments on animals etc. Wildlife Protection Act, 1972 and Allied Rules seek to provide protection to wild animals by prohibiting and regulating their hunting; enlisting Scheduled Animals; prohibiting trade and commerce in trophies & animal articles etc. It further by establishment of various Sanctuaries; establishment of Central Zoo Authority, **National Tiger Conservation Authority, Wildlife Crime Control Bureau**, *National Board for Wildlife etc. accord protection to the wild animals.*

Table 2 – Major Legislations for Protecting the Rights of Animals

S. No.	Statute	Objective
1.	Elephants Preservation Act, 1879	To regulate the killing and capture of wild animals by issue of license
2.	Indian Fisheries Act,1897	To make provisions to prohibit destruction of fish
3.	Indian Forest Act, 1927	To consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest-produce
4.	Prevention of Cruelty to Animals Act,1960 and Allied Rules[29]	To prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals

29 Section 38 empowers the Central Government to make rules to carry out the purposes of this Act. By virtue of this power, various Rules such as Capture of Animals Rules, 1972; The Breeding of and Experiments on Animals (Control and Supervision) Rules, 1998; Animal Birth Control (Dog) Rules, 2001 Prevention of Cruelty to Animals (Regulation of Livestock Market) Rules, 2017 etc. have been made from time to time.

5.	Wildlife Protection Act,1972 and Allied Rules[30]	To provide for the protection of Wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto.
6.	*Forest (Conservation) Act, 1980 and Allied Rules* [31]	*To provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto*
7.	Indian Veterinary Council Act, 1984 and Allied Rules[32] & Regulations[33]	To regulate veterinary practice in India by establishment of Veterinary Council of India , State Veterinary Councils and Joint State Veterinary Councils
8.	Biological Diversity Act, 2002 and Biological Diversity Rules, 2004[34]	To provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.
9.	Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009	To prevent, control and eradicate infectious and contagious diseases affecting animals, prevention of outbreaks or the spreading of such diseases from one state to the other; and to meet international obligations for facilitating the import and export of animals and animal products

The above Table enumerates the objectives of various legislations

30 Section 63 empowers the Parliament to make Rules. The Wildlife (Transaction and Taxidermy) Rules, 1973 ; The Wildlife (Stock Declaration) Central Rules, 1973 ; Recognition of Zoo Rules, 1992 ; The Wildlife (Protection) Licensing Rules, 1993 ; The Wildlife (Specified Plant Stock Declaration) Central Rules, 1995 ; The Declaration of Wild Life Stock Rules, 2003 and The National Board for Wild Life Rules, 2003 have been made.

31 Forest (Conservation) Rules, 1981 Forest (Conservation) Rules, 2003; Section 4.

32 Section 64 empowers the Central Government to make Rules to carry out the purposes of Chapters II, III, IV and V. Indian Veterinary Council Rules, 1985 have been made under this provision.

33 Section 66 empowers Indian Veterinary Council to make Regulations. Veterinary Council of India (Inspectors & Visitors) Regulation, 1991 ; Veterinary Council of India (General) Regulation, 1991 ; Veterinary Council of India (Fees & Allowances) Regulation, 1992; Veterinary Council of India (Minimum Standards of Veterinary Education Degree Course) Regulation, 1993 have been thus made.

34 Section 62 empowers the Central Government to make Rules.

made for protection of animals. Apart from the legislations discussed above, various other legislations also have provisions for protection of rights of animals. Indian Penal Code, 1860 ; Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006[35] and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules ,2007[36] etc. are some examples.

Table 3 - Provisions under Indian Penal Code, 1860 safeguarding Animals

S. No.	Offence	Relevant Provision	Punishment	
			Imprisonment	Fine
1.	Negligent conduct with respect to animal	Section 289	shall be punished with imprisonment of either description for a term which may extend to six months	or with fine which may extend to one thousand rupees, or with both
4.	Unnatural Offence	Section 377	shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years	and shall also be liable to fine
2.	Mischief by killing or maiming animal of the value of ten rupees	Section 428	shall be punished with imprisonment of either description for a term which may extend to two years	or with fine, or both

35 For details, see Section 5(a), (d).

36 For details, see Rule 4(1) (d).

3.	Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees	Section 429	shall be punished with imprisonment of either description for a term which may extend to five years	or with fine, or with both

5. Comparative Study of Animal Protection Laws in Various Countries

In a world, where violations against human rights are rampant, laws to protect powerless animals are a must. Each country has its own set of animal welfare or protection laws to punish violations against the animals.

4.1 Constitutional Perspective with regard to protection of Animals

The level of protection and recognition afforded to animals through their Constitutions varies widely by country. The table below shows that some countries use the term animals specifically and others use terms such as “fauna,” “species,” “living things,” and “nature.” Various countries do not specifically mention animal or fauna, but environment as a whole.

