

Role of Public Interest Litigation in Protection of Human Rights

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Introduction

"Public Interest Litigation" has been defined as a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected¹.

The Constitution of India grants the right to move the Supreme Court of India under Article 32 and the High Courts under Article 226, for enforcement of the Fundamental Rights. The Supreme Court of India has been described many commentators as "The World's Most Powerful Court. This is attributable to the development of jurisprudence of judicial activism under Article 32 of the Constitution of India which gives the Supreme Court original jurisdiction to issue directions, orders or writs for the enforcement of any of the fundamental rights guaranteed by the Constitution of India This jurisprudence is referred to in India as "Public Interest Litigation"

It is through the mechanism of Public Interest Litigation ("PIL"), that the courts seek to protect human rights by expanding the meaning of fundamental right to equality, life and personal liberty. In this process, the right to speedy trial, free legal aid, dignity, means and livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, and so on emerge as human rights.

HUMAN RIGHTS: ITS MEANING, GENESIS AND GROWTH "Human Rights", in their basic meaning, "are those minimal rights which every individual must have against the State or other public authority by virtue of his being a 'member of the human family, irrespective of any other consideration." These rights, however, find their expression under constitutional law which regulates and recognizes the rights and obligations among the people and between the rulers and ruled. That is why; every modern State maintains a comprehensive charter of judicially enforceable rights commonly known as "Fundamental Rights".

Though the Constitution of India guarantees equal rights to all citizens, irrespective of race, gender, religion, and other considerations, and the directive principles of state policy as stated in the Constitution obligate the Government to provide to all citizens a minimum standard of living, the

promise has not been fulfilled. The greater majority of the Indian people have no assurance of two nutritious meals a day, safety of employment, safe and clean housing, or such level of education as would make it possible for them to understand their constitutional rights and obligations. Indian newspapers abound in stories of the exploitation - by landlords, factory owners, businessmen, and the state's own

¹Black's Law Dictionary

functionaries, such as police and revenue officials- of children, women, villagers, the poor, and the working class.

The Supreme Court has provided an expansive interpretation of the term 'life' that includes not only simply physical existence but also quality of life. In *Francis Coralie v Delhi*,² Justice Bhagwati stated: '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.'³

Subsequently, the Court recognised in *Virender Gaur v State of Haryana*, that a healthy environment is one free from environmental pollution.⁴ The Court observed: Article 21 protects the right to life as a fundamental right. Enjoyment of life... including the right to live with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air and water pollution, etc., should be regarded as amounting to a violation of Article 21. Therefore, a hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live with human dignity without a human and healthy environment. There is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard a proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man made and the natural environment.

In *Intellectual Forum, Tirupathi v State of AP*,⁵ the Supreme Court accepted that "all human beings have a fundamental right to a healthy environment commensurate with their well-being... ensuring that natural resources are conserved and preserved in such a way that present as well as the future generation are aware of them equally'.

Similarly, the precautionary and 'polluter pays' principles are considered to be an essential part of the reach of Article 21.⁶

Protection of human rights is a necessity for the development and growth of an individual personality, which ultimately contributes in the development of the nation as a whole. It is an internationally recognized issue and various international instruments have been established for the protection of human rights. The concept of human rights is dynamic and adapts to the needs of the nation and its people. The ultimate purpose of the national as well as international law is to safeguard the human rights of the people.

Human Rights in India

India is the biggest democracy in the world. Being a democratic country one of the main objectives is the protection of the basic rights of the people. Government of India has given due consideration to the recognition and protection of human rights. The Constitution of India recognizes these rights of the people and shows deep concern towards them. The Universal Declaration of Human Rights contains civil, political, economic, social and cultural rights. Constitution guarantees most of the human rights contained in Universal Declaration of Human Rights, Part III of the constitution contains civil and political rights,

² .AIR 1981 SC 746

³ .AIR 1981 SC 753

⁴ .1995, 2 SCC 577

⁵ . AIR 2006 SC 1350

⁶ . *Vellore Citizen Welfare Forum v Union of India* AIR 1996 SC 2715; *AP Pollution Control Board v Prof.M.V. Nayudu* AIR 1999 SC 812, *Narmada Bachao Andolan v Union of India* AIR 2000 SC 3751

whereas economic, social and cultural rights have been included in Part IV of the Constitution.⁷ All the statutes have to be in concurrence of the provisions of the Constitution.

Role of the Judiciary Only provision for the fundamental rights does not fulfill the objective of 'protection of dignity of an individual', but free enjoyment of the rights has to be ensured. Therefore, Article 32 guarantees right to constitutional remedies, i.e. right to move to Supreme Court to enforce fundamental rights. It is constitutional mandate of judiciary to protect human rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his/her fundamental rights, redress of grievances and enjoyment of fundamental rights. In such cases Court are empowered to issue appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamgar Sabha vs. Abdul Thai* (AIR 1976 SC 1455) and was initiated in *Akhila Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India* (AIR 1981 SC 298), wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna Iyer J, enunciated the reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar Union v. Union of India* (AIR 1981 SC 344) and the idea of Public Interest Litigation' blossomed in *S.P. Gupta and others vs. Union of India*, (AIR 1982 SC 149).

