

to make the failed welfare State work. However, the accompanying neo-liberal policy prescriptions of these institutions in the form of structural adjustments, privatization and liberalization further alienated the poor from the Indian State. That is how two clear tendencies in governance became clear by the mid-90s.

The first set of actors, led by the World Bank, advocated 'good governance' to address resource leakage, misappropriation and mismanagement of the loans taken from the Bank and to ensure that there would be relatively less risk in credit a management and repayment. This was more for strategic reasons than any commitment to the democratic principles of public accountability and transparency. The second set of proponents of transparent governance have been grassroots action groups (like the Mazdoor Kisan Shakti Sangathan in Rajasthan) and advocacy organizations who sought Government accountability as part of the citizen's right to know and the right to participate in governance.

The Jan Sunwais (public hearings) and social audits initiated by MKSS in Rajasthan are a well-known example of a process of mobilization that combines a rights-based approach with people's participation. The

people's planning process in local self-governance in Kerala promoted by the Kerala Shashtra Sahitya Parishad (KSSP) is another example of participatory practices with a rights-based perspective. The Community Learning Movement for accountable governance, promoted by the National Centre for Advocacy Studies (NCAS), is an example of a rights-based praxis, based on the principles and practice of participation. Thus the new movements and institutions are working to advance the right to accountable governance and ensure that the people's right to participate in governance and development are the basic premises for people-centred governance and development.

In spite of the relatively greater visibility and legitimacy of the human rights discourse, the meaning and utility of rights is still a highly contested arena. Though India has ratified five of the six covenants (ICCPR, ICESCR, CEDAW, ICCRC, and CERD) and conventions that constitute the legally-binding international human rights treaties, the implementation of these rights is rather poor. Although the new policy papers and the documents of the Planning Commission of India increasingly use the right language, in terms of real programmes and implementation of the performance of the Government of India is far from satisfactory.

THE ROLE OF SOCIAL ORGANIZATIONS IN PROMOTION OF HUMAN RIGHTS OF WOMEN *VISA-VIS* PUBLIC INTEREST LITIGATION

By

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"Women constitutes half the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and owns less than one hundredth percent of world's property".

Introduction :—Though constituting half the population of the world and often referred to better half of a man, women, infact, had the worst deal at the hands of the society till very recently. They were always

treated as an appendage of man and are subject to physical and sexual exploitation. She was wife, mother and unpaid worker in the household. When old, she was discarded and disregarded, when widowed, she was considered to be a “fair game for all”. (Human Rights Challenges Dr. S. Subrahmanyam page 172).

The plight of the women is pathetic in the society. The Rights and liberties that are available to a human being, sometimes denied to women. In such a denial the status of women some times is not remembered as a ‘human being’. Since such denials are increasing alarmingly, a necessity arose in traumatic experience and shock of the women to raise the voice for their rights at least ‘human being’.

If there is one single ideology widely accepted round the world today, it is the concept and ideology of Human Rights. Out of the dark days of the two world wars in the century, when human dignities stood compromised as never before in human history, was born human rights movement¹.

Human Rights and Human Rights Law have become familiar expressions in recent years. The expression Human Rights refers to a wide range of Rights. Some of them directly guaranteed in the Constitution and some of them inferred through the elaboration of legal and constitutional provisions by the higher Courts and some that exist only at the level of political belief and expression and are yet to achieve the status of law.

These rights include the constitutional fundamental rights pertaining to life and liberty, protection to minorities and socially disadvantaged sections viz., women, the rights of women to maintenance and protection from marital harassment and physical abuse at the hands of men *etc.*

In asserting for protection the individuals concerned, have *locus standi* in the Courts of law and also in the society, but in reality they are not in a position to assert their rights because of the infirmities basing on which, the protections were granted. Women, particularly, are in a disadvantageous position in the society. Now they are courageous to fight for the cause in the Courts, yet the clutches surrounded them are not permitting. To safe guard their interest, Social Workers, Activists and Organizations are in a step ahead then the individual women are concerned. The objects and intentions of such protectors have been recognized by the Courts of law and permitted the appeals of organizations, filed in the interest of public as Public Interest Litigations (PIL). The movement of human rights is often brought to the notice of the Higher Courts under Public Interest Litigation.

