Role of Public Interest Litigation in Protection and Promotion of the Human Rights and Fundamental Freedoms of the Deprived, Marginalised and Weaker Sections of the Society

Jai S. Singh[1]

I. Introductory Remarks:

In simple parlance the expression "public interest" means something in which some interest of the people in general or their rights and liabilities are affected. According to Stroud's judicial dictionary the expression 'public interest' means "a matter in which a class of the community have a pecuniary interest or some interest by which their rights or liabilities are affected"[2]. Thus, the expression 'public interest litigation' is to mean the legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

In the constitutional jurisprudence of India, public interest litigation is a unique phenomenon. This legal instrument is unparallel in the entire legal history of the world. This powerful instrument is concerned with the protection and promotion of the interests of a class or group of persons who are either the victims of State constitutional and legal authorities lawlessness, oppression, or social oppression or denied their constitutional and statutory human rights and fundamental freedoms. Further, this technique provides assistance to those weaker sections of the society who are not in a position to approach the court for the redressal of their grievances due to the lack of resources or ignorance or their disadvantaged social and economic conditions. In the area of human rights and fundamental freedoms, judicial activism was evolved in the post emergency period.

II. Public Interest Litigation— A Dynamic Approach:

In accordance with the constitutional and statutory system of adversarial actions, only the person aggrieved could approach the Court for the redressed of grievances. Thus, those class of the weaker section of the society who, because of their poverty, lack of resources, or economic disability and legal ignorance and illiteracy, could not reach the Court on their own approach, had to suffer gross violations of their human rights and fundamental freedoms. There was nobody in the society who could espouse their cause on behalf of them. Consequently, for the poor, the disadvantaged, ignorant, exploited and weaker sections of society, the legal procedure became a hindrance for the

1 LL. M., D. Phil., Reader, Faculty of Law, University of Allahabad. Email: jaishankarsingh08@gmail.com, Mobile N.-09451846407.

2 Stroud's *Judicial Dictionary*, Volume 4 (5th edition).

vindication of their human rights and fundamental freedoms. The Highest Court of the country realized this shortcoming and deficiency in our legal system. Certain Hon'ble Judges of the Supreme Court, particularly Justices P.N. Bhagwati and V.R. Krishna Iyer strongly started to disregard the restrains and constrains of Anglo-Saxon legal system to protect and promote the human rights and fundamental freedoms of the poor, illiterate, ignorant, disadvantaged and weaker sections of the society. This was done by granting the relaxations of the principles of *locus standi*. In the leading case of *S.P. Gupta v. Union of India*[3], Justice P.N. Bhagwati narrated the marvelous principles of court in the following unique words[4].

Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of fundamental right of such person or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. This novel classical principle invented by the Supreme Court of India affords a beautiful opportunity to any member of the public acting in a *bona fide* manner to espouse the cause of the victims of human rights and fundamental freedoms violations.

In essence, public interest litigation is a movement to involve the judicial process for the creation of norms of a just social order based upon the principles of justice and humanism. In this pious and novel movement, people participate in the activation of the judicial power for creating a regime of human rights and fundamental freedoms with the active support of the social activists. Public interest litigation seeks to hold the State instrumentalities within the leading strings of egalitarianism, humanism and fairness and correct by judicial admonition, episodes of governmental lawlessness and excesses of power or abuse of authority or lapses. Further, the public interest litigation activism addresses and confronts the domination formations in civil and civilized society. It activates public discourse on practices of power with the partnership of the media, legal academics, bar and the judges.

---

3 AIR 1982 SC 149. In *Janata Dal v. H.S.Chaudhary*, (1992) 4 SCC 305, the Supreme Court has re-examined the scope and object of public interest litigation. Also see *Bipin Chandra v. State of Gujarat*, AIR 1982 Guj. 99.

4 *Id.* at 210.

III. Human Right and Fundamental Freedom to Speedy Trial:

Hussainara Khatoon (I)[5] was the first reported case of public interest litigation seeking relief for the under-trial prisoners languishing in jails. The public interest litigation proceedings in this case resulted in the release of nearly 40,000 under trial prisoners, then languishing in Bihar jails. In this case the Supreme Court declared the right to speedy trial as a part of fundamental right to life and personal liberty under Article 21 of the Constitution. In that case, on the basis of a newspaper report that large number of men and women, including children were behind prison bar for years awaiting their trial in courts of law.