The rule of locus standi, i.e. right to move to the court, whereby only aggrieved person can approach the court for redress of his grievances has been relaxed by the judiciary. Now court through public interest litigation permits public spirited persons to file a writ petition for the enforcement of rights of any other person or a class, if they are unable to invoke the jurisdiction of the Court due to poverty or any social and economic disability. In *S.P. Gupta v. Union of India and others*,⁸ Supreme Court held that any member of the public can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of poverty or any other disabilities. Person can even write letter to the court for making complaints of violation of rights. Public interest litigation is an opportunity to make basic human rights meaningful to the deprived and vulnerable sections of the community. To assure vulnerable section social, economic and political justice, any public spirited person through public interest litigation can approach the court to protect their rights on behalf of aggrieved persons who cannot approach the court themselves due to their vulnerable conditions.

Children are more prone to exploitation and abuse. The rights of the children are needed to be specially protected because of their vulnerability. For this reason United Nations Convention on the Rights of the Child was adopted in 1989. This convention brings together children's human rights, as children require safety and protection for their development. Judiciary is playing a commendable role in protecting the rights of children from time and again. There are various instances where judiciary intervened and the rights of children. In the case of *labours working on Salal project v. State of Jammu and Kashmir*, Supreme Court held that child below the age of 14 years cannot be employed and allowed to work in construction process. Court has issued various directions related to child labour. Supreme Court in *Vishal Jeet v. Union of India* asked governments to setup advisory committee to make suggestions for eradication of child prostitution and to evolve schemes to ensure proper care and protection to the victim girls and children. The Supreme Court further in *Gaurav Jain v. Union of India* showed its concern about rehabilitation of minors involved in prostitution and held that juvenile homes should be used for rehabilitation of them and other neglected children.

⁷. S. K. Kapoor, *International Law & Human Rights* 800(Central Law Agency, Allahabad, 17th edition 2009) at 886

⁸.AIR 1982 SC 149

Women are considered weak in our society which has resulted in the backwardness of women in every sphere. Women remains oppressed ones and are often denied basic human rights. They are subjected to violence in society whether it is within four walls of the house or at workplace. Despite the provision of right to equality enshrined under Article 14 of the Constitution, they are subjected to discrimination. Gender is considered to be the most important factor as far as Indian labour market is concerned. Discrimination against women laborer in terms of wage payments is a very common phenomenon in India. Supreme Court has played remarkable role in protection of their rights such as in case of Associate Banks officers Association v. State Bank of India, Supreme Court protected the rights of women workers and held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In State of Madhya Pradesh v. Pramod Bhartiya Supreme Court held that under Article 39 the State shall direct its policy towards securing equal pay for equal work for both men and women.

Supreme Court laid down guidelines for protection of women against sexual harassment at work place in case of Vishaka v. State of Rajasthan and reiterated the same in Medha Kotwal Lele v. Union of India. Guidelines for ensuring the safe work environment for women were given and made it mandatory for employer to take responsibility in cases of sexual harassment at work.

Further in Citizens for Democracy v. State of Assam and others, Supreme Court held that handcuffing and tying with ropes is inhuman and in utter violation of human rights guaranteed under the international laws and the laws of the land. Court directed that handcuffs or other fetters shall not be forced on prisoners-convicted or under trial while lodged in jail or even while transporting, police and jail authorities shall have no authority to direct handcuffing of any inmate of jail or during transportation without permission from the magistrate.

Mechanism for protection of Human Rights through PIL Features of PIL through the mechanism of PIL, the courts seek to protect human rights in the following ways:

1. By creating a new regime of human rights by expanding the meaning of fundamental right to equality, life and personal liberty. In this process, the right to speedy trial, free legal aid, dignity, means and livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, bondage and servitude, exploitation and so on emerge as human rights. These new re-conceptualised rights provide legal resources to activate the courts for their enforcement through PIL.
2. By democratization of access to justice. This is done by relaxing the traditional rule of locus standi. Any public spirited citizen or social action group can approach the court on behalf of the oppressed classes, Courts attention can be drawn even by writing a letter or sending a telegram. This has been called epistolary jurisdiction.
3. By fashioning new kinds of reliefs under the court's writ jurisdiction. For example, the court can award interim compensation to the victims of governmental lawlessness. This stands in sharp contrast to the Anglo-Saxon model of adjudication where interim relief is limited to preserving the status quo pending final decision. The grant of compensation in PIL matters does not preclude the aggrieved person from bringing a civil suit for damages. In PIL cases the court can fashion any relief to the victims.
4. By judicial monitoring of State institutions such as jails, women's protective homes, juvenile homes, mental asylums, and the like. Through judicial invigilation, the court seeks gradual improvement in their management and administration. This has been characterized as creeping jurisdiction in which the court takes over the administration of these institutions for protecting human rights.
5. By devising new techniques of fact-finding. In most of the cases the court has appointed its own socio-legal commissions of inquiry or has deputed its own official for investigation. Sometimes it

has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or experts to inquire into human rights violations. This may be called investigative litigation.