Table 4- Provisions under the Constitutions vis-a-vis Animals

S. No.	Country	Relevant Provision under the Constitution	Year in which included
1.	Switzerland	Article 80 (earlier 25bis) The Federation legislates on the protection of animals. The Federation regulates in particular: the keeping and care of animals; experiments and intervention on live animals; the use of animals; the importation of animals and animal products; trade in animals and transportation of animals; and the slaughter of animals. Article 120 (earlier 24 novies) The Federation adopts rules on the use of reproductive and genetic material of animals, plants, and other organisms. It takes thereby into account the dignity of the creature and the security of man, animal and environment, and protects the genetic multiplicity of animal and plant species.	1973 and 1992 (first country to recognise rights of animals as early as 1893[37] and first country to recognise dignity of creation
2.	India	Article 48A *The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.* *Article 51A (g)* *It shall be the duty of every citizens of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;*	1976 (followed Switzerland to incorporate such provisions under the Constitution)

37 Gieri Bolliger, "Animal-Welfare in Constitutions" (accessed on 1 Nov, 2017).

3.	Cuba	Article 27(2) It is the duty of the citizens to contribute to the protection of the water and the atmosphere, and to the conservation of the soil, flora, fauna, and all the rich potential of nature.	1976
4.	China	Article 9 The State ensures the rational use of natural resources and protects rare **animals** and plants.	1982
5.	Brazil	Article 225 Para 1 (VII) It is incumbent upon the Government to protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty	1988
6.	Russia	Article 58 Everyone shall have a duty to preserve **nature** and the environment and to treat natural resources with care.	1993
7.	Germany	Paragraph 20a- Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation	2002
8.	Austria	Article 11 Para 1 (8) Legislation is the business of Federation in Animal protection	2004

9.	Hungary	Article P All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity - in particular native plant and animal species and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.	2011
10.	Egypt	Article 45 The State commits to the protection and development of green space in urban areas; the protection of plants, livestock and fisheries; the protection of endangered species; and the prevention of cruelty to animals.	2014

(Compiled by Researchers)[38]

4.2 Comparative Legislative Analysis

This Part illuminates the countries having strongest laws for the protection of animals. 2000 onwards, many laws have been enacted and amendments have been made for protecting the animals.

38 For details, refer the respective Constitutions.

Table 5- Legislations for Animal Rights in different Countries[39]

S. No.	Country	Primary Legislation	Significance
	Switzerland	Animal Welfare Act, 2005 and Animal Welfare Ordinance, 2008[40]	*Covers various aspects - animal husbandry, animal research, companion animals, breeding, transport and slaughter* (One of strictest animal laws in the world)
	United Kingdom[41]	Animal Welfare Act , 2006	Consolidates more than 20 animal protection legislations, including the Protection of Animals Act , 1911
	New Zealand[42]	Animal Welfare Act, 1999	**Recognizes that animals are sentient, requires owners of animals, and persons in charge of animals to attend properly to the welfare of those animals ;** provides a process for approving the use of animals in research, testing, and teaching; establishes a National Animal Welfare Advisory Committee and a National Animal Ethics Advisory Committee etc.

39 These countries have been selected because they are placed at the top of The Animal Protection Index. API establishes a classification of 50 countries around the world according to their commitments to protect animals and improve animal welfare in policy and legislation. Till now, only first edition of API has been brought in 2015. It is an endeavour of World Animal Protection (International animal welfare organisation), based in U.K.

40 It is based on Article 32, Paragraph 1, Animal Welfare Act, 2005.

41 The other relevant legislations are Wild Mammals (Protection) Act 1996; Wildlife and Countryside Act, 1981; Animals (Scientific Procedures) Act, 1986 etc.

42 The other relevant legislations are Wild Animal Control Act ,1977 ; Marine Mammals Protection Act , 1978 ; Game Animal Council Act, 2013 Animal Welfare Strategy , 2013 etc.

	Austria[43]	Animal Welfare Act, 2004	Protects the life and welfare of animals in light of the particular responsibility that mankind bears to animals as fellow creatures of mankind
	Germany	Animal Welfare Act,2006	*Ensures responsibility of human beings to protect the lives and well-being of their fellow creatures*
	Sweden	Animal Welfare Act ,1988 and Animal Welfare Ordinance, 1988	*Provides that animals shall be treated well and shall be protected from unnecessary suffering and disease, among other things.*
	Australia	*Animal Welfare Act, 2002*	Promotes and protects the welfare, safety and health of animals, ensure the proper and humane care and management of animals in accordance with generally accepted standards.
	Spain	Law 32/2007 ; Law 31/2003	Contains set of principles on the Animal care

As compared to the countries discussed above, India's - Prevention of Cruelty to Animals Act, 1960 is generally criticised for being an old legislation. Though, the legislation has not been overhauled for more than fifty years, but new Rules under the Act are being constantly made to regulate upcoming concerns. Overall, the Prevention of Cruelty to Animals Act, 1960 read with its Allied Rules cover a number of needs and rights of the animals. The major flaw that still prevails is the negligible punishment provisions.