Expressing shock at such alarming disclosures, the Supreme Court in the absence of appearance by the respondent-State passed interim orders for their release and held that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as 'reasonable, just or fair' so as to be in conformity with the requirement of Article 21. It is necessary, therefore, that the law as enacted by the Legislature and as administered by the courts must radically change its approach to pretrial detention and ensure 'reasonable just and fair' procedure which has creative connection after *Maneka Gandhi*[6] case. Justice Bhagwati stated that longer period imprisonment of under-trials is a denial of human rights and withholding of basic freedoms. We are shouting from housetops about the protection and preservation of human rights. But, human right has no meaning in India, unless it is utilized for helpless and poor persons. He laid emphasis upon the poor person's human rights, jurisprudence.

Following the principles laid down in his earlier judgment *Maneka Gandhi v. Union of India*[7], Bhagwati J. held that even under the Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. He held that a procedure which does not provide a reasonably quick trial can not be regarded as 'reasonable, fair or just' and it would be violative of Article 21. Therefore, speedy trial means reasonably expeditious trial, and it is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. He expressly declared the right to speedy trial as a fundamental right[8].

Justice Bhagwati laid emphasis upon the human rights of men, women and children who were behind prison bar awaiting their trial in a court of law for years. In a country like India, where millions of people are living below poverty line, human right had no meaning for them. The objectives of human rights can be realised only if that may be available to poor and helpless persons. Human rights and fundamental freedoms of poor people must be protected otherwise they will be deprived of their real life and personal liberty. They cannot acquire benefits of

---

5 *Hussainara Khatoon v. State of Bihar,* A.I.R. 1979 SC 1360.

6 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

7 AIR 1978 SC 597.

8 AIR 1979 SC 1360 at 1365.

law and justice. If they are sent to prison they cannot exercise their human rights, therefore, the learned Judge declared the right to speedy trial as a fundamental right under Article 21 of the Constitution.

In *Hussainara Khatoon (II) case*[9], the Supreme Court considered the decision of the Government of Bihar to withdraw certain cases. The Court appreciated the decision of the Government and expressed its happiness. The Court re-emphasized the expeditious view for withdrawal of cases against under-trials for more than two years. The Court directed to the Social Welfare Department of the Government of Bihar to contact the women and children who had already been released on their personal bond and to arrange for looking after them. The Court also directed the jail authorities that, as and when they release any women and children on their personal bond they would refer them to the Social Welfare Department of the Government of Bihar to make arrangement for being their taken care of and look after. In *Hussainara Khatoon (III) case*[10], a counter-affidavit, filed on behalf of the Government of Bihar disclosed that few women prisoners were kept in jail without even being accused of any offence merely because they happened to be victims of an offence or they were required for the purpose of giving evidence or they were in protective custody.

The Supreme Court held that the expression 'protective custody' was a euphemism calculated to design what was really and in truth nothing but imprisonment. Thus, the Court imposed a duty upon the State to protect women and children who were homeless or destitute. The Court further directed that all women and children who were in jails in the State of Bihar under 'protective custody' or who were in jail because their presence was required for giving evidence or who were victims of offence should be released and taken forthwith to welfare homes or rescue homes and should be kept there and properly looked for.

In *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*[11], in continuation of Hussainara (I) and (III) the Court considered the affidavits filed in response to its earlier orders and addressed it to some of those issues again and passed further directions. A list was filed on behalf of the State of Bihar which showed that there were certain under-trial prisoners who were in jail for periods longer than the maximum term for which they could have been sentenced, if convicted. Justice Bhagwati held that the list disclosed a shocking state of affairs and betrayed complete lack of concern for human values. It exposed the callousness of legal and judicial system which could remain unmoved by such enormous misery and suffering resulting from totally unjustified deprivation of personal liberty. He directed that under-trial prisoners should be released forthwith because their detention was already illegal and in violation of their fundamental right guaranteed

---

9 *Hussainara Khatoon (II) v. Home Secretary, State of Bihar,* (1980) 1 SCC 91.

