



**12th Meeting of the LAWASIA
Human Rights Lawyers' Network**

Strategic Litigation: Defending Human Rights, Environment & Fair Trial in Nepal

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Impact

- **Changed social and political dimensions:**
- Strategic litigation has changed the social dimensions in Nepal for long time. Because of the litigations that the Nepalese lawyers have filed the changes in the approaches has been visible in terms of protecting human rights and environment
- **Changed laws and policies**
- Because of the litigation, we have been able to change the laws and policies to address various developments and protection over human rights violation however, there seems many things to get into action

Protected various rights

- In Nepal strategic litigation has been instrumental in protecting various types of human rights and raising awareness and strength for human rights to give adequate relief to the victims of human rights.
- By the litigations, the Nepali society has been benefitted to protect various rights including right to privacy, right to fair trial, rights against preventive detention, rights of the immigrants, food security, environmental justice, public health, protection from gender-based violence, discrimination and many more

Active role of lawyers

- We have been able to protect and support victims of human rights violation and arbitrary detention .
- Recently the Supreme Court has pronounced judgments about the fair investigation and diligent prosecution to be conducted by the state in terms of the human trafficking matters and the Supreme Court has explicitly instructed the Investigating authority and the office of the Attorney General to be cautious in these matters so that fair trial can be fairly carried.

Changing patterns in strategic litigation:

- **In the past most of the** strategic litigation cases target states but, increasingly, affected communities are suing companies for violations of human rights and environment.
- Not only states, as companies are also holding powers and have influencing capacity to the government in terms of acquiring land, construction projects, displacing people, violating labor rights, suppressing marginalized people, using bonded labor including environmental degradation, human rights violations and pollution including taxation matter.
- In such context, it is apparent that peoples and communities needed to be empowered putting corporations on notice that they will be held to account for this strategic litigation have been instrumental in Nepalese context too as in global context.
- For instances the human rights lawyers have filed petition against giant industries for their involvement in damaging environment in Nepal including obtaining tax filing orders against multinationals.
- Human rights lawyer have also filed cases against the killing of factory workers and have been get justice and keep the perpetrators behind the bars.

Out Come of Strategic Litigation

- **Inclusion of Marginalized people** The Supreme Court has also instructed the Election Commission in the PIL stating that marginalized community be represented in the election and inclusiveness of marginalized community be ensured
- **Self determination of gender:** In another case the Supreme Court has issued directive order regarding right to self determination in terms of identification of gender
- **Adequate compensation to the habitats of project site:** Additionally the Supreme Court has also guaranteed that adequate compensation be given to the habitants of hydropower and gridline sites .

- **No deforestation and protection of water reservoir:** In the matters of environment, A PIL was filed by lawyers regarding deforestation , the Supreme Court has issued mandamus to ensure no environmental be damaged and where necessary the project side should be changed .The Supreme Court also demonstrated its concern regarding protection of heritage, ponds, waterfalls, and landsite against the project and industry development and ensure no damages be done at the water resources.
- **Uniformity of registration fees:** In another case the supreme court has strike down various fees differently at the various embassies of Nepal in the matters of registration fees for the Nepali and to make uniform fee structures in the PII filed by the lawyers.

- **Right to life and housing facility** :The Supreme Court in the PIL filed by a lawyer regarding to the security of rights to life of oldage, marginalized and poor, incapacity and differently abled person whose life has been dangered due to nutrition, livelihood, housing and food , the Supreme Court of Nepal has issued mandamus to collect the data's of such person within a year and ensure their right to housing and wellbeing and to form central Social Security Board.
- **Oldage Prisoners:** In another case of oldage prisoners, the Supreme Court has said that maximum age of prisoners for their release due to the age factor shall be equally applicable to both Nepali prisoners and foreign prisoners.

COVID -19 and human rights protection

- *Advocate Roshani Poudyal & Advocate Saroj K Ghimire vs Governemnt of Nepal (PIL)*

Supreme Court Pronounced Landmark Decision On COVID-19

By NEW SPOTLIGHT ONLINE | Sept. 5, 2020, 10:58 a.m.



