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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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PUBLIC INTEREST LITIGATION (A GOLDEN KEY TO SECURE JUSTICE FOR THE POOR)

AUTHORED BY - VEDANTI GONGLE,
D.E.S' s Shri Navalmal Firodia Law College, Pune.

ABSTRACT

This article examines the intersection of Rabindranath Tagore's 'Gitanjali' with Indian politics, Public Interest Litigation (PIL) as a solution to justice for the marginalized community. The importance of the path. Discusses how the Constitution's Leaders, Principles and Role align with the idea to uplift the poor and oppress. This article examines the role of Article 39A in ensuring equal justice and changes in the judicial system under Articles 32 and 226 that provide greater access to the courts for those whose rights have been violated. The role of the judiciary in protecting the right to life has been brought to light in some important cases involving the residents of Mumbai. In addition, this article discusses concerns about the misuse of PILs and compares them to the public interest in the United States, the former Soviet Union and the People's Republic of China. Finally, the analysis highlights the importance of ethics for finding justice based on the idea of law making and Tagore's vision of a compassionate society.

This is my prayer of thee, my Lord –

*strike, strike at the root of penury in my heart. Give me the strength never to disown the poor
or bend my knees before insolent might.*

-GITANJALI

-Rabindranath Tagore.¹

¹ Gitanjali poem available at https://www.academia.edu/42804718/THIS_IS_MY_prayer_to_thee_my_Lord_poem_from_Gitanjali, last seen on 19/10/24.

Introduction:

The preamble, the directive principles and the fundamental duties of our Constitution are essentially the summary of the views and ideas which are found in Gitanjali of Rabindranath Tagore. These poems refer to obligations and duties towards the neglected poor and weaker section of the Society. It starts with the prayer which praise the Almighty Lord to strike at the root of penury of the heart to give the strength never to disown the poor and bend his knees before the insolent might. Another poem refers to the mind which is expected to be without fear, to have awakening into ever-widening thoughts and actions and help the tireless who are striving to stretch their arms towards perfection. On this background the Public Interest Litigation can be considered as an instrument, which extends legal aid to the poor masses and weaker sections of the society. This section of society which is about 40 percent below poverty line constitute the majority of the people in India. The State or Public Authorities against whom the Public Interest Litigation is brought by social workers or by public institutions are expected to welcome such litigations as it would result in ensuring basic human rights, constitutional as well as legal rights to those who are a socially in and economically disadvantageous position. This has become a controversial subject and requires clarification, clear thinking and explanation on certain dimensions of the subject matter.

This subject has raised several important questions including sch questions as- What is meant by Public Interest Litigation? Who can file sch petition? Is it required to be filed under Article 32 in the Supreme court of India, or under Article 226 in the High court? What is the view of the Supreme court and various High courts when entertaining sch petitions?

Legal Aid to Poor:

Article 39A² has been added to the Directive Principles in order to ensure equal justice promoted to all citizens by the preamble, and further guarantee equality before the Law (Article 14³) which was of assistance to the poor man so long as he is unable to pay his legal advisor and pay for the Court proceedings. This amendment was made in 1976 when it was found that, though several welfare laws were enacted under our Constitution to realize the goal of social justice, these have remained only on paper without being properly implemented. The total indifference and failure of the legislative wings in the implementation of such socio-economic

² INDIA CONST, art. 39 cl. A

³ INDIA CONST, art. 14

legislation give rise to certain issues. Non-implementation of these legislation affected the proper sections of society. The judiciary therefore was expected to set right the situation of changing the century-old “outlook”. It was said that while reaching the decision in implementation of socio-economic legislation, the operators of the State organizations, including the judiciary, failed to examine the social climate in interpreting the welfare laws. Some of the Courts still continue to stick to old rules of construction without any regard to new constitutional jurisprudence and human rights. The old rules on locus standi and cause of action are required to be liberalized in the backdrop of socio-economic changes contemplated through various social welfare legislations. It created more and more new categories of rights in favor of masses and a corresponding new category of duties on the public authorities.

Writ Petition under Art. 32:

“While interpreting the maintainability of writ petitions under Art. 32 of the Constitution, the Supreme Court further held that it must be borne in mind that the Court’s approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which this article has been enacted as a fundamental right in the Constitution and its interpretation must receive illumination from the trinity of provisions which permeate and energize the entire Constitution, namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy. It is clear on the plain language of Clause (1) of Article 32⁴ that whenever there is a violation of a fundamental right, anyone can move the Supreme Court for enforcement of such fundamental right. Of course, the Court would not, in exercise of its discretion, intervene at the instance of a meddlesome inter-Loper or busy body and would ordinarily insist that only a person whose fundamental right is violated should be allowed to activate the Court. Where however, the fundamental right of a person or class of persons is violated, but who cannot have resort to the Court on account of their poverty or disability or socially or economically disadvantaged position, the Court can and must allow any member of the public acting bonafide to espouse the cause of such person or class of persons and move the Court for judicial enforcement of the fundamental right of such person or class of persons. This does not violate, in the slightest measure, the language of the constitutional provision enacted in Clause (1) of Article 32.