10 *Hussainara Khatoon (III) v. Home Secretary, State of Bihar,* (1980) 1 SCC 93.

11 (1980) 1 SCC 98.

under Article 21 of the Constitution[12].

In *Hussainara Khatoon (V) v. Home Secretary, State of Bihar*[13], the Court considered the extent to which directions in Hussainara (IV) had been complied with, passed further directions and gave more time where necessary.

In *Hussainara (VI) v. Home Secretary, State of Bihar*[14], in the matter relating to pending cases and their disposal to ensure speedy trial, the Court requested further details from the High Court and also directed the State Government to file affidavit in reply. A list was handed over to the Court of under trial prisoners who were accused of multiple offences and who had already been in jail for the maximum term for which they could be sentenced on conviction, even if the sentence awarded to them were consecutive. The Court held that they should be released because their further detention would be violative not only of human dignity but also of their fundamental right under Article 21 of the Constitution. But where the period undergone was less than that but still more than the maximum, if the sentences were concurrent they had to be released on a personal bond of Rs. 50 only without surety and without verification as to their financial insolvency.

In *Hussainara* series cases the Supreme Court recognized the 'right to speedy trial' and the 'right to legal aid services' as a fundamental right under Article 21 of the Constitution. The Court recognized the human rights of poor persons and afforded a new shape to the ambit of human rights. Through these public interest litigation judgments, Justice Bhagwati opened the door of human rights and fundamental freedoms to the poor and helpless people of India.

IV. Human Right and Fundamental Freedom to Protect and Promote Marine Environment:

For the protection and promotion of environment, the Apex Court has addressed the issues of environmental degradation such as vehicular pollution[15], leakage of oleum gas from a factory[16], danger to the Taj Mahal from Mathura refinery[17], degradation of Ridge area in Delhi[18], tanneries[19], and chemical

12 *Id.* at 107-108, para 10.

13 (1980) 1 SCC 108.

14 (1980) 1 SCC 115. Also see *Mantoo Mazumdar v. State of Bihar*, AIR 1980 SC 847, *Sant Bir v. State of Bihar*, AIR 1982 SC 470, *Mathew v. State of Bihar*, AIR 1984 SC 1554, *Kamladevi v. State of Punjab*, AIR 1984 SC 1895. *Anil Yadav. State of Bihar*, (1981) I SCC 622, *Khatri v. State of Bihar* (1981) I SCC 627, Veena Sethi v. State of Bihar (1982) 2 SCC 583.

15 *M.C. Mehta v. Union of India,* 1996 (1) SCALE 42.

16 *M.C. Mehta v. Union of India,* (1987) 1 SCC 395.

17 *M.C. Mehta v. Union of India,* (1996) 4 SCC 351.

18 *M.C. Mehta v. Union of India,* (1996) 1 SCALE SP-22, *M.C. Mehta v. Union of India* (1996) 6 SCC 756.

19 *Citizens Welfare Forum v. Union of India,* (1996) 5 SCC 647.

industries[20] and so on. The court has taken several activist measures to ensure compliance of pollution standards. The Apex Court has taken bold steps to protect and promote marine environment from the pollution caused by shrimp farming. In this regard *S. Jagannath v. Union of India* [21] is an important case decided by a Division Bench of the Supreme Court. The Apex Court held that before any shrimp industry or shrimp pond is permitted to be installed in the ecology fragile coastal area it must pass through a strict environmental test. There has to be a high powered "Authority" under the Act to scrutinize each and every case from the environmental point of view. There must be an environmental impact assessment before permission is granted to install commercial shrimp farms. The Hon'ble Supreme Court issued following directions:

1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal States/Union Territories. he authority shall be headed by a retired Judge of a High Court. Other members preferably with expertise in the field of aquaculture, pollution control and environment protection shall be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under section 5 of the Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-section (2) of Section 3. The Central Government shall constitute the authority before January 15, 1997.

2. The authority so constituted by the Central Government shall implement 'the Precautionary Principle' and 'the Polluter pays principles'.