Petitioners

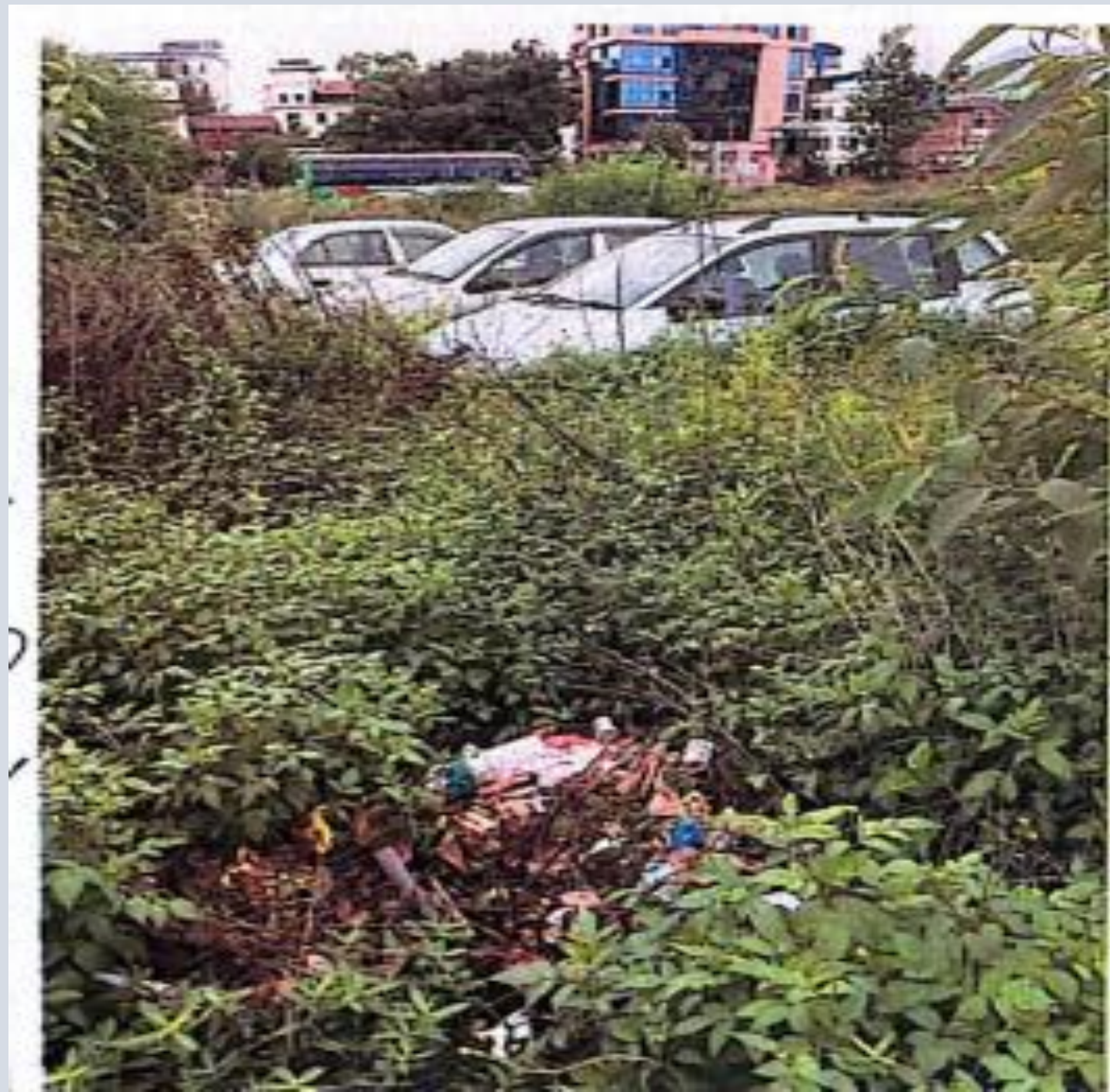
- Human rights violation in the time of COVID 19
- The Supreme Court issued various mandamus order to protect right to privacy of the Covid- 19 Victim, setting up call centers and complaint handling mechanism at court, police and administration office against gender based violence, sexual violence and sexual harassment. The Court also ordered to ensure the Covid-19 Victim receives adequate medication and quarantine centers. The SC also instructed the Government to frame pandemic laws and frame committees keeping women in centre at the policy making body