6. Conclusion

The earliest legislations with regard to animals in India were **Wild Birds and Game Act , 1887** ; the **Wild Birds and Wild Animals Protection Act ,1912 ;** and the **Indian Forest Act ,1927.** The Constitution of India contains three direct and specific provisions i.e. Articles 48, 48A and 51A

43 The other relevant legislations are Animal Welfare Monitoring Regulation 2004; Animal Transport Act 2007; Animal Experimentation Act, 2012 etc.

(g). In 1976, by incorporating Articles 48A and 51A (g) to the Constitution, India became the first country to incorporate express Constitutional provision on environment protection. A lot is still pending to be done. **In independent India,** there exists a number of direct animal-centred legislations - Elephants Preservation Act, 1879; Indian Fisheries Act, 1897; Prevention of Cruelty to Animals Act, 1960; Wildlife Protection Act, 1972 and Biological Diversity Act, 2002.

Various countries around the globe have laws to protect animals. Constitutions as well as legislations are being made and updated to provide potent safeguards to the animals. The countries which have stringent provisions are Switzerland, U.K., New Zealand, Austria etc.

Suggestions

A simple message, a plea that needs to be heard as human beings move ahead in the 21st century – "Give animals the respect that, as sentient beings, is their due". The researchers make following suggestions -

- Article 21, Constitution of India needs to be reframed in favour of both humans and animals. Animals do not need other fundamental rights, apart from the right to live with dignity.
- A Universal Declaration on Animal Welfare needs to be adopted officially by General Assembly of United Nations. It would protect animal welfare in an incredible range of ways. It would encourage governments to create or improve animal welfare laws.
- The penal provisions under the Prevention of Cruelty to Animals Act, 1960 calls for urgent increase. Both the imprisonment and fine must be increased immediately.
- Sensitization of the masses as well as concerned public officials must be done. More social anger and resentment towards the offenders in animal related offences may change the perception towards such offences.

Animals are not to be exploited, terrorized, tortured or controlled to serve frivolous human purposes. There is a need to realize that animals are not objects or things. It must be recognized that animals have the right not to be treated as property and lead a dignified life.

Bills Introduced in the Parliament

The Supreme Court (Number Of Judges) Amendment Bill, 2019

Ministry: Law And Justice

- The Supreme Court (Number of Judges) Amendment Bill, 2019 was introduced in Lok Sabha on August 5, 2019 by the Minister of Law and Justice, Mr. Ravi Shankar Prasad. The Bill amends the Supreme Court (Number of Judges) Act, 1956.
- The Act fixes the maximum number of judges in the Supreme Court at 30 judges (excluding the Chief Justice of India). The Bill increases this number from 30 to 33.

The Repealing And Amending Bill, 2019

Ministry: Law And Justice

- The Repealing and Amending Bill, 2019 was introduced in Lok Sabha on July 25, 2019 by the Minister of Law and Justice, Mr. Ravi Shankar Prasad. The Bill seeks to repeal 68 Acts in whole and makes minor amendments to two other laws.
- **Repealing certain laws in whole**: The Bill repeals 68 laws that have been listed in the First Schedule of the Bill. These include: (i) the Beedi Workers Welfare Fund Act, 1976, and (ii) the Motor Vehicles (Amendment) Act, 2001.
- **Amendment of certain laws**: The Bill makes minor amendments to two Acts which relate to substitution of certain words. The two Acts are: (i) the Income Tax Act, 1961, and (ii) the India Institutes of Management Act, 2017.

The Insolvency And Bankruptcy Code (Amendment) Bill, 2019

Ministry: Finance

- The Insolvency and Bankruptcy Code (Amendment) Bill, 2019 was introduced in Rajya Sabha by the Minister of Finance, Ms. Nirmala Sitharaman, on July 24, 2019. The Bill amends the Insolvency and Bankruptcy Code, 2016. The Code provides a

time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.

- Under the Code, a financial creditor may file an application before the National Company Law Tribunal (NCLT) for initiating the insolvency resolution process. The NCLT must find the existence of default within 14 days. Thereafter, a Committee of Creditors (CoC) consisting of financial creditors will be constituted for taking decisions regarding insolvency resolution. The CoC may either decide to restructure the debtor's debt by preparing a resolution plan or liquidate the debtor's assets.

- The CoC will appoint a resolution professional who will present a resolution plan to the CoC. The CoC must approve a resolution plan, and the resolution process must be completed within 180 days. This may be extended by a period of up to 90 days if the extension is approved by NCLT.

- If the resolution plan is rejected by the CoC, the debtor will go into liquidation. The Code provides an order of priority for the distribution of assets in case of liquidation of the debtor. This order places financial creditors ahead of operational creditors (e.g., suppliers). In a 2018 Amendment, home-buyers who paid advances to a developer were to be considered as financial creditors. They would be represented by an insolvency professional appointed by NCLT.