3. The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in Para 2(1) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarswami report) which are practiced in the coastal low lying areas.

4. All aquacultures industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997. We

---

20 *In re Bhavani River Sakti Sugar Ltd*, (1998) 6 SCC 335.

21 *S. Jagannath v. Union of India & ors*, AIR 1997 SC 811. The case was heard by a Division Bench consisting of Kuldip Singh and S. Saghir Ahmad JJ. However, the judgment of the Court was delivered by Kuldip Singh, J. See also Indian *Council and Enviro-Legal Action V. Union of India,* (! 995) 3 SCC 77.

direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report in this respect shall be filed in the Supreme Court by these authorities before April 15, 1997.

5. The farmers who are operating traditional and improved traditional systems of aquacultures may adopt improved technology for increased production productivity and return with prior approval of the "authority" constituted by this order.

6. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used / converted for construction of shrimp culture ponds.

7. No aquaculture industry/shrimp culture industry/shrimp culture ponds shall be constructed /set up within 1000 meter of Chilka Lake and Pulicat Lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu).

8. Aquaculture industry/shrimp culture industry/shrimp culture ponds already operating and functioning in the said area of 1000 meter shall be closed and demolished before March 31, 1997. We direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish aquaculture industries/shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report in this respect shall be filled in the Supreme Court by these authorities before April 15, 1997.

9. Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the "authority" as constituted by this Court. Such industries which are already operating in the said areas shall detain authorisation from the "Authority" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date.

The Court further directed that any aquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, of the drinking water or wells and/or by the use of chemical feeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing silication turbidity of water courses and estuaries with detrimental implication on local *fauna and flora* shall not be allowed by the aforesaid Authority.

10. Aquaculture industry/shrimp culture industry/shrimp culture ponds which have been functioning/operating within the coastal regulation zone as defined by the CRZ Notification and within 1000 meter from Chilka and Pulikat Lakes shall be liable to compensate the affected persons on the basis of the "polluter pays" principle.

11. The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be pain to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

12. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters whom the amount is to be recovered, the amount to be recover from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrate of the area concerned. The Collector/ District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.

13. The Court further directed that any violation or non-compliance of the directions of the Supreme Court shall attract the provisions of the Contempt of Courts Act in addition.

14. The compensation amount recovered from the polluters shall be deposited under a separate head called "Environment Protection Fund" and shall be utilized for compensating the effected persons as identified by the authority and also for restoring the damaged environment.

15. The authority, in consultation with expert bodies like NEERI, Central Pollution Control Board, respective State Pollution Control Boards shall frame scheme/schemes for reversing the damage cause to the ecology and environment by pollutions of the coastal States/Union Territories. The scheme/schemes so framed shall be executed by the respective State Governments/Union Territory Governments under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the respective State Governments/Union Territory Governments and the Central Government.

16. The workmen employed in the shrimp culture industries which are to be closed in terms of this order, shall be deemed to have been retrenched with effect from April 30, 1997 provided they have been in Industrial Disputes Act, 1947) for not less than one year in the industry concerned before continuous service (as defined in Section 25-B of the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, six years wages as additional compensation. The compensation shall be paid to the workmen before May 31, 1997. The gratuity amount payable to the women shall be paid in addition.

Thus, the Central Government should constitute an authority under Section

3 (3) of the Environment (Protection) Act, 1986. It must confer on the said authority all the powers necessary to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas. The authority so constituted by the Central Government must implement 'the Precautionary Principle' and 'the Polluter pays principles' as directed by the Apex Court of the country. It was further directed that any violation or non-compliance of the directions of the Supreme Court shall attract the provisions of the Contempt of Courts Act in addition.

V. Protection and Promotion of Human Rights, Fundamental Freedoms and Human Dignity of Bonded Labourers:

The bonded labour system continues to be the most pernicious form of human bondage in our country. Under such system, a worker continues to serve his master in consideration of a debt taken by him. Bondage can be inter-generational or child bondage or loyalty bondage or bondage through land allotment. The public interest litigation on bonded labour seeks to implement the aims and objectives of the Act. The first leading public interest litigation on this subject was *Bandhua Mukti Morcha v. Union of India*[22]. However, most of the directions could not be implemented for many years. The Apex Court acknowledged its limited capacity in monitoring the schemes of rehabilitation. In 1992 the Apex Court recounted the history of the case.

