

# Role of Public Interest Litigation in the Protection of Human Rights

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## Abstract

The Courts in India, particularly the Apex Court have gradually been taking gradual support from Universal Declaration of Human Rights 1948 and two basic Covenants International Covenant on Civil & Political Rights and Economic, Social and Cultural Rights adopted by General Assembly of United Nations on 16<sup>th</sup> December 1966, for extending protection to variety of Human rights or to safeguard Human Rights of the members of deprived section of the society who are incapacitated for want of means to have access to the remedy of Courts, the Apex Court remarkably evolved the process of Public Interest Litigation by relaxing the rule of locus standi, allowed claims against violations of human rights on behalf of the victims of political oppression, social tyranny, and economic exploitation to be made by persons or organizations motivated by public interest.

## Introduction

*“The rights of every man are diminished when the rights of one man are threatened”*

- John F. Kennedy.

The concept of human rights, though generally traced to western society is neither entirely western in origin nor so modern. It is the crystallization of values that are the common heritage of mankind. In India, values were present as early as in the Rig Veda to the three civil liberties of Tana (body), Skridhi (dwelling house), and jibasi (life). Long before Hobbes, the Indian epic Mahabharata described the civil liberty of the individual in a political State. Ancient Indian society was a highly structured and well organized affair with the fundamental rights and duties not only of individuals but also of classes, communities and castes clearly laid down. The concept of Dharma, the supreme law which governed the sovereign and the subject alike covered the basic principles involved in the theory of rights, duties and freedoms. Long before the second century B.C., there was mention of elective kingship and the law of nature which even kings had to obey on pain of deposition.

Fundamental human rights in the form of civil liberties with their modern attributes and overtones are, however, a development more or less parallel to the growth of constitutional government and Parliamentary institutions from the time of British rule in India. The impetus for their development obviously came out of resistance to foreign rule when the British resorted to arbitrary acts such as brutal assault on satyagrahis, internments, deportations, etc. There was no fundamental law guaranteeing the subjects rights and liberties and they were humiliated and discriminated against in many ways, in their own country. The social conditions were deplorable particularly affecting the untouchables and the women.

Besides there existed different religious, linguistic and ethnic groups which was encouraged and exploited by the British, the national movement borne from this exploitation and its leaders were from the very Stan committed to the ideal of inherent rights of men and securing them for all the people. The avowed objectives of several national organizations, including that of the Indian National Congress, in the beginning was to secure civil liberties and human rights of non-discrimination on grounds of race, color etc. in the matter of access to public places, offices and services. As far back as 1895, within a decade of the establishment of the Indian National Congress, the Constitution of India Bill (described as the Home Rule Bill) envisaged for India a constitution guaranteeing to every citizen certain basic human rights like freedom of expression, inviolability of one's house, right to property, equality before law and others.

In 1918, the Indian National Congress at its special session (held in Bombay) made a demand for writing the Government of India Bill (popularly referred to as the Montagu-Chelmsford Act), *a declaration of the rights of the people of India as British citizens including therein, among other things, guarantees being equality before law, protection in respect of liberty, life and property, freedom of speech and press, and rights of association.* At its session in Delhi the same year, the Congress passed a resolution claiming the recognition of India as a nation to whom the principle of self-determination should be applied and as a first step demanded the immediate abolition of laws, regulations and ordinances which denied basic civil liberties to the people, restricted free discussion of political questions or empowered the executive to arrest, detain, intern, extern or imprison outside the processes of ordinary civil or criminal law.

The Commonwealth of India Bill, finalized by the Indian National Congress in 1925 went a step further and under the inspiration of the Constitution of the Irish Free State of 1921, which included a list of fundamental rights, embodied a specific declaration of rights visualizing for every person certain fundamental rights in terms practically identical with the relevant provisions of the Irish Constitution.