- The Bill addresses three issues. First, it strengthens provisions related to time-limits. Second, it specifies the minimum pay-outs to operational creditors in any resolution plan. Third, it specifies the manner in which the representative of a group of financial creditors (such as home-buyers) should vote.

- **Resolution plan:** The Code provides that the resolution plan must ensure that the operational creditors receive an amount which should not be lesser than the amount they would receive in case of liquidation. The Bill amends this to provide that the amounts to be paid to the operational creditor should be the higher of: (i) amounts receivable under liquidation, and (ii) the amount receivable under a resolution plan, if such amounts were distributed under the same order of priority (as for liquidation).

For example, if the default were for Rs 1,000 crore and the resolution professional recovered Rs 800 crore, the operational creditor must at least get an amount which they would have received if Rs 800 crore have been obtained through liquidation proceeds.

- Further, the Bill states that this provision would also apply to insolvency processes: (i) that have not been approved or rejected by the National Company Law Tribunal (NCLT), (ii) that have been appealed to the National Company Appellate Tribunal or Supreme Court, and (iii) where legal proceedings have been initiated in any court against the decision of the NCLT.

- **Initiation of resolution process:** As per the Code, the NCLT must determine the existence of default within 14 days of receiving a resolution application. Based on its finding, NCLT may accept or reject the application. The Bill states that in case the NCLT does not find the existence of default and has not passed an order within 14 days, it must record its reasons in writing.

- **Time-limit for resolution process:** The Code states that the insolvency resolution process must be completed within 180 days, extendable by a period of up to 90 days. The Bill adds that the resolution process must be completed within 330 days. This includes time for any extension granted and the time taken in legal proceedings in relation to the process. On the enactment of the Bill, if any case is pending for over 330 days, the Bill states it must be resolved within 90 days.

- Representative of financial creditors: The Code specifies that, in certain cases, such as when the debt is owed to a class of creditors beyond a specified number, the financial creditors will be represented on the committee of creditors by an authorised representative. These representatives will vote on behalf of the financial creditors as per instructions received from them. The Bill states that such representative will vote on the basis of the decision taken by a majority of the voting share of the creditors that they represent.

The Code On Wages, 2019

Ministry: Labour And Employment

- The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on July 23, 2019. It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is carried out. The Code replaces the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

- **Coverage:** The Code will apply to all employees. The central government will make wage-related decisions for employments such as railways, mines, and oil fields, among others. State governments will make decisions for all other employments.

- Wages include salary, allowance, or any other component expressed in monetary terms. This does not include bonus payable to employees or any travelling allowance, among others.

- **Floor wage:** According to the Code, the central government will fix a floor wage, taking into account living standards of workers. Further, it may set different floor wages for different geographical areas. Before fixing the floor wage, the central government may obtain the advice of the Central Advisory Board and may consult with state governments.

- The minimum wages decided by the central or state governments must be higher than the floor wage. In case the existing minimum wages fixed by the central or state governments are higher than the floor wage, they cannot reduce the minimum wages.

- **Fixing the minimum wage:** The Code prohibits employers from paying wages less than the minimum wages. Minimum wages will be notified by the central or state governments. This will be based on time, or number of pieces produced. The minimum wages will be revised and reviewed by the central or state governments at an interval of not more than five years. While fixing minimum wages, the central or state governments may

take into account factors such as: (i) skill of workers, and (ii) difficulty of work.

- **Overtime:** The central or state government may fix the number of hours that constitute a normal working day. In case employees work in excess of a normal working day, they will be entitled to overtime wage, which must be at least twice the normal rate of wages.

- **Payment of wages:** Wages will be paid in (i) coins, (ii) currency notes, (iii) by cheque, (iv) by crediting to the bank account, or (v) through electronic mode. The wage period will be fixed by the employer as either: (i) daily, (ii) weekly, (iii) fortnightly, or (iv) monthly.

- **Deductions:** Under the Code, an employee's wages may be deducted on certain grounds including: (i) fines, (ii) absence from duty, (iii) accommodation given by the employer, or (iv) recovery of advances given to the employee, among others. These deductions should not exceed 50% of the employee's total wage.

- **Determination of bonus:** All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus. The bonus will be at least: (i) 8.33% of his wages, or (ii) Rs 100, whichever is higher. In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.

- **Gender discrimination:** The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same.

- **Advisory boards:** The central and state governments will constitute advisory boards. The Central Advisory Board will consist of: (i) employers, (ii) employees (in equal number as employers), (iii) independent persons, and (iv) five representatives of state governments. State Advisory Boards

will consist of employers, employees, and independent persons. Further, one-third of the total members on both the central and state Boards will be women. The Boards will advise the respective governments on various issues including: (i) fixation of minimum wages, and (ii) increasing employment opportunities for women.

- **Offences:** The Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for three months along with a fine of up to one lakh rupees.