It is important to note that there was not the slightest improvement in the conditions of the workers of the stone quarries. The litigation ended up with one more warning to the government to be responsive to judicial directions[23]. It is submitted, that the public interest actions focusing on the plight of bonded labourers have to some extent assisted the implementation of the aims and objectives of the Act. But the basic problem in the implementation of the aims and objectives of the Act is that emphasis is being placed only on the identification, release and rehabilitation of bonded labourers.

The Court has not made any effort to punish the owners of these labours. The real emancipation of bonded labourers would be achieved not by cutting them off from the life support system but rather by allowing them to work where they are working. It is an obligation of the Government to ensure them a reasonable wage and better living conditions. According to Dr. B. P. Dwivedi, "It is most important to give effect to the rehabilitation plans. There may be non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the Act" [24]. Further, a nationwide movement must be initiated

---

22 (1984) 4 SCC 161. Also *see Bandhua Mukti Morcha v Union of India* (2000) 10 SSC 104.

23 *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1992 S.C. 38. Also see *Mukesh Advani v. State of M.P.*, AIR 1985 SC 1363, *H.P. Sivaswamy v. State of Tamil Nadu*, 1983 (2) SCALE 45, *T. Chakkachal v. State of Bihar*, JT 1992 (1) SC 106.

24 Dr. B.P.Dwivedi,.*The Changing Dimension of Personal Liberty in India*, (Wadhwa & Company, Allahabad, 1998), p.188.

all over the country.

VI. Protection and Promotion of Human Rights and Fundamental Freedoms of Women:

Matters relating to human rights and fundamental freedoms of women have increasingly been brought before the Supreme Court with the growth of women's movement and investigative journalism exposing cases of dowry, rape, sexual harassment and discrimination based on gender. It is considered that investigation into crimes against women has been unsatisfactory and in some cases even the judges have shown gender *bias*. Further, there are complaints about long delays in final disposal of cases not only in lower courts but also in superior courts of the country.

In *Vishaka* case,[25] the Apex Court stated that sexual harassment of women at workplace constitutes violation of gender equality and right to dignity, which are fundamental rights. The Court pointed out that the existing civil and penal laws in India did not provide adequate safeguards against sexual harassment at work place. The Court laid down 12 guidelines to be followed by every employer to ensure prevention of sexual harassment. The Court remarked that all courts in India must interpret the contents of fundamental rights provided in Part III of the Constitution in the light of international conventions if the provisions of such conventions were not inconsistent with fundamental rights and other provisions of the Constitution.

In *Delhi Domestic Working Women's Forum v. Union of India*[26], at the instance of the petitioner, Delhi Domestic Working Women's Forum, through public interest litigation invoked the benign provisions of Article 32 of the Constitution to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault by seven army personnel in a running train while traveling by the Muri Express from Ranchi to Delhi. The victims were helpless tribal women belonging to the State of Bihar. They were vulnerable to intimidation. Notwithstanding the occurrence of such barbaric assault on the person and dignity of women neither the Central Government nor the State Government had bestowed any attention as to the need for provision of rehabilitate and compensatory justice for women. A three Judges Bench of the Supreme Court disposed of the writ petition with certain basic observations and directions. Delivering the decision Mohan, J. stated that it is rather unfortunate that in recent time, there has been an increase in violence against women causing serious concern. Rape does indeed

---

25 (1997) 6 SCC 241. The principles laid down in this case were followed with approval in *Apparel Export Promotion Council v. A. K. Chopra*, AIR 1999 SC 634.

26 *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14. The principles laid down in this case was accepted with approval in *Budhisattwa Gautam v. Subhra Chakraborty*, AIR 1996 SC 922.

pose a series of problems for the criminal justice system. There are cries for the harshest penalties, but often times such crimes eclipse the real plight of the victim. The learned Judge observed:

Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behavior and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings[27]. The learned Judge further observed:

We will only point out that the defects of the existing system: Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself[28].