Though India's higher courts and, in particular, the Supreme Court have often been sensitive to the grim social realities, and have on occasion given relief to the oppressed, the poor do not have the capacity to represent themselves, or to take advantage of progressive legislation. In 1982, the Supreme Court conceded that unusual measures were warranted to enable people the full realization of not merely their civil and political rights, but the enjoyment of economic, social, and cultural rights, and in its far-reaching decision in the case of PUDR People's Union for Democratic Rights vs. Union of

India, it recognised that a third party could directly petition, whether through a letter or other means. The Court and seek its intervention in a matter where another party's fundamental rights were being violated. In this case, advertent to the Constitutional prohibition on begar, or forced labor and traffic in human beings, PUDR submitted that workers contracted to build the large sports complex at the Asian Game Village in Delhi were being exploited. PUDR asked the Court to recognize that begar was far more than compelling someone to work against his or her will, and that work under exploitative and grotesquely humiliating conditions, or work that was not even compensated by prescribed minimum wages Act, as violative of fundamental rights. As the Supreme Court noted, the rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil?

Thus the court was willing to acknowledge that it had a mandate to advance the rights of the disadvantaged and poor, though this might be at the behest of individuals or groups who themselves claimed no disability. Such litigation, termed Public Interest Litigation or Social Action Litigation by its foremost advocate, Professor Upendra Baxi, has given the court epistolary jurisdiction.

At present, the court can treat a letter as a writ petition and take action upon it. But, it is not every letter which may be treated as a writ petition by the court. The court would be justified in treating the letter as a writ petition only in the following cases-

- i. It is only where the letter is addressed by an aggrieved person or
- ii. a public spirited individual or
- iii. a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

A new era of the PIL movement was heralded by Justice P.N. Bhagawati in the case of S.P. Gupta v. Union of India. In this case it was held that any member of the public or social action group acting bonafide can invoke the Writ Jurisdiction of the High Courts or the Supreme Court seeking redressal against violation of legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court. By this judgment, PIL became a potent weapon for the enforcement of public duties, where executed in action or misdeed resulted in public injury. And as a result any citizen of India or any consumer groups or social action groups can now approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In Hussainara Khatoon v. State of Bihar, the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of under trial prisoners

languishing in various jails in Bihar. These proceedings led to the release of more than 40,000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

In the case of *M.C Mehta v/s Union of India* - In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

Crucial Aspects: The flexibility introduced in the adherence to procedural laws. In *Rural Litigation and Entitlement Kendra v. State of U.P.*, Supreme Court rejected the defense of *Res Judicata*. Court refused to withdraw the PIL and ordered compensation too. To curtail custodial violence, Supreme Court in *Sheela Barse v. State of Maharashtra*, issued certain guidelines. Supreme Court has broadened the meaning of Right to live with human dignity available under the Article 21 of the Constitution of India to a greatest extent possible.

In *Citizen for Democracy v. State of Assam*, the S. C. declared that the handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or while in transport or transit from one jail to another or to the court or back.

Conclusion

Public Interest Litigation is working as an important instrument of social change. It is working for the welfare of every section of society. It's the sword of every one used only for taking the justice. The innovation of this legitimate instrument proved beneficial for the developing country like India. PIL has been used as a strategy to combat the atrocities prevailing in society. It's an institutional initiative towards the welfare of the needy class of the society. In *Bandhua Mukti Morcha v. Union of India*, Supreme Court ordered for the release of bonded labourers. In *Murli S. Dogra v. Union of India*, the Supreme Court banned smoking in public places. In a landmark judgment of *Delhi Domestic Working Women's Forum v. Union of India*, Supreme Court issued guidelines for rehabilitation and compensation for the rape on working women. In *Vishaka v. State of Rajasthan*, Supreme court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work. It would be appropriate to conclude by quoting Cunningham, Indian PIL might rather be a Phoenix: a whole new creative arising out of the ashes of the old order.

PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries. It contests the assumption that the most western the law, the better it must work for economic and social development such law produced in developing states, including India, was the development of under developed men.

The shift from legal centralism to legal pluralism was prompted by the disillusionment with formal legal system. In India, however instead of seeking to evolve justice- dispensing mechanism ousted the formal legal system itself through PIL. The change as we have seen, are both substantial and structural. It has radically altered the traditional judicial role so as to enable the court to bring justice within the reach of the common man.

Further, it is humbly submitted that PIL is still in experimental stage. Many deficiencies in handling the kind of litigation are likely to come on the front. But these deficiencies can be removed by innovating better techniques. In essence, the PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. We may end with the hope once expressed by Justice Krishna Iyer, The judicial activism gets its highest bonus when its orders wipe some tears from some eyes.