Human Rights of Women-Indian Approach :

Having believe “Protection of Women’s Rights is the protection of Human Rights” and as a signatory to international covenants India assumed the responsibility of providing and protecting various rights of women. Therefore the concept of “equality and non-discrimination” finds its place in the Preamble of Indian Constitution itself. The Preamble declares quality of status and opportunity is one of the Fundamental Duties of every Indian. The farmers of Indian Constitution having realized the significance of basic natural rights which are required for the development of human being have incorporated under Articles 14, 19, 23, 25, 29 and 32 as Fundamental Rights in Part – III of the Constitution.

The women are equally entitled with men to exercise the above fundamental rights. The women and children are designated as disadvantaged class and safe guards have been afforded to them.

1. Key Note Address by Justice Subash C. Pratap CJ., of A.P. on 11-8-1991 Reported in 1991 3 ALT Journal Page 28.

Though the constitution had guaranteed the fundamental rights to women, in reality a woman has been facing several obstacles to enjoy the rights. The main constraints in her way includes social attitudes, non co-operation from the members of the family, costly and delayed system of justice, and above all poverty, literacy, ignorance *etc.* The existing laws leave much scope for harassing women, in cases involving violence against women.

Having noticed the practical difficulties and that the justice is not being secured by individuals concerned, the Central and State Legislatures enacted separate statutes and separate forums, which are more accessible to the needy, are specified. In spite of stringent enactments came into force the oppressed individuals did not open their mouth, so the grief was felt by society in general and social workers in particular.

Human Rights of Women- The Role of Social Organizations :

The social organizations are acting with sense of participation to become the dream a reality. This is known as Karuna which means compassion and not pity. Compassion and pity are two different attitudes of life.

Compassion implies a sense of duty and, therefore a commitment to help is the object of compassion. This creates a mutual relationship between man and man, woman and woman with compassion to the other.

The social organizations which consist of true social workers are playing an important and vital role in getting the sufferings of so many solved in a systematic and sophisticated system. In India the social organizations are working with a commitment that they are working for the society at large, picking out the causes of individual. Their fight may be on one's grievance but in reality the movements of social organizations are looked at and in the interest of the public. The days

fighting for prohibition are not faded out in the memories of every woman. The fire was set on, by an individual in a smallest place Dubagunta in the world. But it was taken as a torch by innumerable social organizations for eradication of Alcoholic habits. It was achieved because of some true social workers who had a commitment to the object.

In achieving their object, the social organizations are in direct confrontation, either with legislature or executive. The movement for Human Rights did not escape from the looks of social organizations as and when reported or noticed, they are agitating for protection of Human Rights. Thus the social organizations some times reshaping the policies may be in politics or of the persons.

Having gained such an important role, the social organizations attracting the attention of everybody, yet the enlightened should keep vigilance over the activities of the state. As rightly pointed out by eminent persons Eternal Vigilance is the price of democracy, achieved only through constant efforts.

Amnesty International :

Amnesty International is a leading Non-Governmental Organization which has been working for the cause of protection of Human Rights at Global level. Established about 30 years back has many thousand of local groups in more than 100 countries consists of 5,00,000 active members. It primarily works for the release of all prisoners of conscience, fair and prompt trials of political prisoners and abolition of torture and death penalty. Its reports on India have created considerable heat and debate in the country. Its basic concern has been the individual in the cell. It has established contact with National Human Rights Commission through Indian agency. More and more Human Rights workers are relying on its reports, publications, and data in their work.

Indian Organizations :

About twelve reputed social organizations are working in India under the guidance of intellectuals who devoted most of their time for the public causes in different parts of the country. A.P. Civil Liberties Commission is one of such organizations striving to procure the basic rights for the citizens particularly against the acts of State violence.

Thus the problems of the poor people are being taken to the Court in the shape of public interest litigation.

Public Interest Litigation :

To fulfill the objectives of the Preamble of Indian Constitution a new and latest feature is development of "Public Litigation" which has opened a new chapter in the Indian Judicial system. Though it is new to Indian judiciary, it has roots from 1876 in U.S.A. The basis for Public Interest Litigation is said to be *Gideon's* case of U.S.A. (*Gideon v. Wain Wright*, 372 N.S. 335). Where in *Gideon* addressed a letter to Apex Court that he was not heard by the trial Court on the ground that he was a pauper. The letter was treated as a petition by Apex Court of U.S. and relaxed the procedural laws. The judgment of Supreme Court of U.S. for the present days emerged as a basis for the theory of Public Interest Litigation.

The Council of Public Interest Laws setup by the Ford Foundation in U.S.A. defined the Public Interest Litigation as follows. "Public Interest Law" is the name that has recently been given to provide legal representation to previous unrepresented groups and interest"..... such groups and interests included the poor, environmentalists, consumers, racial and ethnic minorities and other¹.

Having taken a lead from U.S.A., *Krishna Iyer*, J., initiated the concept in the year 1976 in *Mumbai Khamgar Sabha v. Abdulla Modh*, AIR 1976 SC page 1455. He expressed and reaffirmed his feelings with regard to PIL in number of cases. The concept was further developed by *Chandrabud*, CJ., and *Krishna Iyer*, J., in *Fertilizer Corporation Khamgar Union v. Union of India*, AIR 1981 SC 344. However the full scope of Public Interest Litigation was analyzed by *Bhagawathi*, J., in *S.P. Gupta v. Union of India*, AIR 1982 SC Page 149.

The concept of public interest litigation relaxed the rigid rule of *locus standi* in filing petitions. But such relaxation is made available when any issue of public importance, any case of atrocities. Suffering of any person or determinate class is brought to the notice of the Court, even though the rights of the petitioner are not affected.

In the combat against violation or denial of human rights like the social organizations the judiciary has vital role to play. The field of Public Interest Litigation is readily available to the Higher Courts under Article 32 or 226 of Constitution of India, as the case may be.

Public Interest Litigation and Human Rights-Judicial Approach :

The land mark case in Public Interest Litigation is that of *Boka Thakur's* case, who was released from jail after a period of 25 years spent as under trial prisoner. (Law Relating to Custodial Death and Human Rights by R.S. Verma)

The Supreme Court took notice of mass violation of Human Rights in Bhagalapu Jail and directed to investigate, in a petition filed under Public Interest Litigation. (AIR 1982 SC Page 1008).

The purpose of Public Interest Litigation as declared in *Bihar Legal Support Society v.*

1. Report by the Council for Public Interest Litigation, U.S.A 1976 Quoted in Public Interest Litigation – A study – AIR 1993 Journal Page 17.

Chief Justice of India in clear terms by Supreme Court is to bring justice within the easy reach of the poor and the disadvantaged sectors of the community. (AIR 1983 SC Page 339).

The *locus standi* of a social organization was confirmed by Supreme Court in *People Union for Democratic Rights v. Union of India* since the petition was for the benefit of workers. The bonded labour were released by the Supreme Court and a petition filed by a social organization Bhandhu Mukti Morcha against Union of India. (AIR 1984 SC Page 803).

A social worker, *Shiela Barse* was paid, Rs.10,000/- for the expenses, by the Union of India to ascertain a fact whether children below the age of 18 years are detained in jails in different states of the country in *Shiela Barse v. Union of India*. 1986 (3) SCC Page 596.

National Federation of Blind filed a petition against Union Public Service Commission in Supreme Court and got an order that persons who are blind or partially blind are eligible to write civil services examination in Braille Script or with the help of a scribe. (1993 (2) SCC Page 411).

Public Interest Litigation and Human Rights of Women :

Not only for the protection of Human Rights but also for the protection of women's rights, the social organizations invoking the jurisdiction of Higher Courts under Public Interest Litigation.

In *Delhi Domestic Working Women Forum v. Union of India*, 1995 (1) SCC Page 14, the Supreme Court laid down guidelines for assisting rape victims.

The judgment, on reading in detail, speak in volumes that the concept of the public interest litigation has further widened and that the judiciary is working with compassion.

The broad guidelines indicate the new concept of rehabilitation of women victims and payment of compensation to them. They also impose an obligation on the part of the State to provide legal assistance in the police station itself to the women victim.

The atrocities against women are being increased day by day even in the civilized society. The Supreme Court directed the Government to pay compensation of Rs.75,000/- to mother victim since her 9 years son died because of beating of police officer. The cause was taken up by an organization known as SAHELI on behalf of the mother and filed the petition in its name against the Commissioner of Police. (AIR 1990 SC Page 513).

In *Vishaka v. State of Rajasthan*, 1997 (6) SCC Page 241, a Division Bench of the Supreme Court headed by the Chief Justice J.S. Verma laid down guidelines as a remedy for the legislative vacuum. The Apex Court was of the opinion that a law should be enacted to curb the evils of the modern society particularly with regard to sexual harassments caused to women at work places by their male counter part or any other member of the society.

In *Apparel Export Promotion Council v. A.K. Chopra*, 1999 (1) Supreme Page 110 = 1999 (1) ALD (SCSN) 26, the Apex Court held that punishment of removal of a male employee from service after he has been found guilty of sexual harassment of a female colleague is proper and reasonable, on the ground that sexual harassment of a female at the place of work is a form of 'gender discrimination against woman' and is incompatible with the dignity and honour of a female and needs to be eliminated.

Public Interest Litigation as an AID to enforce the Rights of Women – An Appraisal:

The cases of individual women victim are rare in Indian Judiciary because of the

poverty, unawareness of the rights and oppression in the society. From the centuries together the women are placed in disadvantaged status. Though want to raise their voice, were not encouraged to open the mouths. Their grievances were suppressed by themselves. To break the shell of suppression, an individual or organization was invited by them and the social organizations took the lead and the judiciary extended its co-operation through Public Interest Litigation. A catena of decisions of Higher Courts certifies that Public Interest Litigation is intended for the causes of public in general and women in particular. If a women victims cause was brought its notice, no Court hesitated to relax its procedure conditional in Public Interest Litigation. *Shiela Barse*, *SAHELI*, *Vishaka*, *Apparel Export Promotion Council* cases are some of land marks in the work out of restoration of women's right. Delhi Domestic Working Women's Forum's Case known as *Mouri Express Case* is a classic example for assertion of women's right. The law books do not contain in clear terms that rape victim is given a right of rehabilitation, legal aid and compensation. The judgment in *Mouri Express case* directed to set Criminal Injuries Compensation Board, to restore financial loss to rape victims. The problems in the event of pregnancy were also taken into consideration. All this has happened because of the evolution of the concept of Public Interest Litigation.

Rights of Women – Recent Legislative Safeguards :

Taking into a consideration of alarmingly increase of the violence against women at domestic levels and sexual harassment of woman at work places the Indian Legislation has taken protective measures by enacting Protection of Women from Domestic Violence Act, 2005 (Act, 42 of 2005 which was passed by the Lok Sabha on 24-8-2005

and Rajya Sabha 29-8-2005). The Provisions of Act, 43 of 2005 are elaborately discussed, defined the Rights of Women and the nature of violence against them at domestic levels and also provided the Forums and penalties. It is a welcoming enactment by the Parliament and it is in recognition of the women as a human being with Human Rights.

In view of the judgment of the Apex Court in *Vishaka's* case (supra), the Parliament had to come forward to prepare a bill under the name of the protection against sexual harassment of women bill, 2005 and the draft of the said bill is under debate of the Parliament. The proposed enactment as per the draft bill provides, though complicated procedure to the needy, has a welcoming and important sections to the victimized women at work places. The bill has to be passed by both houses of the Parliament to pass an Act. It is also an important enactment to protect the Right of a woman at work place. It is also necessary, in view of the increase of number of woman joining in services and rendering services at different levels in different organizations both in public and private sectors in day times and also during night hours.

Conclusion :

In view of alarming increase in violation of Human Rights and Women's Rights the social organizations are shoulder with a divine responsibility of protecting the same through Public Interest Litigation. The social organizations should not feel that they are handicapped and has no support from any section of the Constitution. The judiciary, as the Supreme, is extending its full co-operation and support in favour of protection of Human Rights and opened its doors for public grievances. It is the high time for every one to use Public Interest Litigation as a means to enforce their rights particular the women.