

ROLE OF PUBLIC INTEREST LITIGATION IN THE PROTECTION OF HUMAN RIGHTS IN INDIA

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Abstract

In India Public Interest Litigation (PIL) in Indian law, means litigation for the protection of public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary that the person who is the victim of the violation of his or her right should personally approach the court. Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The concept of public interest litigation as against the rule of locus was evolved by our courts in the 1980s to help the weaker sections of society, who due to their poverty, ignorance and illiteracy, were not able to assert their rights. Justice Krishna Iyer in Fertilizer Corpn Kamgar Union v Union of India² made a forceful plea that the "law should not be a closed shop", else "the system may crumble under the burden of its own insensitivity". Thereafter in S.P. Gupta v Union of India³ (commonly called the first Judges case) and in Bandhua Mukti Morcha v Union of India⁴, Justice Bhagwati evolved the concept of "public injury" and allowed a public spirited citizen to approach the court for redressal of public injury relating to environment, human rights, administration of justice, arbitrary action of the executive, investigation of cases involving persons occupying high-public offices, etc

INTRODUCTION

The history of mankind has been closely associated with the struggle of individual against injustice, exploitation and humiliation. The recognition, first at national and later at international level, of human rights is one of the most remarkable manifestations of this struggle. Recognition, protection and implementation of human rights is a very important and complicated issue because there is no agreed definition and understanding of the term 'human rights'. It is a dynamic concept and it endeavors to adopt itself to the changing historical needs. For this reason, the definition and understanding of human rights depends upon the prevalent conditions in any given society at any time, and attaining ever new dimensions with the march of history.

II.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 ruler and ruled. That is why, every modern State maintains a comprehensive charter of judicially enforceable rights commonly known as "Fundamental Rights".

The concern for human rights became popular only in the twentieth century particularly after the second world war though it had its roots in different forms since time immemorial. It is not a static but a part of continuing dialectic process through which progress in the field might be and manifestly has been made.

The development of the concept of human rights is relatable to the different stages of evolution of the human society from the primitive slavery to the present democracy. The shape and ambit of such rights cannot be seen or taken into consideration in isolation to the human relations which are regulated by socio-political-economic system prevalent at a specified time. Human relations regulate the human rights. The State specifies the means and methods for preservation of such rights. Human rights, as such, cannot be considered to be of a specified nature. Such rights have changed and are in continuous process of change on the lines and the path upon which human society has traversed and is on a continuous march. It may not be appropriate to say that the concept of human rights is the product only of the modern times.

The struggle of man against tyranny is related to primitive times when man lived in clans and asserted his rights within the then smallest unit of society. After assurance of basic rights, man struggled for better rights for his decent living. At that time, the recognized rights were few and their violation, least. However, with the transformation of the society to feudalism, the chains of slavery were fastened upon the man more tightly. The human values and basic rights were left at the mercy of the feudal lords and other exploiting classes in the society. The oppression, repression and suppression of the feudalism lowered the common man in his esteem and approach. General masses were deprived of even the bread and butter, what to talk of the civil, basic or human rights.

The ancient Indian civilization had the seedlings of welfare State that originated and blossomed in its present form through the process of historical evolution. Undoubtedly, its forms and contents were not as developed and matured as one finds in the contemporary period. But it did exist in one form or the other, howsoever embryonic, and grew to its present stature after passing through several stages of modifications and reformulations. The king in ancient India was expected to behave like a 18th August, 1996, New Delhi.

Father towards its citizens. But the kingdoms of Maurya, Kautilya and Harsha were more than paternalistic in character. Welfare activities in those times came under the domains of Dharma, i.e. religious duty and charity. The ancient concept of Karma, emphasised duties and obligations rather than rights. Welfare was not a matter of right but charity. The *laissez-faire* theory of minimum functions of the State was non-existent in the ancient Hindu civilization.

CONCLUSION

The foregoing analysis seeks to document that the Public Interest Litigation (PIL) has been instrumental in effectively redressing some of the problems such as child labour, bonded labour, women and environment as being analysed in the chapter III, of the marginalised groups in Indian Society. PIL, as the widely used arm of the Indian judiciary proved by far one of the way to deliver justice to the poor, who are denied their basic right to life and free and dignified living. Justice has always been very costly and delayed in India. The access to Justice is limited to a privileged few. The complex procedures of law, the prohibitive cost of litigation and the illiteracy and ignorance of our masses- all these factors combined together, are responsible for denying justice underprivileged. The PIL has made the legal procedure very simple and transparent to common populace. It effectively expanded the concept of *locus standi*, whereby the person who may not be directly affected by the violation of rights can still file a petition on behalf of the affected person or group of persons.