The resolution passed at the Madras session of the Indian National Congress in 1927 reiterated that the basis of any future Constitution for the country must be a declaration of fundamental rights, based on the fact of the existence of minorities in India. Similarly the Motilal Nehru Committee appointed in 1928 by the All Parties Conference declared that the first concern of Indian people was to secure fundamental rights that had been denied to them. The rights recommended by the Committee were incidentally, a close precursor of the fundamental rights in the Constitution of independent India, with ten of the nineteen rights enumerated in the Nehru report appearing in the Constitution substantially unchanged. such as the fight for personal liberty, freedom of conscience and of profession and practice of religion subject to public order or morality, to assemble peaceably and without arms, and to form associations or unions, subject to public order or morality, equality for all citizens before the law and in civil rights and equality of rights to men and women as citizens.

The Congress pledge of commitment to complete independence at the Lahore Congress under the presidentship of Jawaharlal Nehru in 1930 declared the inalienable right of the Indian people as of any other people, to have liberty, to enjoy the fruits of their labor and have the basic necessities of life, so that they may have complete opportunities of growth. It was clear to the leaders of the freedom movement by now that achievement of national independence was an essential pre-condition for enjoyment of any of the other basic human rights and liberty.

Then came the Karachi Resolution on Fundamental Rights and Social Change which further clarified the goals and was divided in three parts:

- 1) Fundamental Rights and Duties
- 2) Labour conditions
- 3) Economic and Social Programme.

The Resolution enumerated the fundamental duties along with the fundamental rights and significantly made no mention of the right to hold property. It also demanded several social and economic rights such as the right to free primary education, a living wage and healthy conditions of work for labour, protection against old age, sickness and unemployment, protection of women workers and protection against employment of children and enjoined the state to control key industries and own mineral resources. The civil and political rights were thus demanded in conjunction with positive social and economic rights of the masses declaring that in order to end the exploitation of the masses, the political independence must include the real economic independence of the famished millions.

The emphasis on rights placed by the freedom movement all along did lead to the inclusion of certain rights and forms of protection in the Government of India Act, 1935. It was provided in section 145 of the Act, with certain exceptions, that no person

shall be disqualified on ground of sex from holding any civilian office under the Crown and that no person shall be deprived of his property save by authority of law.

### **Public Interest Litigation and the Development of Human Rights Jurisprudence:**

The view that predominated in the initial period after India's independence was that it was the Parliament and the executive who were principally responsible for fulfilling the promise of human rights contained in the Constitution. There is no dearth of metaphors confining the role of the judiciary to that of a watchdog, umpire, wicket keeper or balance wheel. The situation does not improve by substituting the word sentinel for watchdog. The political leaders emphasized it time and again.

When human rights are guaranteed as Fundamental Rights in Constitution, the question arises whether enumeration thereof in the Constitution is exhaustive or beyond such enumeration there are some other rights to meet the growing needs of civilization or the changes in the social background since the date of adoption of the written Constitution. In the American Constitution, the position is made explicit by stating that the enumeration of the rights in the Bill of Rights appended to the Constitution is not exhaustive. The Ninth Amendment says:

*The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.*

Further through a process of judicial interpretation, new rights have been evolved.

As regards the Indian Constitution, initially the view was taken that Part III gives an exhaustive list of fundamental rights. However this view has been departed from by the Supreme Court subsequently, by propounding the theory of emanation, following the example of the American Supreme Court. This means that, even though a right is not specifically mentioned in Part III, it may still be regarded as a fundamental right, that it emanates from a named fundamental right or its very subsistence is necessary so as to make the exercise of a named fundamental right meaningful and effective. Thus, though this no provision in the Indian Constitution similar to Ninth Amendment to the American Constitution, the Indian judiciary has achieved the same result as in USA.

The most fertile area for applying this theory has been provided by Article 21 of the Constitution. The Courts have first expanded the meaning of life and liberty contained in the Article and then by a gradual process of interpretation read many other rights into the Article as necessary for the enjoyment of right to life and liberty. At the same time, the Courts have also relied on the Directive Principles of State Policy and read many of the unenforceable Directives into the enforceable Fundamental Rights. The dichotomy made in the Constitution between the enforceable and non-enforceable human rights has been overcome through the Court's power to issue directives under Article 32, which again is confined to the enforcement of Fundamental Rights.

In fact, the Supreme Court in *CES. C Ltd v. Subhash Chandra Bose* has held that the right to social and economic justice is a fundamental right.

