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## **ROLE OF LAW AND LEGAL INSTITUTIONS**

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# Role of Law and Legal Institutions

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**Abstract – For the protection of individual's rights and liberties law was recognized as the mighty instrument. Whenever the right and liberty of an individual was encroached by another, the injured individual could seek the protection of law with the assistance of the king or sovereign however powerful the opponent (wrongdoer) might be. Sovereign's power to punish keeps the people in righteous path. With the changing society and changed mindset of people the concept of righteousness has been diluted therefore the need of stringent laws were sought. The law, according to western jurisprudence, is an imperative command which is enforced by some superior power or sovereign. The objective of law is to promote and ensure justice. The principles of law provide certainty and uniformity to the justice administration system. The courts are the legal institutions which ensure the justice. The present paper would talk about the PIL as an instrument to poise the competing security and interests of different stakeholders in the society.**

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## INTRODUCTION

Law is an instrument to balance the clashes of interests in the society. All societies claim rules or regulations to manage the actions of their members. While people in society have right to enjoy certain freedoms, those freedoms cannot be supreme for the reason that one person's use of freedom may unfavorably influence another person's independence of rights. Usually everyone wants for justice and fairness in laws; however, justice and fairness is subjective. Laws are rules and regulations which governs the activities of persons within a country. They provide necessary rules and balance the various interests of different members of the community.

Both natural persons and legal persons are bound by laws of the country they exist in. From these laws they can determine what they are allowed to do and what they are not allowed to do. Some laws forbid certain actions, such as theft and murder, while other laws affirm that persons must accomplish conditions prior to commencing certain actions or must comply with specified regulations. For example a license must be obtained prior to legally running a riding school and a company must have a registered office. Laws are not the alike in every country around the world, even though often countries have alike laws.

The meaning of law has been variedly dealt in different schools of jurisprudence. In natural law school it is inherent in nature based upon morality, just, ethics, freedom, liberty. Austin called the law as a command of sovereign. Savigny in his 'Volkgeist Theory' emphasized that law is the inner conscience of the people. Law is what people follow customs and

traditions i.e. social institutions. Ihering said that law is a result of continuous struggle for social interests. Dean Roscoe Pound stressed on the functional not individual interest. In Realistic School, law is subject to the various cases decided by the courts. Law emanates from the courts not from the society or state made laws.

## EVOLUTION OF LAW AS AN INSTRUMENT IN INDIA:

Law in India has evolved from religious directions to the contemporary constitutional and legal system we have at present, traversing all the way through secular legal systems and the British common law. India has a documented legal history starting from the Vedic period. Law as a matter of religious instructions and philosophical dialogue has a well-known history in India. Emanating from the Vedas, the Upanishads and other religious texts, it was a fertile field enriched by practitioners from different Hindu philosophical schools and later by Jains and Buddhists. Secular law in India varied widely from region to region and from ruler to ruler. Court systems for civil and criminal matters were essential features of many ruling dynasties of ancient India. Excellent secular court systems existed under the Mauryas (321-185 BCE) and the Mughals (16<sup>th</sup> – 19<sup>th</sup> centuries) with the latter giving way to the current common law system.

In modern societies laws are made to control the behaviour of the individuals and institutions whereas, In primitive societies the folkways, customs and customs suffice to control the individual behaviour since there is unquestioned compliance with them but in modern civilized societies customs tend to loosen

their hold with the result that laws are enacted by the State to control the individual. The transition from custom to law is just a part of the general rationalization in modern society. Thus law becomes necessary to ensure order in the society. The legal system during British rule was distinct in presidency towns (as Presidencies of Bombay, Calcutta and Madras) on the hand and rest of India (as Mofussil) on the other hand.

### PROTECTION OF INTERESTS:

As Dean Roscoe Pound has stated that the function of law is to reconcile the conflicting interests of individuals in the community and harmonize their inter-relations. He termed this as 'Social Engineering' and enumerated the various interests which the law and legal institutions should seek to protect and divided them as:

- i. Individual Interests
- ii. Public interests
- iii. Social interests

In order to balance these interests the concept of Public Interest Litigation had been rapidly developed as social engineering, as was determined by Justice Krishna Iyer in the case of *Mumbai v. Abdullah Bhai* 1976. Then again it was developed in the case of *Fertilizer Corporation Kamgar Union v. UOI*, 1981 by then Chief Justice of India, Justice Chandrachud and Justice Krishna Iyer.

Thus to fulfill the objectives mentioned in the Preamble of Constitution of India the Supreme Court has clarified the awakening of judiciary. In *P.V. Kapoor v. UOI*, 1992 the SC held that PIL is a new form of petitions. Its nature is to secure the public interests where remedies do not reach to paupers, discarded and socially-economically backward people.

### ROLE OF LEGAL INSTITUTIONS:

The Supreme Court is the guardian of the Constitution. The judiciary is an arm of social revolution upholding the equality. A novel and recent feature of Indian Legal System is the rapid growth and development of Public Interest Litigation. The Supreme Court and High Courts have entertained petitions and 'letters' not only by the persons or persons who are 'aggrieved' or 'adversely affected' in the strict sense of the term by any action or omission by the respondents but also institutions acting pro bono public. The beginning of the public interest litigation is assumed by the analysis given by Justice P.N. Bhagwati in *S.P. Gupta v. UOI*, 1982.