⁴ INDIA CONST, art. 32 cl. 1

To Serve Public Purpose

While referring to the Public Interest Litigation which came up before the Supreme Court in a very well-known case of the Pavement Dwellers⁵ in the slums of Bombay, the Supreme Court has held that the Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedom conferred upon him by the Constitution. A confession made by him in a proceeding, whether he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceedings. Such a confession, if enforced, would defeat the purpose of the Constitution. Where the argument of estoppel is valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedom on promise of transitory, immediate benefits. (*Miss Olga Tellis vs. Municipal Corporation of Greater Bombay*).⁶

Right to Livelihood:

The Supreme Court further observed that “the right to live includes the right to livelihood”. The sweep of the right of life conferred by Art. 21⁷ is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right of life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to life is conceded. That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprivation of person of his right to livelihood and you shall have deprived him of his life.

⁵ Pavement Dwellers Report no. 138 available at <https://www.advocatekhoj.com>, last seen on 17/10/24.

⁶ *Miss Olga Tellis Vs. Municipal Corporation of Greater Bombay* AIR 1985 SC 805-1985 (3) SCC 545

⁷ INDIA CONST, art. 21

These writ petitions were filed on behalf of persons who live on pavements and in slums in the city of Bombay, they constitute nearly half of the metropolitan population. The first group of petitions relate to pavement and basti's of slum dwellers. Those who have made pavements their homes exist in the midst of filth and squalor, which has to be seen to be believed. Rabid dogs in search of stinking meat and cats in search of hungry rats, keep them company. They cook and sleep where they please, for no conveniences are available to them. Their daughters come of age, bathe under the nosy gaze of passers-by, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other's hair. The boys beg. Men folk, without occupation, snatch chains with the connivance of the defenders of law and order; when caught, if at all, they say "Who does not commit crimes in this city?".

Prevention of Misuse of Provision:

The Supreme Court however has always taken care to see that provisions under the pretext of public interest are not misused. In one of the cases where directives were issued to Government in a petition filed by the parents of a student for taking steps against ragging in a medical college in the State of Himachal Pradesh. In this case, the Supreme Court has held that public interest litigation is a weapon which has to be used with great care and circumstances and the judiciary has to be extremely careful to see that under the guise of redressing a public- grievances, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. In this, on the basis of a letter written by a guardian of a student of a Medical College in Shimla, the letter was treated as a petition and the High Court issued notice to the College Authorities and the Government. The High Court gave various directives, including a directive to constitute a committee for reporting in the matter. On the submission of the report which contained a recommendation for legislation, the High Court directed the Chief Secretary to inform the court as to what action the Government proposed to take on the recommendation to initiate legislation for curbing ragging. This directive was given in spite of the Chief Secretary's categorical assurance in that regard referred from *The State of Himachal Pradesh vs. parents of student of medical college*⁸.

⁸ *The State of Himachal Pradesh Vs. Parents of student of medical college* AIR 1985 SC 910, 1985 (3) SCC 169.

U.S.A., U.S.S.R. & REPUBLIC OF CHINA:

In the U.S.A., Public Interest Litigation is also known as social action litigation. In USA, petitions are filed against the injustice caused on the issues like pollution, environment etc. The question of filing the petition for social action litigation or Public Interest Litigation does not arise. For example, in a country like the USSR, the constitution confers upon the citizens the right to have education, free medical facilities, employment etc. which are considered as the directive principles under our Constitution. In the USSR, all organs of power and administration have the duty to protect the rights of citizens in the Soviet State. The courts have a special duty in protecting their labor, housing and other property rights of citizens. One of the primary tasks of the courts in the USSR is to provide protection for the labor rights of industrial and office workers. The right to judicial protection is one of the most important guarantees in the protection of labor rights of industrial and office workers.

While referring to the judicial and legal system in the People's Republic of China, the question of social action litigation does not arise there, in as much as all properties are owned by the Government. Every dispute, criminal or civil, is disposed of within three months. Article 53 of the Constitution of the People's Republic of China 1984 confers the right of equality on women in all spheres of political, economic, cultural, social and family life. People's courts are formed as prescribed by law. The People's Courts apply the system whereby representatives of the masses participate as an assessor in administering justice. With regard to major counter-revolutionary or criminal cases, the masses should be drawn in for discussion and suggestions. People's courts are heard in public except those involving special circumstances as prescribed by law.

The Supreme Court supervises the administration of justice by local people's courts at various levels and by special people's courts; people's court at the Higher levels supervise the administration of justice by people's courts at lower levels. The Supreme People's Court is responsible and accountable to the National People's Congress and its standing committee. Local people's courts at various levels are responsible and accountable to local people's congress at the corresponding levels. In socialist countries, the Governments themselves are required to take care of masses and weaker section of the society along- with the people who are better-off and affluent.

Conclusion:

While referring to the public interest litigation in the form of implementing the codified laws, one is reminded about the fact that the founding fathers of our Constitution were influenced by the reading of Bhagwat Geeta, Bible, Quran and other religious commentaries. In the Bhagwat Geeta, it refers to the message of “**Mukam Karoti Vachalam Pangum Langhayate Girim**” which means, “Make the dumb to speak” “Make the disable able”. This is what is contemplated in our Constitution. A study of Public Litigation (PIL) within the framework of the Indian Constitution demonstrates a commitment to social justice. As the judiciary continues to grapple with the complexities of litigation, it must strike a balance between the need to address public grievances and the need to prevent misuse of the law. The right is an essential part of the right to life. The evolution of PILs reflects a shift towards justice that recognizes the need for greater access and advocacy for those who cannot voice their concerns. Accordingly, PILs become an important tool to empower the weaker sections and ensure that the principles of equality and justice are not only enshrined in law but also succeed in practice. In a country like ours, which is economically and socially underdeveloped having a population of 40% below the poverty line, public interest litigation is one of the greatest needs of the 21st century and the centuries to come.

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