The Protection of Children from Sexual Offences (Amendment) Bill, 2019

Ministry: Women and Child Development

- The Protection of Children from Sexual Offences (Amendment) Bill, 2019 was introduced in Rajya Sabha by the Minister of Women and Child Development, Ms. Smriti Zubin Irani on July 18, 2019. The Bill amends the Protection of Children from Sexual Offences Act, 2012. The Act seeks to protect children from offences such as sexual assault, sexual harassment, and pornography.

- **Penetrative sexual assault:** Under the Act, a person commits "penetrative sexual assault" if he: (i) penetrates his penis into the vagina, mouth, urethra or anus of a child, or (ii) makes a child do the same, or (iii) inserts any other object into the child's body, or (iv) applies his mouth to a child's body parts. The punishment for such offence is imprisonment between seven years to life, and a fine. The Bill increases the minimum punishment from seven years to ten years. It further adds that if a person commits penetrative sexual assault on a child below the age of 16 years, he will be punishable with imprisonment between 20 years to life, with a fine.

- **Aggravated penetrative sexual assault:** The Act defines certain actions as "aggravated penetrative sexual assault". These

include cases when a police officer, a member of the armed forces, or a public servant commits penetrative sexual assault on a child. It also covers cases where the offender is a relative of the child, or if the assault injures the sexual organs of the child or the child becomes pregnant, among others. The Bill adds two more grounds to the definition of aggravated penetrative sexual assault. These include: (i) assault resulting in death of child, and (ii) assault committed during a natural calamity, or in any similar situations of violence. Currently, the punishment for aggravated penetrative sexual assault is imprisonment between 10 years to life, and a fine. The Bill increases the minimum punishment from ten years to 20 years, and the maximum punishment to death penalty.

- **Aggravated sexual assault:** Under the Act, "sexual assault" includes actions where a person touches the vagina, penis, anus or breast of a child with sexual intent without penetration. "Aggravated sexual assault" includes cases where the offender is a relative of the child, or if the assault injures the sexual organs of the child, among others. The Bill adds two more offences to the definition of aggravated sexual assault. These include: (i) assault committed during a natural calamity, and (ii) administrating or help in administering any hormone or any chemical substance, to a child for the purpose of attaining early sexual maturity.

- **Pornographic purposes**: Under the Act, a person is guilty of using a child for pornographic purposes if he uses a child in any form of media for the purpose of sexual gratification. The Act also penalises persons who use children for pornographic purposes resulting in sexual assault. The Bill defines child pornography as any visual depiction of sexually explicit conduct involving a child including photograph, video, digital or computer generated image indistinguishable from an actual child. In addition, the Bill enhances the punishments for certain offences as shown in Table 1.

Table 1: Punishment for offences for using child for pornographic purposes

Offence	POCSO Act, 2012	2019 Bill
Use of child for pornographic purposes	Maximum: 5 years	Minimum: 5 years
Use of child for pornographic purposes resulting in penetrative sexual assault	Minimum: 10 years Maximum: life imprisonment	Minimum: 10 years (in case of child below 16 years: 20 years) Maximum: life imprisonment
Use of child for pornographic purposes resulting in aggravated penetrative sexual assault	Life imprisonment	Minimum: 20 years Maximum: life imprisonment, or death.
Use of child for pornographic purposes resulting in sexual assault	Minimum: Six years Maximum: Eight years	Minimum: Three years Maximum: Five years
Use of child for pornographic purposes resulting in aggravated sexual assault	Minimum: Eight years Maximum: 10 years	Minimum: Five years Maximum: Seven years

Sources: Protection of Children from Sexual Offences (Amendment) Bill, 2019; Protection of Children from Sexual Offences Act, 2012; PRS.

- **Storage of pornographic material:** The Act penalises storage of pornographic material for commercial purposes with a punishment of up to three years, or a fine, or both. The Bill amends this to provide that the punishment can be imprisonment between three to five years, or a fine, or both. In addition, the Bill adds two other offences for storage of pornographic material involving children. These include: (i) failing to destroy, or delete, or report pornographic material involving a child, and (ii) transmitting, displaying, distributing such material except for the purpose of reporting it.

The Arbitration and Conciliation (Amendment) Bill, 2019

Ministry: Law and Justice

- The Arbitration and Conciliation (Amendment) Bill, 2019 was

introduced in Rajya Sabha by the Minister for Law and Justice, Mr. Ravi Shankar Prasad, on July 15, 2019. It seeks to amend the Arbitration and Conciliation Act, 1996. The Act contains provisions to deal with domestic and international arbitration, and defines the law for conducting conciliation proceedings. Key features of the Bill are:

- **Arbitration Council of India:** The Bill seeks to establish an independent body called the Arbitration Council of India (ACI) for the promotion of arbitration, mediation, conciliation and other alternative dispute redressal mechanisms. Its functions include: (i) framing policies for grading arbitral institutions and accrediting arbitrators, (ii) making policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters, and (iii) maintaining a depository of arbitral awards (judgments) made in India and abroad.