In this process of enumeration of many unremunerated rights, public interest litigation has had a major role to play since many of these rights have been enunciated in Public Interest Litigations filed by public-spirited individuals. Many other cases have involved the elaboration of the rights and principles evolved by the courts in the earlier cases. Thus the Courts have greatly contributed to the development of human rights jurisprudence in the country not only by relaxing the procedural norms and evolving different techniques of providing relief but also by expanding the list of human rights.

Article 21, though couched in negative language, confers on every person the fundamental right to life and of personal liberty. These two rights importantly have been given prime position by our Courts. With reference to a corresponding provision

in the 5th and 14th amendments of the US Constitution, which says that no person shall be deprived of his life, liberty or property without the due process of law.

In *Munn v. Illinois*, Field, J. expressed his view on right to life in the subsequent words:

*“By the term life as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicated with the outer world.”*

This statement was quoted with approval by the Supreme Court in a number of cases and has been further expanded by the statement, *That any of the act which damages or injures or subsequently interferes with the use of any limb or of faculty of a person, either everlastingly or even temporarily, would be within the inhibition of Article 21.* Bhagwati, J. further held:

*“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”*

Relying on the above, Bhagwati, J. held in *Bandhua* case

*“It is the fundamental right of everyone in this country to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and(f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of the workers men and women, and of the tender aged children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State ... has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”*

### **Role of Public Interest Litigation in implementation of human rights**

Public interest litigation is not adversarial in nature but is one of cooperation and coordination between the three wings of the State and it is the constitutional duty of this Court to ensure enjoyment of the fundamental rights by all citizens and in particular the poor and deprived social segments and in case of violation thereof, to prevent the same by giving appropriate directions in that behalf, in aid thereof Supreme Court has been armed with Article 142 to pass such orders as may be necessary for doing complete justice in a cause or pending matter before it. An order so made shall be enforceable throughout the Territory of India.

Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to check injustice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of Constitutional ethos which constrain any person to avail Article 142 of the Constitution of India and direct the Union of India as well as all State Governments to evolve, after in depth discussion at Ministerial level conference, such procedures and principles as indicated in this order, as that would guide, help, rescue and rehabilitate the needy. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives.

Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversarial litigation and in keenly contested matters of even public interest litigation in particular of recent type cases. However, in the cases, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society

is responsible for a woman becoming victim of circumstances. The society should make amends to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice is the constitutional duty of the State.

### Writ Jurisdiction underneath Articles 32 & 226 of the Indian Constitution, 1950

The Writ Jurisdiction of Supreme Court of India could be invoked underneath Article 32 of the Constitution for the contravention of fundamental rights which are very well guaranteed under Part – III of the Indian Constitution as any stipulation in any Constitution for fundamental rights is futile unless there are any adequate safeguards available to ensure enforcement of such provisions. Given of the fact that the reality of such rights is only tested through the judiciary, the safeguards thus assume even more importance. Constitution of India, like most of western Constitutions, lays down certain provisions to ensure the enforcement of fundamental rights. These are as under

- (a) The Fundamental Rights provided in the Indian Constitution are guaranteed against any executive or legislative actions. Any executive or legislative action which infringes upon the fundamental rights of any person or any group of persons, can be declared as void by the Courts under Article 13 of the Constitution.
- (b) Along with it, the Judiciary has the authority to issue the prerogative writs. These are the extra-ordinary remedies provided to the citizens to get their rights enforced against any authority in the State. These writs are:

1. Habeas corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo-warranto

Both, Supreme Court and High Courts may issue the writs.

- (c) The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, but during the period of emergency all fundamental rights are suspended except Articles 20 and 21 as laid down in Article 359 of the Constitution. A fundamental right may also be enforced by the way of standard legal procedures including a declaratory suit or by the way of defense to legal proceedings.

### Public interest litigation filed in various areas for the protection of human rights

- a) Right to food.

In a significant judgment in *PUCL v. Union of India*, the Supreme Court has held that the people who are starving because of their inability to purchase food grains have right to get food under Art. 21 and therefore they ought to be provided the same free of cost by the States out of surplus stock lying with the States particularly when it is unused and is rotting. The Court held that under such a situation food grains be provided to all those who are aged, infirm, disabled, destitute women, destitute men, pregnant and lactating women and destitute children. Accordingly the Court directed the States to make surplus food grains lying in godowns available to all of them immediately through PDS shops to avoid starvation and mal-nourishment.