The learned Judge laid down the broad parameters in assisting the victims of rape which are as follows:

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well- acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient movement, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the

27 *Id.* at 18-19, para 13.

28 *Id.* at 20, para 14.

police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity to the victims must be maintained, as for as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

The learned Judge held that in the present situation, the National Commission for women such scheme as to wipe out the tears of such unfortunate victims. Such a scheme shall be prepared within six months from the date of this judgment. Thereupon, the Union of India will examine the same and shall take necessary steps for the implementation of the scheme at the earliest.

Thus, the Supreme Court, with a view to assisting rape victims, has laid down various broad guidelines. These guidelines include the legal assistance, anonymity, compensation and rehabilitation to rape victims. The National Commission for Women was directed to evolve a scheme for providing adequate safeguards to these victims.

It is submitted that the decision recognize the right of the victim to compensation by providing that it shall be awarded by the court on conviction of the offender subject to the finalization of the Scheme by the Central Government. If the court trying offences of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation which should also be provided in the Scheme.

VII. Protection and Promotion of Human Rights and Fundamental Freedoms of Persons Suffering from Hunger:

The Apex Court of the country has declared various social rights such as right to means of livelihood, right to adequate health care, right to housing, right to education as aspects of 'Right to Life' guaranteed by Article 21 of the Constitution of India[29]. In *People's Union for Civil Liberties case*[30], an action regarding fundamental right to food was arisen out of starvation death in certain parts of the

---

29 *Francis Coralie v. Union Territory of Delhi,* AIR 1981 SC 746, *Bandhua Mukti Morcha v. Union of India,* (1984) 4 SCC 161, *Chameli Singh v. State of U.P.,* AIR 1996 S.C. 1051; *Samatha v. State of A.P.,* AIR 1997 SC 3297, *Unni Krishanna v. State of A.P.,* AIR 1993 SC 2178, *State of Punjab v. M.S. Chawla,* AIR 1997 SC 495.

30 *People's Union for Civil Liberties v. Union of India,* (2001) 7 SCALE 484.

State of Orissa gave rise to a claim that right to food should be recognized a human right and fundamental freedom. The Apex Court has issued certain directions to the State government from time to time to take preventive and curative measures to avoid starvation deaths and provide for adequate food supply to the needy people.

In *People's Union for Civil Liberties case*[31], a petition was filed seeking a direction for the enforcement of Famine Code and immediate release of food grains lying in the stocks of the Government. The petitioners were also sought requiring the Government of India to frame fresh schemes of Public Distribution for the Scientific and Reasonable Distribution of food grains.

The Highest Court of the country remarked that despite the fact that plenty of surplus food grains were lying in the stocks of the Union of India or drought affected areas, people were dying of starvation. The Court pointed out that between 2001 and 2003 it had issued various directions to see that food was provided to the aged, infirm, disabled and destitute men and women who were in danger of starvation, pregnant and lactating women and destitute children especially in cases where they or members of their family did not have sufficient funds to get food. It was unfortunate that plenty of food was available but distribution of the same was among the very poor and destitute was scarce leading to starvation, malnutrition and other related problems. Mere schemes without implementation were of no use. The Court strongly remarked[32]:

> Article 21 of the Constitution protects for every citizen a right to live with human dignity. Would the very existence of life of those families, which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide adequate aid to such families? Reference can also be made to Article 47 which *inter alia* provides that the State shall regard the raising of level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

In its report of January 17, 2003, the National Human Rights Commission stated that right to food should be declared as a guaranteed fundamental right[33]:

By way of public interest litigation the matter of denial of human right to food and means of livelihood was brought to the attention of the Apex Court by way of public interest litigation in *Kapila Hingorani case*[34]. The Public interest litigation came out of a newspaper report that due to non-payment of salary for a long time resulting in starvation of an employee of Bihar State Agro-Industries

---

31 *People's Union for Civil Liberties v. Union of India*, 2003(9) SCALE 835 and 840.

32 *Id.* at 836.

33 National Human Rights Commission Order January 17, 2003, Case No. 37/3/97: Coram: Justice J.S. Verma, Chairperson, Justice Sujata V. Manohar and Sri Virendra Dayal.