- **Composition of the ACI:** The ACI will consist of a Chairperson who is either: (i) a Judge of the Supreme Court; or (ii) a Judge of a High Court; or (iii) Chief Justice of a High Court; or (iv) an eminent person with expert knowledge in conduct of arbitration. Other members will include an eminent arbitration practitioner, an academician with experience in arbitration, and government appointees.

- **Appointment of arbitrators:** Under the 1996 Act, parties were free to appoint arbitrators. In case of disagreement on an appointment, the parties could request the Supreme Court, or the concerned High Court, or any person or institution designated by such Court, to appoint an arbitrator.

- Under the Bill, the Supreme Court and High Courts may now designate arbitral institutions, which parties can approach for the appointment of arbitrators. For international commercial arbitration, appointments will be made by the institution designated by the Supreme Court. For domestic arbitration, appointments will be made by the institution designated by the concerned High Court. In case there are no arbitral institutions available, the Chief Justice of the concerned High Court may maintain a panel of arbitrators to perform the functions of the arbitral institutions. An application for appointment of an arbitrator is required to be disposed of within 30 days.

- **Relaxation of time limits:** Under the Act, arbitral tribunals are required to make their award within a period of 12 months for all arbitration proceedings. The Bill seeks to remove this time restriction for international commercial arbitrations. It adds that tribunals must endeavour to dispose off international arbitration matters within 12 months.

- **Completion of written submissions:** Currently, there is no time limit to file written submissions before an arbitral tribunal. The Bill requires that the written claim and the defence to the claim in an arbitration proceeding, should be completed within six months of the appointment of the arbitrators.

- **Confidentiality of proceedings:** The Bill provides that all details of arbitration proceedings will be kept confidential except for the details of the arbitral award in certain circumstances. Disclosure of the arbitral award will only be made where it is necessary for implementing or enforcing the award.

- **Applicability of Arbitration and Conciliation Act, 2015:** The Bill clarifies that the 2015 Act shall only apply to arbitral proceedings which started on or after October 23, 2015.

The Motor Vehicles (Amendment) Bill, 2019

Ministry: Road Transport and Highways

- The Motor Vehicles (Amendment) Bill, 2019 was introduced in Lok Sabha on July 15, 2019 by the Minister for Road Transport and Highways, Mr. Nitin Gadkari. The Bill seeks to amend the Motor Vehicles Act, 1988 to provide for road safety. The Act provides for grant of licenses and permits related to motor vehicles, standards for motor vehicles, and penalties for violation of these provisions.

- **Compensation for road accident victims:** The central government will develop a scheme for cashless treatment of road accident victims during golden hour. The Bill defines golden hour as the time period of up to one hour following a traumatic injury, during which the likelihood of preventing death through prompt medical care is the highest. The central government may also make a scheme for providing interim relief to claimants seeking compensation under third party insurance. The Bill increases the minimum compensation for hit and run

cases as follows: (i) in case of death, from Rs 25,000 to two lakh rupees, and (ii) in case of grievous injury, from Rs 12,500 to Rs 50,000.

- **Compulsory insurance:** The Bill requires the central government to constitute a Motor Vehicle Accident Fund, to provide compulsory insurance cover to all road users in India. It will be utilised for: (i) treatment of persons injured in road accidents as per the golden hour scheme, (ii) compensation to representatives of a person who died in a hit and run accident, (iii) compensation to a person grievously hurt in a hit and run accident, and (iv) compensation to any other persons as prescribed by the central government. This Fund will be credited through: (i) payment of a nature notified by the central government, (ii) a grant or loan made by the central government, (iii) balance of the Solatium Fund (existing fund under the Act to provide compensation for hit and run accidents), or (iv) any other source as prescribed the central government.

- **Good samaritans:** The Bill defines a good samaritan as a person who renders emergency medical or non-medical assistance to a victim at the scene of an accident. The assistance must have been (i) in good faith, (ii) voluntary, and (iii) without the expectation of any reward. Such a person will not be liable for any civil or criminal action for any injury to or death of an accident victim, caused due to their negligence in providing assistance to the victim.

- **Recall of vehicles:** The Bill allows the central government to order for recall of motor vehicles if a defect in the vehicle may cause damage to the environment, or the driver, or other road users. The manufacturer of the recalled vehicle will be required to: (i) reimburse the buyers for the full cost of the vehicle, or (ii) replace the defective vehicle with another vehicle with similar or better specifications.

- **National Transportation Policy:** The central government may develop a National Transportation Policy, in consultation with state governments. The Policy will: (i) establish a planning framework for road transport, (ii) develop a framework for grant of permits, and (iii) specify priorities for the transport system, among other things.

- **Road Safety Board:** The Bill provides for a National Road

Safety Board, to be created by the central government through a notification. The Board will advise the central and state governments on all aspects of road safety and traffic management including: (i) standards of motor vehicles, (ii) registration and licensing of vehicles, (iii) standards for road safety, and (iv) promotion of new vehicle technology.