- b) Public Interest Litigation - constitutional validity of Section 377, IPC

*In Naz Foundation v. Government of NCT & Ors.* A public Interest Litigation was filed by the NGO Naz Foundation against the Government of NCT Delhi, impugning Section 377(unnatural offences) of the Indian Penal Code, 1860 before the Delhi High Court and court legalized consensual acts between adults in their privacy. The judgment was overruled by the



supreme court in 2014 and again such acts were criminalized in *Suresh Kumar Koushal & another v. Naz Foundation and others*

c) Public Interest Litigation- Constitutional validity of Section 497,IPC

Sec 497 of Indian Penal Code had been challenged by way of Public Interest Litigation in the case of *Joseph Shine v. Union of India* section 497 of IPC defines adultery .The court observed that, it would be unrealistic to proceed on the basis that even in a consensual sexual relationship, a married woman, who knowingly and voluntarily enters into a sexual relationship with another married man, is a “victim”, and the male offender is the “seducer”. Section 497 fails to consider both men and women as equally autonomous individuals in society, lacks an adequately determining principle to criminalize consensual sexual activity and is manifestly arbitrary. It’s a denial of substantive equality as it perpetuates the subordinate status ascribed to women in marriage and society. Section 497 is based on gender stereotypes about the role of women and violates the non-discrimination principle embodied in Article 15 of the Constitution. Thus it is a denial of the constitutional guarantees of dignity, liberty, privacy and sexual autonomy which are intrinsic to Article 21 of the Constitution. It was declared unconstitutional by the Supreme Court.

d) Public Interest Litigation- Gender Justice

Public Interest Litigation has played a significant role in providing gender equality. Recently in case *Indian Young Lawyers Association & ors v. State of Kerala & ors* the apex court has struck down a practice that disallowed girls and women in the age group of 10-50 years from entering the Sabarimala Temple in Kerala. It was held by the court that practice violated the right to equality and right to worship. A Constitutional five-judge bench, headed by then Chief Justice of India Dipak Misra, held that the proviso in the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which authorised the restriction, violated the right of women to practice religion. It was also held that the patriarchy in religion can’t be allowed to trump over the right to pray. The court observed that devotion cannot be subjected to discrimination. "Patriarchal rules have to change.

e) Public Interest Litigation -Right to Privacy

The Right to Privacy of Indian citizens has been saved by way of Public Interest Litigation in the case *Justice K.S Puttaswamy (Retd.),& anr v. Union of India & ors*. The Supreme Court upheld the overall validity of the Aadhaar (Targeted Delivery of Financial and other Subsidies Benefits and Services) Act 2016. The Aadhaar Act was held to be constitutional to the extent it allowed for Aadhaar number based authentication for establishing the identity of an individual for receipt of a subsidy, benefit or service given by the Central and State governments funded from Consolidated Fund of India. However, the Supreme Court disallowed the call of individual Aadhaar number by any private entities for establishing the identity of the individual concerned for any purpose, on the basis that it was contrary to the fundamental right to privacy.

f) Public Interest Litigation - Sexual Exploitation

Public Interest Litigation has got proper recognition in India, especially where women and children are concerned. Sexual Exploitation of a girl student has got redressal by way of public interest litigation. In *Bharat Lal Kumar v. State of Orissa* based on a petition filed by an advocate in West Bengal, sexual exploitation of a girl student was brought to the notice of the Court by way of a letter with news item published in Amrit Bazaar Patrika. In the said case, the Court directed the concerned Chief Judicial Magistrate and to make enquiry and file a report for taking appropriate action. Though it was only a letter, supported by publication in news papers, in order to render proper justice, the Court gave suitable direction to the concerned Chief Judicial Magistrate. In that case, justice could be done by way of PIL to the affected girl, who had been in a disadvantaged position to approach the Court.