34 *Kapila Hingorani v. State of Bihar,* (2003) 6 SCC 1.

Development Corporation, the employee tried to immolate himself. This employee later succumbed to burn injuries suffered by him. It was also reported that apart from the employees of public sector undertakings, even the teaching and non-teaching staff of unaided schools, madarsas, and colleges had been facing the similar fate. It was reported that about 250 employees died due to starvation or committed suicide owing to acute financial crisis resulting from non-payment of salary to them for a long time.

It was held that corporate entities are liable to respect the life and liberty of all citizens in terms of Article 21 and also their own employees. The Court came to conclusion that food, clothing, and shelter are core human rights in a civilized society. The State of Bihar made itself liable to mitigate the suffering of the employees of the public sector undertakings and government companies. The Court issued directions to the State of Bihar to deposit Rupees 50 crores with the High Court for disbursement of salaries to the employees of the corporations. The Court pointed out that hunger was a violation of human rights and fundamental freedoms. Further, the State has an obligation to satisfy basic human needs.

To deal with the problem of foodgrains rotting in godowns, in the leading case of *People's Union for Civil Liberties v. Union of India*,[35] the Supreme Court on August, 12, 2010 asked the Government of India to consider distributing them at "very low cost" or "no cost" as a short term measure. A Division Bench consisting of Justices Dalveer Bhandari and Deepak Verma passed the order, taking on record the affidavit filed by the Centre in response to the suggestions made by the Apex Court on July 27, 2010. While dealing with the problem of food grains, "which is rotting", the government could consider increasing the quantum of food supply to the population Below Poverty Line (BPL), opening the fair price shops for all the thirty days in a month and distribute food grains to the deserving population at a very low cost or no cost.

The Apex Court made it clear that the Centre must ensure food security of the country. In view of the record procurement which the Centre was not able to properly store and preserve, it would be appropriate that the Centre might take some long term and short measures to solve the problem. It said, "Permanent solution lies in constructing adequate storage facilities. The Union of India may consider constructing at least one large Food Corporation of India gowdown in every State and consider the possibility of construction of one godown in every division if not in every district of the State".

Further, on August, 31, 2010, the Supreme Court made it clear that it had ordered free distribution of food grains to the poor instead of allowing it to rot in gowdowns. It was not a suggestion as made out by Agriculture Minister Sharad Pawar. The Court made it clear that, "It was not a suggestion. It is there in our order. You tell the Minister". The Court told the advocate of Government of India.

---

35 *The Hindu*, New Delhi, August 13, 2010 at p. 13.

The Supreme Court had on August 12, 2010 asked the Union Government to consider free distribution of food grains to the poor instead of allowing it to rot in Food Corporation of India gowdowns.

In a public interest litigation filed by civil rights groups the *People's Union for Civil Liberties* (PUCL) on rampant corruption in Public Distribution System (PDS) besides rotting of food grains in Food Corporation of India gowdowns. Following this, Minister for Agriculture in Centre Mr. Sharad Pawar had stated that it was not possible to implement the "suggestion" of the Apex Court for free distribution.

On August, 31, 2010, the Supreme Court, a Division Bench consisting of Justices Dalveer Bhandari and Deepak Verma referred to newspaper reports quoting Pawar that the Supreme Court had only made a suggestion and it was not an order. The Court stated "it was not a suggestion. It is there in our order. You tell your Minister. Let him not misunderstand our order". Justice Verma told Additional Solicitor General Mohan Parasan[36].

The Court directed the Government to conduct a fresh survey of the BPL/ ABPL/AAY beneficiaries on the basis of the figures available for 2010 and said the authorities cannot rely on a decade-old data to extend the benefits. The Bench further said the Government must take urgent steps to prevent further rotting of food grains while maintaining that it must procure only that much quantity which it can preserve. The Apex Court reiterated its earlier order that persons above poverty line shall not be entitled to subsidized food grains but if the Government was determined to extend the benefit, the same shall be given to those families whose annual income is below Rs. Three lakh[37]. Thus, the Court directed the Centre to consider increasing quantum of food to BPL population. It directed to the Centre to distribute food grains at very low or no cost. The Court passed the order, taking on record affidavit filed by the Centre.