- **Offences and penalties:** The Bill increases penalties for several offences under the Act. For example, the maximum penalty for driving under the influence of alcohol or drugs has been increased from Rs 2,000 to Rs 10,000. If a vehicle manufacturer fails to comply with motor vehicle standards, the penalty will be a fine of up to Rs 100 crore, or imprisonment of up to one year, or both. If a contractor fails to comply with road design standards, the penalty will be a fine of up to one lakh rupees. The central government may increase fines mentioned under the Act every year by up to 10%.

- **Taxi aggregators:** The Bill defines aggregators as digital intermediaries or market places which can be used by passengers to connect with a driver for transportation purposes (taxi services). These aggregators will be issued licenses by state Further, they must comply with the Information Technology Act, 2000.

The Consumer Protection Bill, 2019

Ministry: Consumer Affairs, Food and Public Distribution

- The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019. The Bill replaces the Consumer Protection Act, 1986. Key features of the Bill include:

- **Definition of consumer:** A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.

- **Rights of consumers:** Six consumer rights have been defined in the Bill, including the right to: (i) be protected against marketing

of goods and services which are hazardous to life and property; (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services; (iii) be assured of access to a variety of goods or services at competitive prices; and (iv) seek redressal against unfair or restrictive trade practices.

- **Central Consumer Protection Authority:** The central government will set up a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. It will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into such violations.

- CCPA will carry out the following functions, including: (i) inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum; (ii) passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices, as defined in the Bill; (iii) issuing directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it; (iv) imposing penalties, and; (v) issuing safety notices to consumers against unsafe goods and services.

- **Penalties for misleading advertisement:** The CCPA may impose a penalty on a manufacturer or an endorser of up to Rs 10 lakh and imprisonment for up to two years for a false or misleading advertisement. In case of a subsequent offence, the fine may extend to Rs 50 lakh and imprisonment of up to five years.

- CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years. However, there are certain exceptions when an endorser will not be held liable for such a penalty.

- **Consumer Disputes Redressal Commission:** Consumer Disputes Redressal Commissions (CDRCs) will be set up at the district, state, and national levels. A consumer can file a complaint with CDRCs in relation to: (i) unfair or restrictive

trade practices; (ii) defective goods or services; (iii) overcharging or deceptive charging; and (iv) the offering of goods or services for sale which may be hazardous to life and safety. Complaints against an unfair contract can be filed with only the State and National Appeals from a District CDRC will be heard by the State CDRC. Appeals from the State CDRC will be heard by the National CDRC. Final appeal will lie before the Supreme Court.

- **Jurisdiction of CDRCs:** The District CDRC will entertain complaints where value of goods and services does not exceed Rs one crore. The State CDRC will entertain complaints when the value is more than Rs one crore but does not exceed Rs 10 crore. Complaints with value of goods and services over Rs 10 crore will be entertained by the National CDRC.

- **Product liability:** Product liability means the liability of a product manufacturer, service provider or seller to compensate a consumer for any harm or injury caused by a defective good or deficient service. To claim compensation, a consumer has to prove any one of the conditions for defect or deficiency, as given in the Bill.

The Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 2019

Ministry: Housing and Urban Affairs

- The Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 2019 was introduced by the Minister of Housing and Urban Affairs, Mr. Hardeep Singh Puri, in Lok Sabha on July 8, 2019. The Bill amends the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Act provides for the eviction of unauthorised occupants from public premises in certain cases.

- **Residential accommodation:** The Bill defines 'residential accommodation occupation' as the occupation of public premises by a person on the grant of a license for such occupation. The license must be given for a fixed tenure, or for the period the person holds office. Further, the occupation must be allowed under the rules made by the central, state or union territory government, or a statutory authority (such as Parliament Secretariat, or a central government company, or premises belonging to a state government).

- **Notice for eviction:** The Bill adds a provision laying down the procedure for eviction from residential accommodation. It requires an estate officer (an officer of the central government) to issue a written notice to a person if he is in unauthorised occupation of a residential accommodation. The notice will require the person to show cause of why an eviction order should not be made against him, within three working days. The written notice must be fixed to a conspicuous part of the accommodation, in a prescribed manner.

- **Order of eviction:** After considering the cause shown, and making any other inquiries, the estate officer will make an order for eviction. If the person fails to comply with the order, the estate officer may evict such person from the residential accommodation, and take possession of it. For this purpose, the estate officer may also use such force as necessary.

- **Payment of damages:** If the person in unauthorised occupation of the residential accommodation challenges the eviction order passed by the estate officer in court, he will be required to pay damages for every month of such occupation.

The Unlawful Activities (Prevention) Amendment Bill, 2019

Ministry: Home Affairs

- The Unlawful Activities (Prevention) Amendment Bill, 2019 was introduced in Lok Sabha by the Minister of Home Affairs, Mr. Amit Shah, on July 8, 2019. The Bill amends the Unlawful Activities (Prevention) Act, 1967. The Act provides special procedures to deal with terrorist activities, among other things.

