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Protection Of Environment Through Public Interest Litigation In India: A Socio–Legal Study

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“Where there is man, there is environment”. In fact, the Vedic rituals like ‘Yajna’ i.e. offerings to Gods and Goddesses, have also been designed to fulfill the objects of environmental conservation and maintain the balance between “Pinde” and “Brahmande” (that is, the man and his/her environment). “Yatha pinde thatha bhrahmande, Yatha bhrahmande thatha pinde”

Introduction

Public Interest Litigation is an important instrument of social change. It is working for the welfare of every section of society. Public interest litigation (PIL) in India can serve as a vehicle for creating and enforcing rights and is critical to the sustenance of democracy. Privacy is a fundamental human right recognized in the United Nations Declaration of Human Rights, the international covenant on civil and political rights and many other international and regional treaties. The privacy underpins human dignity and key values of a democracy. The PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interest of the weaker elements in the community¹. Nearly every country in the world recognizes a right of privacy explicitly in their constitution. The judiciary looked into constitutional provisions to provide the court with the necessary jurisdiction to address specific issues. Disputes that are normally matters of torts in other common law jurisdictions are treated as cases pertaining to fundamental rights in India. Though the fundamental rights enshrined in Part III of the Constitution of India do not specifically mention environmental matters, but the courts have held that Article 21 of the Constitution of India entitles citizens to invoke the writ jurisdictions of the Supreme Court and High Courts under Articles 32 and 226 of the Constitution, respectively². The problematic of environmental pollution has been documented as a universal disaster. The environmental guard around the world needs urgent attention. Provisions have been given in the Indian Constitution for the protection of environment in India, apart from these provisions, many Acts have been made by the Parliament to protect the environment. Indian judiciary has also been playing its important role to protect the environment. It has further expanded the existing legal provisions to address environmental issues. It has developed many new principles applied to deal with the problem of environment. The PIL in India has played the role of an effective tool in the field of environmental guard.

Impotence of Public Interest Litigation:

Today public interest litigation is an instrument for seeking administration of justice, when there is gross violation of fundamental rights. One of the objectives of Indian legal system is to deliver justice to all. Public

¹Bandhua, A.I.R. 1984 S.C. at 811.

²Md. SaifulKarim, Okechukwu Benjamin Vincents, and Mia Mahmudur Rahim, LEGAL ACTIVISM FOR ENSURING ENVIRONMENTAL JUSTICE," *Asian Journal of Comparative Law*. Vol. 7: Iss. 1,

Interest Litigation is a tool used to achieve this goal in the society. Preamble to the Constitution of India envisages Social, Economic and Political justice. The term 'Public Interest Litigation' is coined by use of two terms, 'Public Interest' and 'Litigation'. Definitions of PIL which were given in many of the early PIL cases, were lengthy and imprecise. In a leading judgment in 1982, Justice Bhagwati described PIL as litigation undertaken to redress public injury, enforce public duty, protect social collective or "diffused" rights and interests, or for vindication of the public interest.³

Writing in the early 1980's, UpendraBaxi, an analyst and participant in PIL, objected to the terminology of "public interest litigation", which had been borrowed from the USA.⁴ Stressing the need to highlight the conceptual differences, he suggested "Social Action Litigation" as a more accurate description.⁵

Although the Fundamental Rights, applicable to every Indian citizen, could be enforced in the Supreme Court under Article 32 of the Constitution, and all other legal rights could be enforced in the High Courts under Article 226 of the Constitution, the procedures governing the use of these provisions were determined by the rules of each court and by accepted practice.⁶

What is public interest?

The term "Public Interest" means the larger interests of the public, general welfare and interest of the masses⁷ and the word "Litigation" means "a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy." Thus, the expression 'Public Interest Litigation' means "any litigation conducted for the benefit of public or for removal of some public grievance." In simple words, public interest litigation means.

The expression public interest' indicated something which the general public or the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. The word litigation' means a legal action, including all legal proceedings initiated in a court of law with the purpose of enforcing a right or seeking a remedy⁸.

Significance Of Public Interest Litigation

- ❖ The aim of PIL is to give to the common people access to the courts to obtain legal redress.
- ❖ PIL is an important instrument of social change and for maintaining the Rule of law and accelerating the balance between law and justice.
- ❖ The original purpose of PILs have been to make justice accessible to the poor and the marginalized.
- ❖ It is an important tool to make human rights reach those who have been denied rights.
- ❖ It democratizes the access of justice to all. Any citizen or organization who is capable can file petitions on behalf of those who cannot or do not have the means to do so.
- ❖ It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc.
- ❖ It is an important tool for implementing the concept of judicial review.
- ❖ Enhanced public participation in judicial review of administrative action is assured by the inception of PILs.

Need Of Public Interest Litigation

Public interest litigation (PIL) in India can serve as a vehicle for creating and enforcing rights and is critical to the sustenance of democracy. The traditional conventional judicial process in India is described as

³ *S P Gupta, V M Tarkunde, J L Kalra and others v Union o f India and others* 1981 (Supp) SCC 87 as discussed in 'Judges, Courts, Lawyers' in chapter four.

⁴ See Baxi, Upendra, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' in Baxi, Upendra (ed) *Law and Poverty*, (N M Tripathi Pvt Ltd, Bombay, 1988), 387-415.

⁵ *Janata Dal v H S Chowdhary and others* (1992) 4 SCC 305 at 331,

⁶ A full listing of these provisions can be found in Appendix A.

⁷ Oxford English Dictionary 2nd Edn.) Vol.XII)

⁸ UpendraBaxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1983), *Third World Legal Studies*, Volume 4, Article 6

colonial legacy unsuited to our conditions. After independence, the poverty, social and educational backwardness, financial constraints and other obstacles prevented the citizens from approaching the courts. Earlier in Indian law citizen whose fundamental rights had been infringed had the right to approach the Supreme Court under Art 32 of the Constitution, but PIL has relaxed the rule and now NGOs, public spirited citizens or any other organization can approach the court on behalf of the people who belong to class of poor, deprived, women or children for the protection of their rights⁹. It is in harmony with the objectives enshrined in 39A of the Constitution of India to protect and deliver prompt social justice with the help of law. It is working as an important instrument of social change¹⁰. It is working for the welfare of every section of society. It is used as a strategy to combat the atrocities prevailing in society. It is an institutional initiative towards the welfare of the needy class of the society. It has helped the people who are poor, ignorant or in socially, economically disadvantaged positions to protect their fundamental rights. Administration and makes judicial process democratic. PIL has enabled the individuals, social groups, NGOs to approach the Courts of country seeking legal remedies and justice in all cases where the public interest is at stake. PIL is people friendly procedure. The intent of the PIL is to ensure redressal to those who are otherwise poor to move to Courts and are unaware of legal procedure¹¹.

The PIL was created to empower ordinary citizens to write letter and draw attention of the apex court. Judicial action initiated through such petition has brought relief to a wide variety of cases and has taken action against the political corruption and accountability. It seeks to draw the attention of authorities to their constitutional and legal obligations¹². The greatest contribution of the PIL has been the accountability of government towards human rights of underprivileged. PIL enables the civil society to not only spread the awareness about human rights but also allows them to participate in decision making process.

Constitutional Rights

The Indian Constitution contains sections of rights which have been described as the core of the Constituent Assembly's commitment to social justice. Part III, the Fundamental Rights, and Part IV, the Directive Principles of State Policy, were supplemented by Part IVA, the Fundamental Duties, in 1976. In framing the rights in Part III, the Constituent Assembly was informed by the natural law ideas prevalent in eighteenth century Europe. Knowledge of existing constitutions¹³ and their declarations of rights went in tandem with the Universal Declaration on Human Rights, promulgated by the United Nations in 1948. The fundamental Rights provided for justifiable civil and political rights available against the state, with the exception of Articles 15(2), 17 and 23 of the Constitution which, it was envisaged, would protect the individual against other citizens. "Reasonable restrictions" were included in many of the fundamental rights, delineating their availability and empowering the State to disregard them in certain circumstances. Debates in the Constituent Assembly about the inclusion of the right to "due process"¹⁴

In the right to life and personal liberty ended in a more diluted version of the phrase. Thus, fears about conferring on the judiciary powers greater than the other branches of government informed the final decision on the form which the constitutional rights should take.¹⁵

The Directive Principles of State Policy, which can be identified as social and economic rights were made non-justifiable. This compromise which made civil and political rights justifiable, while leaving the realization of economic and social rights to the anticipated governmental policies rather than judicial directive, delineated the new social order that was envisaged for independent India¹⁶. Critics of the constitutional scheme of rights have focused on the particularities of the context in which they operate. While some are concerned with human rights as civil and political rights, others have focused more on economic and social rights, and more recently, a need-based, situation-specific, theory of community rights has been discussed. The historical antecedents of the modern critique of human rights is presented by Waldron, who notes that modern rights theorists depart from the

⁹S P Gupta op citnote 1 at 189. Similarly *People's Union for Democratic Rights*

¹⁰*A G Prayag v State of M.P. and others* AIR 1987 MP 25 in the chapter on 'Politics and Elections'.

¹¹S P Gupta op citnote 1 at 189. Similarly *People's Union for Democratic Rights*

¹²B R Ambedkar in the Constituent Assembly Debates (CAD Vol XI at 979), quoted in Baxi, Upendra, Law, Democracy And Human Rights' in Kothari Smitu; Sethi, Harsh (1989), 101-117 at 102.

¹³Austin, Granville (1966), 50-83; Iyer, V R Krishna (1986) at 7.

¹⁴Article 21 of the Constitution in Appendix A.

¹⁵Austin, Granville (1966), 84-115

¹⁶Article 21 of the Constitution in Appendix A.

historical critiques by their emphasis on welfare rights and on the idea that rights may express claims about need and not merely individual freedom' Dhavan and Parrington expanded this argument in a discussion of the "new" entitlements that were being given to the poor and disadvantaged through PIL. These entitlements consist of social welfare rights (part of the "third generation" of community rights), a greater emphasis on the social aspects of the right to equality, and on increasing the scope of political participation.¹⁷

Interpretation of constitutional rights by the courts had been restricted, but by 1978, the interpretation of rights was being evolved in an effort to realize constitutional objectives. This was done by revising the procedures by which rights could be enforced and could be restricted. For example, in *Maneka Gandhi v Union of India* it was held that the procedure depriving a person of the right to life and personal liberty under Article 21 of the Constitution must be reasonable, fair and just.

Constitutional Remedies

Article 32 of the Constitution

In his study of the Indian Constitution, Granville Austin analysed the discussions about the scope of the remedies available in Article 32 of the Constitution. He noted that while ordinary remedies existed for the enforcement of rights, the prerogative writs put teeth into the fundamental rights provisions and were widely believed to be "the cornerstone of freedom and liberty". One member of the Constituent Assembly said of Article 32 of the Constitution.

The way in which the use of Article 32 had developed had laid the foundation for its use in PIL found from the late 1970s. In 1950, shortly after the Constitution was established, the Supreme Court commented on the scope of Article 32 of the Constitution, differentiating it from Articles 226 and 131-139 of the Constitution:

Article 32 provides a "guaranteed" remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights¹⁸

Thus the procedures that were to promote access to justice, had already been raised in the courtroom, for example when the Court capitulated on its early orders to affirm that the right to invoke Article 32 of the Constitution could not be affected by the existence of an alternative remedy. The greatest contribution of PIL has been to enhance the accountability of the governments towards the human rights of the poor. 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.

Judicial Activism and Public Interest Litigation in India

According to the jurisprudence of Article 32 of the Constitution of India, "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi (standing required in law) to file a case and continue the litigation and the non affected persons had no locus standi to do so. And as a result, there was hardly any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other¹⁹. However, all these scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved.

Legal Provisions Relating To Environmental Protection In India

Environmental pollution is one of the most serious problems facing humanity and other life forms on our planet today. „Environment pollution“ means the presence in the environment of any environmental pollutant, as

¹⁷Baxi, Upendra 'From Human Rights To The Right To Be Human: Some Heresies' in Sethi, Harsh and Kothari, Smitu (eds) (1989), 151-166.

¹⁸*Romesh Thappar v State of Madras* AIR (37) 1950 SC 124 at 126.

¹⁹.C. Shastri ; Environment Law, Eastern Book Company, Lucknow, 2005

per Section 2(c) of the Environment Protection Act, 1986. In simple words „environmental pollution“ is defined as “the contamination of the physical and biological components of the earth/atmosphere system to such an extent that normal environmental processes are adversely affected”. The key purpose of the laws linked to environmental conservation is to save humanity and encourage healthy and good life. The Indian Constitution comprises some articles linked to environmental protection and the Indian Parliament has made some laws from time to time to protect the environment as per the requirement. The provisions which have been included in the Constitution to protect the environment are as follows:

- ❖ **Article 14:** This article provides equality by law to all persons of the state, talks about not depriving the equal protection of the laws of the land of India.
- ❖ **Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
- ❖ **Article 48–A:** Apart from taking steps to protect and improve the environment, the state will also make successful efforts to protect the forests and wildlife of the country.
- ❖ **Article 51- g:** To guard and reform the natural environment as well as jungles, lakes, rivers and wildlife, and to have kindness for existing creatures.²⁰

Social Movements In Environmental Legal Activism

The aim of this part is not to provide a template for determining whether or not the civil society organizations engaged in environmental legal activism in India And Other Countries qualify as social movement organizations. Instead, it is to map an overview of some of the views adopted by scholars on the meaning of the term. As McCann noted, “considerable disagreement and uncertainty exist regarding just how the very concept of ‘social movement’ itself should be defined²¹.”

Conclusion:

In every nation of the world poor people and minorities face greater environmental risks, have less access to environmental goods, and have less ability to control the environmental insults imposed on them. The ecological danger is more serious problem than as compare to others for which urgent attention is now being paid in most of the world. The Constitution of India, as adopted by the constitution makers in 1950, did not deal with ‘Protection of environment’ as a specific legislative subject. Nor did it contain any specific provision to embody India’s commitment to the protection and preservation of environment. However, Indian Constitution was not totally silent in this regard as it contained (and still contains) several related subjects in its constitutional scheme of distribution of legislative powers²². Governments should set up or assist existing national mechanisms, including youth committees, task forces, youth NGOs and advisory councils, to promote dialogue and enable their participation in decision making process at local, regional and national levels. All members States should ensure youth participation in appropriate government delegations. Non-governmental organization (NGOs) plays a vital role in shaping and implementing participatory democracy.

Local authorities construct, operate and maintain economic, social and environmental infrastructures, oversee planning processes, establish local environmental policies and regulations and assist in implementing national and sub-national environmental policies. The Central and state governments and NGOs working for environment protection shall take steps to bring awareness among people on environmental laws and enforcement agencies thereof.

²⁰ Pandey J.N. [2014], Constitutional Law of India, Central Law Agency, Allahabad, at p. 23

²¹ Biswas et al., (eds.), Environmental Impact Assessment for Developing Countries, OUP, 1992

²² Atisha Sisodiya <https://www.lawctopus.com/academike/role-indian-judiciary-protection-environment-india/>