Padam Bahadur Shrestha v Office of the Prime Ministers etl. 79-WO-0709

- Advocate Padam Bahadur Shrestha filed a petition as PIL regarding the impact made by grounded vehicles at government offices which has caused serious environmental impact including land contamination, loss of revenue and unnecessary government expenditure.
- It took him 4 years to file litigation after various desk study, more than 90 field visits of governments offices to asses about grounds vehicles, assessment of revenue loss and environmental damages.
- He claimed the constitution protection of safe environment, right to life and adequate utilization of government expenditure.
- He also raised about the legal complication at all tiers of government about the utilization and auction of the vehicles.
- It took more than 15 days for the Supreme Court to confirm about registration of the petition and finally the petition was filed.
- The Supreme Court formed a committee to study about the status of the vehicles that are grounded at Government offices.
- Directives relating to adopt economy policies on public expenditures after the case got order to form the Committee to prepare Report
- The case has been waiting for final hearing today



















Challenges

- Collecting adequate data of the vehicle
- Lack of cooperation from the governmental offices
- Targeting to the lawyers as the case came to be obstruction for purchasing new vehicle and also necessary to use the vehicle which were not in position to be grounded.
- No financial support. The petitioner himself travelled all over the country
- Restriction to check and take picture of vehicle
- Relocation of vehicles to avoid controversy at the govt offices
- Non cooperation due to possibility of being accountable by the office and their Head.

Outcomes

- Judgement being awaited
- The Supreme Court formed a committee to study about the status of the vehicles that are grounded at Government offices.
- Economy on public Spenditure
- The case has been waiting for final hearing this week

CHALLENGES:

- As everywhere, strategic litigation is equally challenges, costly and time consuming.
- Despite of getting favorable decision, order or directive from the supreme court the implementation process is frustrating except in the case of preventive detention and writ of habeas corpus.
- In our experience, various Mandamus order have not been seen to be much implemented and honored by the executive.
- Especially in the PIL matters, on the order comes, we have seen lawyers filing PIL rarely follows the outcome and implementation due to its costly nature and time consuming matters.
- Even in the PIL we have filed, we are not much excited to kept the progress in track when there was no progress of implementation

- Despite of Directive relating to Implementation of Judgements at the Supreme Court, there appears 100s of decisions not been implemented, documented, followed, initiated and adhered. NGOs who are engaged in filing petitions have also been seen to be concerned more on recording the judgments then using their resources for ensure implementations.
- Additionally, the Supreme Court on the other side seems to be serious in the human rights litigation but in some important cases Supreme Court judgments are also criticized as being populist judgements. Without confirming the resources and practicality of implementing decisions, some decisions seems to be more guided from justices being popular and activist. And other other site, strategic litigations by means of Public Interest Litigation is also criticized at Populist Interest Litigation or private Interest Litigation.

- In this perspective the role of Nepal Bar Association, Supreme Court Bar Association and we the human rights lawyers have been consistently engaged in advocating, warning, pleading, representing, researching and conducting training on human rights and human rights litigations. I am proud to say that its more because of human rights lawyers we have been able to ensure equality, protection of women for various forms of discrimination including partition of property, their representation, securing reproductive rights as fundamental rights, social security rights, right to fair trial and many more rights in the judgement, policies, laws and even in the constitution.
- The framers of constitution have guaranteed various rights and state policies as an outcome of the litigations

Risk for Human rights lawyers in Strategic litigation

- In some cases Human rights lawyers have also filed random PIL cases that has raised about the proximity with the public interest.
- Human rights defenders have found themselves targated in some high profile cases of human rights violations and in the matters defending against the wrongful allegations of criminal act. They have faced personal attacks, personal threat, threat over social media and hate speeches too . As human rights lawyers, I too have faces such kinds of attack few times not only targeted to me but to my family in social media and in personal messages.
- However, Nepali lawyers institutional strength have always motivated to stand for litigation that intended to protect against human rights violations.

Thank You

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