- **Who may commit terrorism:** Under the Act, the central government may designate an organisation as a terrorist organisation if it: (i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The Bill additionally empowers the government to designate individuals as terrorists on the same grounds.

- **Approval for seizure of property by NIA:** Under the Act, an investigating officer is required to obtain the prior approval of the Director General of Police to seize properties that may be connected with terrorism. The Bill adds that if the investigation

is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director General of NIA would be required for seizure of such property.

- **Investigation by NIA**: Under the Act, investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.

- **Insertion to schedule of treaties**: The Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, including the Convention for the Suppression of Terrorist Bombings (1997), and the Convention against Taking of Hostages (1979). The Bill adds another treaty to the list. This is the International Convention for Suppression of Acts of Nuclear Terrorism (2005).

The National Investigation Agency (Amendment) Bill, 2019

Ministry: Home Affairs

- The National Investigation Agency (Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister for Home Affairs, Mr. Amit Shah, on July 8, 2019. The Bill amends the National Investigation Agency (NIA) Act, 2008. The Act provides for a national-level agency to investigate and prosecute offences listed in a schedule (scheduled offences). Further, the Act allows for creation of Special Courts for the trial of scheduled offences.

- **Scheduled offences:** The schedule to the Act specifies a list of offences which are to be investigated and prosecuted by the NIA. These include offences under Acts such as the Atomic Energy Act, 1962, and the Unlawful Activities Prevention Act, 1967. The Bill seeks to allow the NIA to investigate the following offences, in addition: (i) human trafficking, (ii) offences related to counterfeit currency or bank notes, (iii) manufacture or sale of prohibited arms, (iv) cyber-terrorism, and (v) offences under the Explosive Substances Act, 1908.

- **Jurisdiction of the NIA:** The Act provides for the creation of the NIA to investigate and prosecute offences specified in the schedule. The officers of the NIA have the same powers as other

police officers in relation to investigation of such offences, across India. The Bill states that in addition, officers of the NIA will have the power to investigate scheduled offences committed outside India, subject to international treaties and domestic laws of other countries. The central government may direct the NIA to investigate such cases, as if the offence has been committed in India. The Special Court in New Delhi will have jurisdiction over these cases.

- **Special Courts:** The Act allows the central government to constitute Special Courts for the trial of scheduled offences. The Bill amends this to state that the central government may designate Sessions Courts as Special Courts for the trial of scheduled offences. The central government is required to consult the Chief Justice of the High Court under which the Sessions Court is functioning, before designating it as a Special Court. When more than one Special Court has been designated for any area, the senior-most judge will distribute cases among the courts. Further, state governments may also designate Sessions Courts as Special Courts for the trial of scheduled offences.

The Protection of Human Rights (Amendment) Bill, 2019

Ministry: Home Affairs

- The Protection of Human Rights (Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of Home Affairs, Mr. Amit Shah, on July 8, 2019. The Bill amends the Protection of Human Rights Act, 1993. The Act provides for a National Human Rights Commission (NHRC), State Human Rights Commissions (SHRC), as well as Human Rights Courts.

- **Composition of NHRC:** Under the Act, the chairperson of the NHRC is a person who has been a Chief Justice of the Supreme Court. The Bill amends this to provide that a person who has been Chief Justice of the Supreme Court, or a Judge of the Supreme Court will be the chairperson of the NHRC.

- The Act provides for two persons having knowledge of human rights to be appointed as members of the NHRC. The Bill amends this to allow three members to be appointed, of which at least one will be a woman. Under the Act, chairpersons of various commissions such as the National Commission for Scheduled

Castes, National Commission for Scheduled Tribes, and National Commission for Women are members of the NHRC. The Bill provides for including the chairpersons of the National Commission for Backward Classes, the National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities as members of the NHRC.

- **Chairperson of SHRC:** Under the Act, the chairperson of a SHRC is a person who has been a Chief Justice of a High Court. The Bill amends this to provide that a person who has been Chief Justice or Judge of a High Court will be chairperson of a SHRC.

- **Term of office:** The Act states that the chairperson and members of the NHRC and SHRC will hold office for five years or till the age of seventy years, whichever is earlier. The Bill reduces the term of office to three years or till the age of seventy years, whichever is earlier. Further, the Act allows for the reappointment of members of the NHRC and SHRCs for a period of five years. The Bill removes the five-year limit for reappointment.

- **Powers of Secretary-General:** The Act provides for a Secretary-General of the NHRC and a Secretary of a SHRC, who exercise powers as may be delegated to them. The Bill amends this and allows the Secretary-General and Secretary to exercise all administrative and financial powers (except judicial functions), subject to the respective chairperson's control.

- **Union Territories:** The Bill provides that the central government may confer on a SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC.