

CHAPTER – VIII

Public Interest Litigation and Social Justice

8.1 Genesis of Public Interest Litigation

Public Interest Litigation (PIL) is a distinctive litigation related to public interest. Some regard Public Interest Litigation as the legalistic recognition of the Directive Principles of State policy. The aim of this litigation is to protect people against the violation of public interest and to redress their grievances. It aims at vindicating public interest and ensuring justice of all forms to people. Sunia Hurrah writes in her article "**Public Interest Litigation**", "It is a litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social collective entities and different rights and interest vindicating public interest".

In 1979 the Supreme Court of India, in the interest of social justice and to discharge its constitutional duty to protect fundamental rights of citizens, made a distinctive innovation known as "Public Interest Litigation" (PIL). Since then Public Interest Litigation has been invoked in a number of times to protect public interest which has been overridden by the executive. PIL , thus, used has been dubbed by political elite as "judicial activism", which in their view, is inimical to democracy. The then Lok Sabha Speaker P. Sangma, commented in a symposium on "Judicial Activism" held in New Delhi in 1996 in reference to Public Interest Litigation that the judges "have lately shown a disturbing tendency to encroach on the executive domain" and that the judiciary should "strongly discourage tendencies towards abuse of the facility of recourse to public interest litigation". The Prime Minister described such role of the Judges as a menace to the executive.

8.2 Role of Judiciary in securing Justice to people

The role of the judiciary to restrain the executive from denying right and freedom to people and thus seeming justice to them thus was criticized as the encroachment of the judiciary upon the executive but it is misconceived and

misinterpreted. Public Interest Litigation (PIL) originated in securing justice which is denied to a class of people or to an individual being a victim of injustice on upholding their fundamental rights enshrined in the Constitution of India. The role of Judiciary is often hailed as the positive way of dispensation of justice. The Judiciary is compelled to intervene in the action and decision of the executive when it goes against the intent of an individual or a section of people in general. Thus judicial intervention becomes a necessity to secure justice for victims of injustice.

8.3 Vindication of PIL

The internal emergency that was in force between 1975 and 1977 and its aftermath contributed significantly to the change in the judiciary's perception of its role in the working of the Constitution. The period of the emergency witnessed large scale violations of basic rights of life and liberty. There were also blatant violations of the rights to freedom of speech and expression. The end of the 'Emergency era' saw the emergence of a realignment of political forces. Nevertheless, the popularly elected government was weak, and in trying to find its feet, it did not last very long. It was already collapsing by 1978-1979, which was when the judiciary initiated the public interest litigation movement". The post-emergency period then provided the right environment for the judiciary to redeem itself as a protector and enforcer of the rule of law. Judges woke up to this and PIL was the tool the judiciary shaped and designed to achieve this end. "PIL was entirely a judge-led and judge-dominated movement."⁴⁴(Upendra Baxi, Taking Suffering Seriously: Social Active Litigation in the Supreme Court of India", in Supreme Court on Public Interest Litigation, and Jagga Kapur, 1998.

8.4 First PIL and its victory

In 1979 a socially motivated lawyer in the Supreme Court filed the first ever public interest litigation in the Supreme Court, without any power of attorney but on the basis of two articles published in The Indian Express which narrated

⁴⁴ Upendra Baxi, 'Taking suffering seriously', Social Active Litigation in the Supreme Court of India, in Supreme Court on Public Interest Litigation, and Jagga kaur, 1998.

"a shocking state of affairs regarding the under-trial prisoners in the jails of Bihar". The newspaper exposed that a large number of men, women and children had been behind the bar, most of them for minor offences, for as many as twenty years. In the PIL it was mentioned that Hussainara Khatun and twelve other undertrials had been illegally detained and through the PIL the notice of the Court was drawn to their continued detention in violation of the fundamental right under Article 21 of the constitution in view of Section 428 of the Code of Criminal Procedure. The lawyer agreed that even if the said prisoners had been tried and convicted of the offences charged they would have been released ten years ago after serving their sentences. This is a classic example of justice rendered to the under trials through PIL.