VIII. Criticism, Contribution and Future Dimensions of Public Interest Litigation Movement:

Public interest litigation has given beautiful results which were unthinkable nearly 35 years ago. Tortured, under-trials and women prisoners, humiliated inmates of protective women's home, blinded prisoners, degraded bonded labourers, exploited children, beggars, and many others have been granted relief through assistance of judiciary. The most important contribution of public interest litigation has been to extend the responsibility and accountability of the State instrumentalities towards the protection and promotion of human rights and fundamental freedoms of the poor, ignorant, illiterate, humiliated and weaker sections of the society.

It is important to state that there are certain limitations and shortcomings of

---

36 *The Hindu*, New Delhi, September 1, 2010 at p. 1.

37 *The Times of India*, Lucknow, September 1, 2010.

public interest litigation. Sometimes public interest litigation actions may give rise to the problem of competing rights. For instance, when a Court gives directions to close a polluting industry[38], the interests of the workmen and their families who are deprived of their livelihood is not considered. The construction of a dam to provide water to the public at large may deprive other citizens their human right to shelter[39]. A court order for the closure of a polluting abattoir may deprive the means of subsistence of the butchers[40]. In brief, it may be stated that judicial activism will not automatically achieve the aims and objectives of social justice and social empowerment. It is considered that public interest litigation emphasizes litigation as a means of social change. Thus, it widens the dependency of the poor, ignorant, illiterate and victim groups on the non-governmental organizations and voluntary organizations. It does not provide any effective participation of these groups who remain passive depending upon the efforts of others. Judicial activism interrogates power. It tries to make the Courts as people's Court.

Human rights and fundamental freedoms of the of the poor, helpless, ignorant, illiterate, disadvantaged groups and weaker section of the society will be better protected and promoted by subjecting public interest litigation to discipline and control that should be limited only to the cases focusing on hapless victims of domination and inactions of State instrumentalities. The misuse of public interest litigation for every conceivable public interest might dilute the original commitment. The public interest litigation proceedings must be utilized only for the protection and promotion of human rights and fundamental freedoms of the poor, helpless, ignorant, illiterate, and victimized, the disadvantaged groups and weaker section of the society.

IX. Concluding Observations:

In the modern era of globalization and universalization social action litigations has become the household word for judicial involvement for the protection and promotion of the human rights and fundamental freedoms of the poor, oppressed and weaker sections of the society. In the last few years, extensive literature has come into picture on the role of public interest litigation in the direction of social justice, social change and social empowerment. With the leading role of non governmental organizations, voluntary organizations, active assistance of social activists and human rights leaders public interest litigation activism aims at innovative remedial measures for the vindication of constitutional commitments for the welfare and relief of the deprived, marginalized and disadvantaged groups.

In brief, the public interest litigation has become an effective method for seeking protection of human rights, promotion of rule of law and preservation of

---

38 *M.C. Mehta v. Union of India,* (1997) 11 SCC 227, 312, 327.

39 *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

40 *Buffalo Traders Welfare Association v. Maneka Gandhi, 199* 4 Supp (3) SCC 448.

democracy. It holds the State and its instrumentalities within the limits of constitutionalism and provides redress to citizens against the governmental repression, lawlessness and misuse of power. The most important contribution of public interest litigation has been to enlarge the accountability of the State and its instrumentalities towards the protection and promotion of human rights and fundamental freedoms of the poor, oppressed and weaker sections of the society. The judiciary is playing an activist role through public interest litigation. It has become more assertive and responsive to the new challenges of the modern times. Public interest litigation has widened the legitimacy and prestige of the judiciary. It has brought the higher courts closer to the people of India. The expanding horizons of public interest litigation are resented by the bureaucracy as also the politicians because it exposes their actions or inactions to public accountability. The public interest litigation has emerged as a weapon to the deprived, marginalized and weaker sections of the society for whom justice was considered beyond reach. Public activism interrogates power. It makes the Courts as people's Court. The public interest litigation makes the Supreme Court the people's court.