The High Courts in India do have authority to take up the matters suo motu. The High Courts have been authorized to issue writs of habeas corpus, mandamus, and prohibition certiorari and quo warranto

for the enforcement of the fundamental rights and 'for other purposes'. The Supreme Court may issue the writs only for the enforcement of fundamental rights not for other purposes. The power of the High Court to issue writs in the nature of habeas corpus cannot be abbreviated even in emergency.

### CONTRIBUTION OF SUPREME COURT IN PIL:

Public Interest Litigation was introduced in India to provide redress where a legal wrong or injury was caused to a person or to a determinate class of persons. PIL would apply where such persons were, for reasons of poverty, helplessness, or social or economic disadvantages, unable to approach the court for relief. Unlike other countries, in India this legal phenomenon has been thought of more as social action litigation- a means whereby the needs of disempowered victims could be addressed. Law is not autonomous but embodied the priorities of those involved in establishing and maintaining a legal system. In order to obstruct the personal or political benefits, the Supreme Court has declared certain standards for the approval of petitions as PILs. They are as follows:

- i. Matters of bonded labour
- ii. Discarded children
- iii. Minimum wages of workers if not paid
- iv. Rehabilitation of children of prostitutes; economically or socially
- v. Atrocities, prevention in jails after completion of 14 years sentence, speedy trial
- vi. Non acceptance of FIR by police, death in the police custody
- vii. Atrocities against women, rape, murder, abduction etc.
- viii. Pollution control, ecological imbalance, medicines, adulteration in food, conservation of culture and heritage etc., forest and wild life
- ix. Rapid investigation by CBI on ministers and bureaucrats
- x. Family pensions

### CASE LAWS:

*S.P. Gupta v. UOI*, 1982, also known as Judges transfer case, the Hon'ble S.C. held that any member of the public having 'sufficient interest' can approach the court for enforcing constitutional or legal rights of other persons and redressal of a common grievance.

*PUDR v. UOI*, 1984 known as *Asiad* case wherein the Contractors were violating the labour laws and

fundamental rights under article 14, 17, 21, 23 and 24 of the Constitution of India. The Hon'ble S.C. held that PUDR had locus standi to file a petition for enforcement of various labour laws under which certain benefits are conferred on workers,

Bandhua Mukti Morcha v. UOI, 1984, the court treated the 'letter' as writ petition by the organization and appointed a commission consisting of two advocates to visit the stone quarries situated in Faridabad district of state of Haryana and make an enquiry and reported to the court about the existence of bonded labourers. The labourers were working under the inhuman and intolerable conditions.

In Hussainara Khatoon v. State of Bihar, 1979 S.C. held that free legal aid and speedy trial as a fundamental right is implicit in the guarantee of life and personal liberty under article 21 of the Constitution of India. The court ordered the Bihar Government to release immediately the under trial prisoners on their personal bonds.

In D.S. Nakara v. UOI, 1983 the S.C. held that a registered society, non-political, non-profit making and voluntary organization is entitled to file a writ petition under article 32 for espousing the cause for the large number of pensioners who are unable to approach the court individually.

In M.C. Mehta v. State of Tamil Nadu, 1991 the SC held that children cannot be employed in match factories as it is a hazardous employment. They can however be employed in packaging process but it should be done in area away from the place of manufacture. Every child must be insured for a sum of Rs. 5000 and the premium to be paid by employer as a condition of service.

M.C. Mehta v. UOI 1986 (known as Sriram foods & fertilizers case), the Hon'ble S.C. directed the company manufacturing the hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighborhood, to take all necessary safety measures before reopening the plant.

Nilabati Behera v. State of Orissa, 1995 is a case related to custodial death of a deceased aged about 22 years. The S.C. has laid down the principle on which compensation is to be awarded by the court under article 32 & 226 to the victim of state action. Compensation provides relief by way of 'monetary amounts' for wrong done due to breach of public duty of not protecting the fundamental rights of the citizen.

Vishakha v. State of Rajasthan 1997, the S.C. directed that prevention of sexual harassment of women at workplace must be done by the employer either the institution is private or public.

Gaurav Jain v. UOI 1997, the S.C. held that-

1. The directions issued in public interest are constitutional and valid if issued by any of the judge of the bench of Supreme Court. It forms precedent under article 141.
2. The dignified life is a fundamental right under article 21 for the prostitutes and their children.
3. It's the duty of the state to provide education, healthy atmosphere and economic-social rehabilitation to the prostitutes and their children.

Vineet Narayan v, UOI 1998, the S.C. held that any citizen has public right to file petition against persons engaged in corruption. CBI is free to investigate severe matter of corruptions like HAWALA. In the case of J. Jayalalitha v. State of Tamil Nadu 1999, the S.C. held that any person can file petition against the misuse of public property in the State.

## **CONCLUSION:**

The law and legal institutions are working in the form of Social engineering. Huge opportunities are emerged in the decisions given in number of Public Interest litigations for the development of social harmony. However there exists a gap between the advancement of the people and the legal system of the country. It cannot be denied that the lack of flexibility in law results in hardship and injustice in several cases. Hence the static nature of law is not desirable for a progressive society. The judiciary has often reinstate and assured the principles of law to the ends of justice. Differences in judicial responses to certain constitutional doctrines and their applications lend scope for vivid understanding of the role of the court and the scope of the remedial process. Public interest litigation has reaffirmed the Indian law to a great extent.

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