8.5 PIL and the Role of the Supreme Court

The court as the guardian of the constitution and protector of the fundamental rights of the people of India passed an order of the immediate release of forty thousand prisoners in Bihar on personal or no bond. This is the origin of PIL which is different from traditional or representative actions in its remedial, collaborative and non-adversarial nature."

"The concept of PIL has been firmly established by the subsequent matters entertained by the Supreme Court and its nature, scope and limitations have been clearly stated by the apex Court in a case relating to employment of children in the hazardous industries through such employment was prohibited by the constitution."⁴⁵

Justice P.N. Bhagawati delivered a Supreme Court judgment on September 18, 1982 on a writ petition filed by the civil rights group. Peoples' Union for Democratic Rights, to ensure observance of labour laws and stated that the time has come when the court must become the court of the poor and struggling masses of this country. They must shed their character as upholder of the established order and the status quo. They must be satisfied to the need of the poor during justice to the large mass of people to whom justice has been denied

⁴⁵ D. C. Bhattacharya 2012, India Government and Politics, Vijaya Publishing House, Kolkata.

by cruel and heartless society for generations"⁴⁶ . The Court will, therefore, entertain a writ petition from a public spirited person or a social action group for the vindication of a fundamental right of a person who is unable to enforce them because he belongs to a class or group of persons who are in a disadvantaged position on account of poverty, disability or other social or economic impediment and are unable to enforce these rights⁴⁷ (S.P. Gupta vs. President of India, 1982; Subhas vs State of Bihar, 1991).

The device of PIL has enabled the Court to take speedy cognizance of the violation of fundamental rights affecting tribals , and under trials, victim of police torture and of other acts of oppression by the influential groups or the state machinery (Bandhua Mukti Morch vs. Union of India, 1984) and of inaction on the part of the government machinery to enforce and implement the laws affecting the poor and the disadvantaged (e.g. The Minimum Wages Act, The Untouchability Offences Act, etc.).

The Supreme Court ruled that Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Courts to secure observance of the constitutional or legal rights, benefits and privileges enforced upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal to those who are in a socially disadvantaged position as the petitioner who brings the public interest litigation and showed in fact welcome it as it would give an opportunity to right, wrong, or redress at injustice done to the poor and weaker sections of the community whose welfare is and must be the public authority."

As the governments have forfeited people's faith in the dispensation of justice and in the protection of their rights, the people are looking forward to the intervention of the judiciary for the dispensation of justice, protection of their rights and punishment to the criminal and corrupt elements violating or

⁴⁶ The Statesman , July 14

⁴⁷ S.P. Gupta vs President of India , 1982; Subhash vs. state of Bihar, 1991

infringing the law. As a result, the Courts are being saddled with increasing Public Interest Litigations in the entire range of human activity. It is found that PIL also includes environmental political, medical treatment, procurement and purchase of all categories of store and providing services which are their legal and professional responsibility.

The Supreme Courts' special initiative in rendering justice to people of which they have been denied by the Government of India as well as the State Governments, which is often dubbed as judicial activism is considered as a positive role in securing justice to the victims. The Supreme Court, has so far, on the basis of Public Interest Litigation, has awarded justice to them through protecting the rights of the individual against the executive and against oppressive legislation. "What made PIL unique was that it acknowledged that a majority of the population, on account of their social, economic and other disabilities, was unable to access the justice system. The insurmountable walls of procedure never dismantled and suddenly the doors of the Supreme Court were open to people and never that had reached these before, By relaxing the rules of standing and procedure to the point whenever a postcard could be treated as a writ petition, and the judiciary ushered in a new phase of activism where litigants are free from the strangle hold of formal law and lawyering".

8.6 PIL- A Judicial Platform for Dispensation of Justice

Public Interest Litigation should not hereby be looked upon as one of the ways of making the court judicially active but also as a judicial platform for dispensation of justice to those who have been denied or deprived of justice by any of the agencies of the executive. It has considerably widened the range and scope of the judiciary and given it power to intervene in the areas of the legislature and executive areas within the judicial jurisdiction. It has thus restrained the legislature from formulating arbitrary laws—laws to override citizens' rights and the executive from authoritarian decisions to seal the passage of social justice and human dignity. Human dignity is related to social justice. To derogate human dignity is one of the ways which is hostile to social justice.

Through Public Interest Litigation the Supreme Court of India attempts to secure justice to the common and poor people and the deprived classes of the country. Commenting on it, Chief Justice P.N. Bhagawati said—"The Supreme Court has developed several new commitments. It has carried forward participative justice. It has laid just standards of procedures. It has made justice more accessible to citizens". It is here pertinent to say that the expansion of the court's jurisdiction is not to be seen or concluded such as the judicial intervention but as an instrument of social justice so far and so long denied to them.

On the strength of Public Interest Litigation, the Supreme Court has made several historic declarations with the decision to render justice to the deprived and disadvantaged classes. In 1995 it declared that health is the basic right of the people and as such the doctors were brought under the consumer's law. The next year the Supreme Court also declared that if the hospitals and the doctors refuse to admit a serious patient, it would be considered as a punishable offence. It is the doctor's professional duty and responsibility this duty and to attend patients and to take all possible steps to save his life. He cannot shirk responsibility. He can't neglect a patient's treatment on any ground. In the case of doctor's negligence causing the death of a patient, the concerned medical staff must be made accountable to criminal justice system.

Education is the pillar of progress for a nation. It is a human right and no one should be deprived of education. Article 41 of the Directive Principles of State policy calls upon the state to secure for people the right to education and if any one is deprived of the opportunity of education, social justice shall cease to exist in society. Since imparting education is essential the Supreme Court issued order that no professional institution would charge any capitation fees for admitting students. The court also regulated travelling sessions in medical and engineering institutions. Even the Delhi High Court also ordered all the Public School to keep compulsorily reserved some of their seats for the economically and socially backward students.

The aim and spirit of this direction of the court is that no one should be deprived of the facilities of education at all levels because of poverty and social backwardness.

The Constitution of India prohibits child labour and yet the system continues unabated and the government remained indifferent to this problem. Child labour is a social offence and an exploitation. It is matter of deprivation of a child of his rights to education, free normal life and the enjoyment of childhood. Employment of children to works or jobs at brick kilns, shops and restaurants, hotels and factories, it is inhuman and hostile to the rights of a child This is to be looked upon as a violation of child rights and as an act of inhuman oppression and exploitation.

Hence in December 1996 the Supreme Court ordered to set up a Child Labour Rehabilitation Worker Fund and the employers of the child workers are to deposit these compulsorily a compensation of Rs. 20,000 per child worker and rehabilitate them accordingly. Through PIL the court enforces constitutional or legal right, protect human rights and dignity, resists exploitation and oppression to children and women and attempts to secure and validate social justice to all.

The recent incident of racial discrimination against North East People is a serious matter of violation of rights and freedoms of Indian citizens within India. A PIL filed seven advocates, some of them belonging to North East has highlighted the recent attacks on North Eastern People including the death of Arunachal Pradesh youth Nido Tania who was beaten by local shopkeepers in south Delhi. The PIL⁴⁸ (PIL to Protect North East People , 12 February , 2014 , The Statesman) seeks to Supreme Court to direct the government of India to frame guidelines to protect the people from the North eastern states in the national capital and other parts of the country from racial discrimination. A state which claims to be welfare state cannot approve of racial discrimination to govern social and national life. Hence racial discrimination needs to be rooted out to secure justice to all.

⁴⁸ The Statesman , February 12, 2014

8.7 Public Interest Litigation and Implementation of Directive

Principals

Public Interest Litigation is playing a significant role in the implementation of the 'Directive Principles of State Policy'. It has facilitated enforcement and implementation of many directives and enabled the court to formulate various guidelines so as to do and ensure full justice to an aggrieved person, to recognize class or group rights, to protect freedom and to implement or to enforce the Directive Principles, which is not difficult for an individual to receive through ordinary litigation. The judiciary is seen to have taken upon itself the task of infusing into the constitutional provisions the spirit of social justice. *Maneka Gandhi vs. Union of India, 1978* is an illustration in point⁴⁹. The Case was filed following the refusal by the government to grant a passport to the petitioner, which thus denied her liberty to travel. The case was heard and the court proceeded to explain the scope and content of the right to life and liberty. The court took a broader view of the scope and content of the fundamental right to life and liberty. Article 21 which deals with the right to life was interpreted to include a bundle of other incidental and integral rights.

On the basis of a PIL , filed by National Legal Services Authority urging the Supreme Court to give separate identity to transgenders by recognizing them as a third category of gender and directed the government to ensure that they would get job , reservations, and facilities, including voter card , driving license and passport. "The apex court said, the group would be considered as socially and economically backward classes and as entitled to reservations in jobs . The centers and the states also directed to take steps for bringing the community into the mainstream by providing adequate health care, education and employment.", "Recognition of transgender as a third gender is not merely a social or medical issue but a human right issue."

⁴⁹ The decision in *Maneka Gandhi vs. union of India* where it was held a person could be deprived of his right to life only by a law which was just , fair and reasonable and in *Bandhua Mukti Morcha vs Union of India* case the S.C. conferred a verdict against the bonded labour system.

The court observed that members of transgender “are also citizens of India. It is the right of every human being to choose their gender. The spirit of the Constitution is to provide equal opportunity to every citizens to grow and attain their potential, irrespective of caste, religion or gender. The court’s order also includes the

Rights Movements and Social Justice in India

Protection of members of transgender against harassment and discrimination. This judgment is of recent , origin, however.

PILs As Instruments of Judicial Justice

Public Interest Litigation should not be viewed as the judicial encroachment upon the executive because it has succeeded in meeting out justice to many who were denied it. It has now been recognized as judicial platform for the dispensation of justice. Its range is so wide that it covers all matters that come within purview of the constitution of India as well as Indian policy. It has protected public interest against being overridden or denied and upheld rule of law and the principle of justice and reinforced the spirit of the Constitution.

It has immensely widened the range and scope of the meaning and implication of the word ‘justice’ in the domain in the domain of Indian social and political system and lent a far extending significance to the interrelationship of rules and laws existing in Indian administration . Even the legislation that make laws are not outside the purview of PIL. Judicial decisions have often been seen challenged through PIL and finally the victory of PIL. Has also influenced allowed those. There are many cases that have gone far to restrain the executive from overstepping its boundary and to delimit it. In every decision and action the executive has been very much active

It is true that PILs , namely Bhagalpur Blinding case, Bandhua Mukti Case, Francis Coralie Mullin case, M.C. Mehta vs. Union of India, Bishakha vs State of Union and earlier Maneka vs. Union of India (though not PIL strictly) are of enormously important in ensuring social justice. Needless to say the famous

Golaknath vs. State of Punjab , and Keshavnanda Bharati vs, state of Kerala , though not coming strictly under the purview of PIL led to a host of social legislation. In this dissertation, all this landmark cases appeared and reappeared in previous chapters indicating their importance in our discussion. The impact of Bishakha vs. State of Rajasthan on the question of social justice , are still felt . The sexual scandal involving Tarun Tejpal , the editor of Tahelka magazine of New Delhi , the case of Vishakha vs. state of Rajasthan was aptly invoked . Important point is , the gravity of the cases were so all comprehensive and all pervasive , that its impact has crossed the boundaries of ages ; it would have been effective to discuss the impacts of such landmarks judgments upon the issues of Directive Principles of State Policy and Social Justice in Coalition Politics. But space constraints is a bar to an elaboration of the direct and indirect impact of the cases of the judicial and executive initiative to implement various Directive Principles .

However, Indira Swahney case and Vishakah vs. State of Rajasthan are so important in ensuring social justice and justice to women in the workplace , that this point needs to be discussed as part of the analysis of research data. Even a cursory glance of **Indira Sawhney case** would amply prove how the Directive Principles and Fundamental Rights are interrelated in our Constitution. The constitution-makers also shaped the Constitution from the perspective of interrelationship between Directive Principles, Fundamental Rights and Preamble.

In the case it was stated that , 'Liberty , equality and fraternity' was the battle cry of the French Revolution. It is also the motto of our Constitution, with the concept of 'justice- social economic and political' – the sum total of modern political thought liberty of thought, expression, belief, faith and worship has equally been an abiding faith of all human beings , and at all times in this country in particular. Fraternity assuring the dignity of the individual has a special relevance to the Indian context. as this judgment will illustrate in due course.

It has been frequently stated on several occasions in the present dissertation that the content of the expression "equality before the law" is contemplated. Its spirit

and aim is to minimizing the inequalities in income and eliminate the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, to secure adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the Scheduled Castes and Scheduled Tribes and to protect them from social injustices and all forms of social exploitation and deprivation. In Indira Sawhney case , **it was categorically stated , indeed in a society where equality of status and opportunity do not obtain and where there are glaring inequalities in incomes , there is no room for equality – either equality before law or equality in any other respect.**

The doctrine of equality has many facets. It is a dynamic and evolving concept. Its main facets , relevant to Indian society , have been referred to in the Preamble and the Articles under the sub heading “Right to equality” –(Articles 14 -18). In short , the goal is “equality of status and of opportunity”. **Articles 14 to 18 must be understood not merely with reference to what they say but also in the light of several articles in Part IV (Directive Principles of State Policy)- “Justice, Social, Economic and Political”, is the sum total of the aspirations incorporated in part IV.**

The content of expression “equality before law” is illustrated not only in Articles 15 to 18 but also in the several Articles in Part IV , in particular , Articles 38, 39 , 39A and 46.

It is not my aim to discuss the legal implication of all those landmark judgments given by Hon’ble Supreme Court but to focus on their importance upon social legislations passed successively . I have already referred about Zia Mody’s **Ten Judgments that Have Changed India** in Book review section where Aruna Shanbaug case , ADM Jabalpur case, Maneka Gandhi case, Bhpal gas case find prominent place. **Firstpost.com , a news web page** , has also referred Zia Mody’s book while highlighting Vishakha vs. State of Rajasthan case .

What is the Vishakha judgment?

As Zia Mody says in her book, *Ten Judgements that Changed India*, "Judicial activism reached its pinnacle in Vishakha Vs. State of Rajasthan." The judgment was unprecedented for several reasons: the Supreme Court acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law; the Supreme Court provided the first authoritative decision of 'sexual harassment' in India; and confronted with a statutory vacuum, it went creative and proposed the route of 'judicial legislation'.

The Vishakha judgment was an offshoot of a rape case involving a social worker in Rajasthan. It laid down the requirements for employers dealing with complaints of sexual assault and stipulated the formation of committees to dispose of complaints from victims of harassment.

Some general points about the judgement:

Below are some of the general points of the Vishakha judgment:

Gender equality includes protection from sexual harassment and the right to work with dignity as per our constitution.

Extra-hazard for a working woman compared her male colleague is a clear violation of the fundamental rights of 'Gender Equality' and 'Right to Life and Liberty'.

Safe working environment is fundamental right of a working woman.

In no way working women should be discriminated at the workplace against male employees. (If a woman is, then it must be documented in company policies, for example, limitation of women in police and armed forces.)

Working with full dignity is the fundamental right of working women.

The right to work is an inalienable right of all working women.

The Vishakha judgment had recommended a Complaints Committee at all workplaces, headed by a woman employee, with not less than half of its members being women. All complaints of sexual harassment by any woman employee would be directed to this committee. This is significant because an immediate supervisor may also be the perpetrator. The committee advises the victim on further course of action and recommends to the management the course of action against the man accused of harassment.

In Francies Coralie Mullin case the court declared. "The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessity of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and combining with fellow human beings. The magnitude and components of this right would depend upon the content of economic development of the country, but it must, in any view of the matter, include the bare necessity of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human life."⁵⁰ (Francies Coralie Mullin vs. The Administrator, Union Territory of Delhi (1981) 2 SCR, p 529 BF).

"The combined effect of the expanded interpretation of the right to life and the use of PIL as a tool led the court into areas where there was a crying need for social justice. There were areas where there was a direct interaction between law and poverty, as in the case of bonded labour and child labour and crime and poverty, as in the case of undertrials in jails". The court examined human rights of dignity, living conditions, health in the ambit of the right to life as enunciated in the Directive Principles of State Policy and tried to enforce and implement these through various public interest litigations. What has impelled the court to become active in protecting human rights, value and dignity and in rendering justice to the poor, weaker classes and aggrieved person was the sense of justice and value of human life and liberty. The implementation of the Directive

⁵⁰ Francies Coralie Mullin vs. The Administrator, Union Territory of Delhi (1981) 2 SCR, p 529 BF

Principles is the definite and positive way to give the Indian society the shape of a true civil society and to make India a true welfare state.

In *Bandhua Mukti Morcha vs. Union of India*, 1984, a PIL by an NGO (Non-government Organisation) highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not far from the Supreme court. The court ruled a host of protective and welfare-oriented labour legislations, including the Bonded Labour (Abolition) Act and the Minimum Wages Act. In giving extensive direction to the State Government to enable it to discharge its constitutional obligation towards the bonded labourers, the court observed.

"The right to live with human dignity restrained in Article 21 derives its life breath from the Directive Principles of State Policy and particularly classes (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 workers, men and women and of the tender age of children against abuse of opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human 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.

Since the Directive Principles of State Policy contained in Clauses (l) and (f) of Article 39, and Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the state providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obliged to ensure observance of such legislation, for inaction on the part of the state in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every state shall be so exercised as to

ensure compliance with the laws made by parliament and any existing laws which apply in that state."

Thus in **Vishakha vs State of Rajasthan case, 1997** (very significant case and landmark judgment was issued from it, already elaborated above), the court converted what seemed a non-justiciable issue into a justiciable one by invoking the wide sweep of the enforceable Article 21. More recently, the court performed a similar exercise when, in the context of Articles 21 and 42, it evolved legally binding guidelines to deal with the problems of sexual harassment of woman at the work place. In *National Textile Workers Union vs. P.R. Ramakrishna, 1983*, the court observed "It would indeed be strange that the workers who have contributed to the building of enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

This is a fact that denial of justice to people by the executive as well as the legislature led to the evolution of Public Interest Litigation. PIL covers a wide range of area of human life, right and freedom. PIL has restored to the victim of justice related to life, right and freedom, deprived by all agencies of the government. The Supreme Court has made itself active enough in rendering justice to aggrieved persons who have been victims of legal or administrative injustice because of the indifference of the concerned government agencies to the value, dignity, right of human beings. In *D.K. Basu vs. State of West Bengal, 1986*⁵¹ the court expressed deep concern over the matter of police custodial death and directed the police to adopt great caution with respect to arrest. The court ruled that the police on duty can arrest an offender and detain a person for interrogation during investigations but law has not given to the police power to give the suspect third degree or to apply this method during interrogation and investigation. The application of third degree to the suspect during interrogation and investigation has been proscribed. In the opinion of the court "End cannot justify the means". The concept of third degree is very popular with the police as a means to elicit statements from the accused detained in the police station. But

⁵¹ Hon'ble Supreme Court laid down certain principles to be followed before arresting a person

it is widely criticized as a wild means used and applied by the police in the police station. In the civilized society, everybody condemns the concept of third degree traditionally applied by the police. It is an instance of glaring violation of human rights. The argument placed against the application of third degree is that the police are not entitled or empowered to impose physical or mental punishment upon a suspect detained in the police station. The duty of the police is to detect crimes and criminals and book them accordingly and finally forward the accused to the court for judicial action. It is up to the court, not up to the police to subject a suspect or an accused person detained in the police station, to physical punishment.

There are scores of cases of illegal detention of people in the Police Station. On many occasions it is alleged that the Police detained innocent persons in the Police Stations for days together without any specific charges against them. Apart from this the Police are often reported to have beaten to death many innocent or accused persons. These actions of the Police in the name of maintenance of law and order or peace in the locality are undoubtedly barbaric and inhuman. They are violations of law and rights granted to people. But judicial activism has greatly restrained the police from going beyond the defined jurisdiction and a number of PIL were filed against Police excesses. The Court passed many historic judgments of which a few have been cited and precisely discussed in this study, to show how PIL has become an effective tool for the protection of human rights and dignity. In *Sushil Basra vs. Delhi Administration* it was held that the writ of habeas corpus can be not only for releasing a person from illegal detention but also for protecting prisoners from inhuman treatment.

In the civil society no person is subject to injustice nor is it upheld under any circumstances. Right and justice constitute a unique human phenomenon. They cannot be overridden and any attempt to override them amounts to the violation of human dignity. The court directed the police to abide by obligatorily the duty that the police are duty-bound to inform the nearest relative of the detention of a person. The right of the detained person should be protected and violation of these instructions shall be treated as violation of the court. Violation of human rights shall entail compensation as the remedial measure, for the aim of PIL is to civilise the persons in power and to ascertain them that they are under the

similar law. In a PIL the Supreme Court convicted the State Police of Punjab of police custodial death and directed the State to pay Rs.2,00,000 to the parents of the deceased as compensation.

So long it was thought that appointment of judges, transfer of judges and promotion of judges were subject to the decision and jurisdiction of the executive or parliament, but in view of some public interest litigations the court reminds that it has something to say about these matters. In *S.P. Gupta vs. Union of India*⁵² a senior advocate of the High Court of Allahabad filed a PIL challenging the decision of transfer of a judge of the court. But the Supreme Court reserved the form of verdict saying that the matter of transfer of judges is subject to the decision of the executive. After about one year a PIL was again filed to clarify this judgment and the case referred to the Division Bench. This case to be known as *Advocate-on-Records Association vs. Union of India* and the Supreme court declared that since then onwards the executive would issue the order of appointment of judges not in consultation with the judiciary but with the consent of the Chief Justice. In another PIL the court declared that the transfer of judges is not justiciable unless there is a deviation from the process. In consequence of this PIL, the Supreme Court was able to issue directives to the state government regarding the functions and discharge of duties of the lower courts and the appointment of judges.

Article 48 (A) of the Directive Principles of State Policy enjoins that the state should safeguard the wild lives and forests of the country. This means that the state should take the initiative in improving ecology and environment. But what we have found that the State was quite indifferent to the improvement of ecology and environment and this indifference has led to the creation of environment pollution in India. The nation-wide movement against pollution raised the consciousness of the government in the formulation of law to control pollution. Besides, the greatest reflection of public interest litigation is found in the world of Pollution Control Act. The credit of the legislation of Pollution Control set specially goes to M.C. Mehta, a distinguished lawyer in Supreme Court. Air is abnormally polluted by the rapid increase in number of motorised vehicles. In

⁵² Popularly known as Judges Transfer case.

Delhi air pollution has already exceeded all limits of safety marked by World Health Organisation (WHO).

Public Interest Litigation were filed in the matters of emission of odious gas in the populated area of Delhi, high pollution in the heart of the capital, oil refinery of Mathura greatly affecting the Taj Mahal, jam on the roads of Delhi vehicle regulation etc. The court has taken positive steps through passing verdicts on PILs to control pollutions. The court has played a significant role in bringing the western coastal areas of India under Pollution Control Act. It has helped in controlling pollution at the coastal area through its ruling to proscribe the culture of pollution. The court deserves the credit of controlling pollution by directing the Pollution Control Board to fine the organisations creating pollution. This has proved to be very effective in protecting life against disruption because of rapidly rising pollution by uncontrolled industrialisation. The court's principles of pollution control restrained leather factories or tanneries chemical factories in Rajasthan prawn breeding distillery factories in Tamil Nadu from polluting the air and the environment. The court has taken upon itself the responsibility to take into the steps adopted by those factories to neutralize water and soil pollution created. As a result many polluting organisations have been compelled to install pollution control machines and thus pollution has finally come under control.

The Supreme Court is not only the protector of right and liberty but also the institution to make India a pollution free nation. It has delivered some historic verdicts restraining factories and industries from polluting the air and environment, which is hazardous for life. The court's verdicts are the result of Public Interest Litigations when the inaction of the executive or of the agencies of the executive frustrated environmentalists, social workers and many other NGOs working hard to save our environment from being further polluted. People have always welcomed the directives of the Supreme Court to such factories and industries causing massive pollution.

"In *M.C. Metha vs. Union of India (Shriram Food and Fertilizer Case)* the Supreme Court ordered the closure of the units manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people

living in its neighbourhood and directed the companies to take all necessary safety measures before reopening the plants".

"In Rural Litigation and Entitlement Kendra vs. State of U.P. the Court ordered the closure of lime stone quarries those who caused large scale pollution adversely affecting the safety and health of the public living in the areas on the ground that there were serious deficiencies regarding safety and hazards in them". Environmental plunder has caused horrible environmental problem in India. It has also invited horrible consequences of life and human livelihood. The development of life has been hampered. The quality life in some larger cities has been lowered. Air has been polluted beyond limit and urban areas have been greatly congested. Deforestation has degraded our environment and adversely impacted people's traditional livelihood in such areas as Kalahandi in Odisha. In rural areas, the exploitation of ground water for irrigation has exceeded all limits causing sharp decline in ground water table. Keeping all these damaging activities, it can be said that more strident laws are required to control pollution. In M.C. Mehta Vs. Union of India relating to Ganga pollution case, the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, U.P. polluting the Ganga unless they took steps to set up treatment plants. In M.C. Metha vs. Union of India relating to Taj Mahal case the Supreme Court has directed the industries in Taj Trapezium zone to change over to natural gas as industrial fuel and if they could not do so they must stop functioning and to relocate the same to a place outside the Taj Trapezium zone. The Court has further given guidelines to safeguard the interests of the workers working in relocated units.

In M.C. Mehta Vs. Union of India, the Supreme Court has issued direction to take steps to prevent destruction or change to the environment flora and fauna and wild life. The direction are based the Article 48(A) of the Directive

Principles of State Policy. In Animal and Environment Legal Defence Fund vs. Union of India, the Supreme Court has directed to erect a boundary wall around a test firing range so that probable damages to animals are averted. This direction is in consistence with Article 48(A) of the Directive Principles of State Policy.

The National Green Tribunal (NGT) has expressed grave concern over alarming pollution caused by thermal power plant in Vidarbha using inferior quality coal in violation of Ministry of Environment and Forests' norms. A PIL had been filed by Ratnadeep Rangari, a social worker and resident of Mahadula village near Nagpur, charging coal and power utility with flouting Ministry and Forests' norms, which is polluting the air, poisoning the water and reducing Vidarbha to a gas chamber by not using clean coal technology. This has put lives of about twenty million people of Vidarbha in Maharashtra in danger. The petition urged the National Green Tribunal to direct coal and power utility to follow the notification of the ministry and all other regulatory and supervisory institution to ensure its compliance.

A division bench of the National Green Tribunal entertained the PIL writ and issued a notice to Maharashtra Chief Secretary, State Energy Department, Environment Department, Union Power and Coal Ministry, Ministry of

Environment and Forest, Maharashtra Control Board, Coal India Limited seeking a reply by March 19, 2014. It is expected that the Division Bench of NGT will pass a verdict directing the Government of Maharashtra and its related agencies to adopt all measures with an immediate effect to control air, water, and environment pollution which is apprehended to harm about twenty million people of Vidarbha and also direct thermal power plant in Vidarbha to use clean coal technology. This PIL is intended to control air pollution as well as to render justice to people because air pollution is a horrible hazard to lifeⁱⁱ. (NGT takes serious note of pollution due to Vidharbha power plants, Feb 13, 2014, The Statesman)

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 justiciable 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.

Summary

Public Interest Litigation is a new judicial intervention as well innovations in securing social and economic justice to the poorer and the depressed. Justice Krishna Aiyar and Justice Bhagawati led this movement within the judicial system for bringing speedy trial and justice . The orphans, the destitute , the social outcastes, the depressed women , the under trials , the victim of custodial torture , the helpless and the poorer parents of the killed , now can plead for themselves without going into the rigorous procedure of litigation. PIL has become a sure judicial process for people to get justice which is often denied either by the executive or even by the judiciary or by the both.

The concept of locus standi also underwent metamorphosis and the expanded concept of locus standi assumed a significant part in the parlance of PIL. PIL cannot be initiated in the court of law on individual ground ; it must focus on public interest ; cause of environmental degeneration , air pollution , sound pollution and its prevention may benefit the people or children and be sought justice and remedied through court of law and can be dubbed to be a perfect example of PIL which are generally entertained by the highest court.

The court entertains a writ petition from a public spirited person or a social action group for the vindication of Fundamental Rights of a person who is unable to enforce them because he belongs to a class or group of persons who are at a disadvantaged position on account of poverty. Disability or other social or economic impediment and are unable to enforce these rights. The Supreme Court ruled that Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner and the courts to secure observance of the constitutional or legal rights.