## g) Environment protection and Public Interest litigation

In *Vellore case* the honorable apex court considering a Public Interest Litigation lime lighting the discharge of toxic waste and polluted water from the huge number of tanneries in the State of Tamil Nadu taking a strict notion laid down two important viewpoints which are summarized as below:

- (1) The court held that as a policy the "Sustainable Development" is a harmonizing concept between ecology and development which has been vividly accepted as a part of customary international law although its significant features are yet to be finalized by the international law jurists.
- (2) Further the court was of the view that both the "precautionary Principle" and "The Polluter Pays Principle" are indispensable features of "Sustainable Development."

### Conclusion

Public Interest Litigation (PIL) is the new epoch in the history of the judicial system of India. It has opened up a new path for people to receive social, political and economic justice. This has brought to people justice, which was otherwise denied to them. PIL has rekindled the hope of justice through the judiciary when the executive has failed to ensure it. The directive principles which are not justifiable and enforceable in the court of law have been accorded legal status. PIL contributes to translate the spirit of the Directive Principles of State Policy into a reality. PIL should not be criticized as increasing the trend of the judicial predominance over the executive nor should any attempt be made to restrict the range and scope of PIL. Any attempt to delimit the range of PIL may be termed or viewed as an attempt to deny justice.

### References

- [1] Varun Gauri, *Public interest litigation in India: overreaching or underachieving* 23(New York University Press, New York, 2009).
- [2] T. Suryanarayana and N. Sastry, *India and human rights: reflections* 45(Concept Publishing Company, New Delhi, 2005).
- [3] Shanti Kumar Purohit, *Ancient Indian legal philosophy: Its relevance to contemporary jurisprudential thought* 26(Deep and Deep Publications, New Delhi, 1994).
- [4] C. K. Lal, *Human Rights, Democracy and Governance* 40 (Pearson Education India, New Delhi, 2010).
- [5] Tim Leadbeater, *Access to History: Britain and India 1845-1947* 67 (Hodder Education Publishers, UK, 2008).
- [6] Jawaharlal Nehru, *A bunch of old letters* 67(Penguin Random House India Private Limited, 2005).
- [7] Melvil Pereira, Bitopi Dutta, and Binita Kakati, *Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India* 56(Routledge India, 2017).
- [8] Gokulesh Sharma, *Human Rights and Social Justice: Fundamental Rights Vis-a-vis Directive Principles* 63(Deep and Deep Publications, New Delhi, 1997)
- [9] Hans Raj Khanna, *Making of India's Constitution* 93(Eastern Book Company, Lucknow, 2008).
- [10] Arun Ray, *National Human Rights Commission of India: formation, functioning, and future prospects* 85(Atlantic Publishers & Distributors, New Delhi, 2003).
- [11] David Feldman, "Public interest litigation and Constitutional theory in Comparative Perspective" 55, *The Modern Law Review*, 44-72 ,(1992).

- [12] Parmanand Singh, "Protection of Human Rights through Public Interest Litigation in India." 42 *JILI* 263-283(2000).
- [13] *CES. C Ltd v. Subhash Chandra Bose* (1992) 1 SCC 441.
- [14] Article 21 " No person shall be deprived of his life or personal liberty except according to procedure established by law."
- [15] *Munn v. Illinois* 94 U.S. 113 (1876).
- [16] *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378.
- [17] *Bandhua Mukti Morcha Case* (1984) 3 SCC 161.
- [18] Aryeh Nejer, *The international human rights movement: A history* 63(Princeton University Press, Princeton, 2012)
- [19] Article 142 Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc.
- [20] Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India* 90(Cambridge University Press, Cambridge, 2017).
- [21] *PUCL v. Union of India* (1997) 3 SCC 433.
- [22] *Naz Foundation v. Government of NCT & Ors.* 2010 Cri LJ 94(Delhi).
- [23] *Suresh Kumar Koushal & another v. Naz Foundation and others* (2014) 1 SCC 1.
- [24] *Joseph Shine v. Union of India. Writ Petition (Criminal) No.194 of 2017*
- [25] *Indian Young Lawyers Association & ors v. State of Kerala & ors*(2017) 10 SCC 689
- [26] *Justice K.S Puttaswamy (Retd.),& anr v. Union of India & ors*(2017) 10 SCC 1
- [27] *Bharat lal Kumar v. State of Orissa* AIR 1989 SC 1793