The Republic of India is a Democratic welfare State. These two dimensions should be seen in their interdependence, which enable the State to protect human rights.

Constitution in its part III and Part IV elaborately delineates various provisions concerning fundamental rights and Directive Principles of State Policy, which are integrally linked to achieve a just and welfare society. This would ensure protection and promotion of a free, equal and dignified existence for Indian citizens. Articles 32 and 226 are significant because they empower the judiciary to issue writs to defend the rights of the citizens. It is mandatory to implement Directive Principles of State Policy but they are not technically enforceable in a court of law.

Public interest litigation as an instrument for the protection of human rights has been popularized by the civil rights movement in the country. Various committees such as Bhagwati Committee, Krishna Iyer Committee, Law Reforms Commission, Committee on juridicare of India were set up by the government to provide socio-economic justice to the poor as explored in chapter-11. In the famous *Asiad Case (1982)* the apex court made it clear that the affected group might not be in a position to approach the court directly, in order to facilitate

delivery of justice for that group, the court held that any citizen with social conscience can file the petition, which would be taken note of as a judicial response to violation of human rights emerged out of long struggle for civil rights in India. Justice P. N. Bahgwati and Justice V. R. Krishna lyer took upon themselves the activist role in providing justice to the needy evolution in India. The study focusses on four major areas of human rights violation, viz; child labour, bonded labour, women and environment. It analyses various Supreme Court cases in these four areas. It is established in this study beyond doubt that PIL considerably expanded the scope for judicial intervention into hitherto untouched areas of glaring human rights violation. The empirical study of many cases show that particularly in 1990s, in response to PIL writs, the courts have begun to direct the Government and its administrative authorities on everything from cleansing garbage off the streets to cleansing the polity of political sleaze. Earlier judgements and decrees were passed and files were closed and shelved. But in 1990's judiciary is following a more pragmatic technique of "judgement with monitority". Today, not only judgements are pronounced but their result-oriented implementation is also ensured through new tools, methods and techniques. Through these techniques the fairly swift and dramatic-decisions of the courts, particularly that of the Supreme Court, have highlighted not just the larger activist role that judiciary appear to have assigned itself. The study brings out the following shortcomings of the PIL.

1. The concept of 'Rule of *locus standi*' which has given birth to PIL can encourage vexatious litigants to file unmeritorious charges in a large number, thus allowing them to abuse the process of the court, and also cause further delay in the administration of Justice. This can open a 'flood gate of litigation'.
2. The introduction of PIL can lead to a confrontation between the judiciary on one hand, and executive and legislature, on the other. The effect of such confrontation may underline the prestige of judiciary and may impair its ability to discharge its traditional function.
3. In dealing with peculiar PIL cases the court may lack the expertise knowledge for ascertaining certain facts, or making legal investigations.

Child labour can be described "as any work undertaken by children below 14 years, which are injurious to their health and harmful to their proper development - physical, mental and intellectual." It has been observed that illiteracy, ignorance, low wages, unemployment, poor standard of living, stark poverty deep social prejudices and appalling backwardness of the country side are all, individually and collectively, the root causes that prompt the children to seek employment to augment the income of their families or to have a gainful occupation in the absence of availability of school going facilities at various places.

Articles 15, 23, 24, 39(e) and 39(f) of the constitution make certain provision for welfare legislations like the Juvenile Justice Act, 1986, Child Labour (Prohibition and Regulation) Act, 1986 and international conventions on child labour have been reference point for the court in describing this issue.

Preamble, Fundamental Rights and Directive Principles of State Policy of the constitution combinely constitute the basic and inherent rights of human beings. Article 21, 23 and 45 of the constitution deal with the welfare schemes of bonded labour. The Indian Penal Code (45 of 1860) and the Abolition of Bonded Labour System (Abolition) Act,

1976 also provide for the release and rehabilitation of bonded labour.

With regard to women's issues there is a general feeling among intelligentsia that women constitute the half of population or better- half of men have always suffered in a male-dominated society and have to fight against their basic rights as provided by the constitution and other legal documents made by the government from time to time. The rapid pace of developments in the context of rights of women can be attributed to a number of factors such as the doctrine of equality of the sexes, female literacy and the break up of the joint family system.

Articles 14, 15, 16, 23, 39, 51A, 325 of the constitution provide for the protection and promotion of rights of woman. Various legislations like the equal Remuneration Act, 1976, the maternity Benefit Act, 1961, the Factories Act, 1948 and the Minimum Wages Act, 1948 were passed in protecting rights of women.

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