



Case Study

Protection of Women's Rights in India Through PIL: An Analysis of The Vishaka Case

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ABSTRACT

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The Indian Supreme Court played a very important role by using Public Interest Litigation for the enforcement of Fundamental Rights to the underprivileged and the marginalized sections of society. The concept of 'pro bono Público' litigation was introduced first by Justice Krishna Iyer. It was further elaborated and enforced by Chief Justice P. N. Bhagwati in the judge's case. In the concept of the protection of women's rights, the Vishaka judgement delivered by Justice Verma is a landmark pronouncement in which the provision of CEDAW was involved by applying the principle of incorporation. This judgement created the conditions conclusive for the enactment of various laws in India for the promotion of women's rights in India. This paper seeks to explain the tool of PIL about women's rights with a detailed account of the Vishaka Case. The study process on the impact and significance of the case and analysis of the present state of women in India despite specific and special constitutional safeguards and statutory provisions and judicial intervention.

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Introduction

General Concepts of Human Rights

Despite being fundamental to political science, the idea of human rights is not well understood. Not only are established and developing nations at odds over this concept, but the East—which stands for former communist states—and the West—which stands for liberal-democratic states—are also at odds over it. The communist nations of the East put more value on the community and the unwavering interests of class, whereas the so-called First World of the West considered the individual to be of utmost importance. Due to the community's superior protection of their rights, the individual benefited from these communal rights. Compared to the liberal-democratic governments, the former communist countries gave greater weight to civil and political rights and maintained that economic, social, and cultural rights were intimately tied to the social class structure of the society in which they were found (Vijapur, 2010).

Following the Eastern or Western model of human rights, the newly emerging Third World states placed a strong emphasis on collective rights, including the right to development, the right to a healthy and ecologically balanced environment, the right to peace, the right to own the common heritage of humanity, and the right to self-determination of peoples, including sovereignty over their natural resources. Additionally, they assert that economic and social rights are inextricably linked to civil and political rights and are invisible (Vijapur, 2010).

As a result, the scope and content of the current idea of human rights are extensive. There are three categories of rights included in it:

- Political or civil
- Cultural and social; and
- The newly developing rights of the collective or group
- The list of rights is actually growing every day.

The conditions of existence that enable us to fulfill our spiritual demands and fully utilize our human characteristics of conscience and intelligence are known as rights. When rights are denied to us, our personalities cannot grow. They are essential to who we are as humans; without them, we could not survive. Human rights impact everyone's daily life, including that of men, women, and children. They are not only a theoretical topic for philosophers, political scientists, and attorneys. (Vijapur, 2010).

Gender Perspective of Human Rights

Whether a culture is mature, developing, or undeveloped, women have a special place in it. This is especially because of the many phases of their lives—as a sister, mother, wife, and daughter, among others. She nonetheless belongs to a class or group in society that is disadvantaged due to a number of obstacles and hindrances, notwithstanding her contributions and involvement in every human being's life. She has been subjected to despotism by the dominant males in society. When compared to women in other regions of the world, the status of Indian women is identical. She is

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revered, highly regarded by everybody, and seen as the epitome of morality and tolerance on the one hand. She has, however, endured many sufferings, tragedies, and crimes brought about and supported by a civilization ruled by men.

In independent India, however, constitutional protections were established, stating that discrimination against any individual on the basis of sex, caste, color, or any other criterion is prohibited and that all people are equal before the law. The Constitution provides women with various protections that are based on their financial status. Regretfully, however, practical action to match the rhetorical commitment to gender equality has not been taken (Rout, 2017).

International Framework of Women's Rights

Gender equality has been one of the most important human rights guarantees since the United Nations was founded. The 1945 Charter of the United Nations lists one of its objectives. "To reaffirm belief in the equality of men and women, in the dignity and worth of the human being, and in fundamental human rights."

1948 saw the creation of the Universal Declaration of Human Rights. Additionally, it stated that all of its rules applied equally to men and women, "Without distinction of any kind, such as sex." After careful consideration, the word "All men" was used throughout the Declaration's drafting process rather than phrasing that would be gender-neutral. Ultimately, the wording "all human beings" and "everyone" were added to the Universal Declaration in order to allay any worries that it was intended for men and women equally. (Samour, n. d.)

Vienna Declaration and Programme of Action

Vienna hosted the World Conference on Human Rights in 1993. It aimed to assess the state of the human rights apparatus that was in existence at the time. Women's rights advocates came together under this catchphrase to ensure that the world community gave full consideration to women's human rights. "Human Rights Include Women's Rights."

Tribunals were formed by civil society activists, particularly in regard to the issue of violence against women, to draw attention to rights abuses against women that had gone unreported because they were believed to be private concerns. The conference was able to establish the Vienna Declaration and Programme of Action, which emphasized eradicating gender-based violence and said that women's and girls' rights are an integral part of universal human rights.

The Commission on the Status of Women

By United Nations Economic and Social Council resolution 2/11 in 1946, the Commission on the Status of Women was created with the aim of "preparing recommendations and reports to the (Council) on promoting women's rights in political, economic, civil, social, and educational fields."

Every year, the Commission gets together to adopt consensus statements on the major issues that are allocated to that year. The consensus conclusions contain a summary of the successes, flaws, and challenges as well as particular recommendations for governments, international organizations, civil society, and other interested parties. Additionally, the Commission adopts resolutions on a variety of subjects related to women's rights.

The Commission has made a substantial contribution to the advancement of women's rights over its whole history. It has played a key role in the creation of important international legal and policy documents, such as the Beijing Declaration and Programme for Action, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Declaration on the Elimination of Violence Against Women.

Women's Right to an Adequate Standard of Living

Everyone has the right to enough food, clothes, and shelter for themselves and their family, as well as the right to ongoing improvements in living conditions, according to the International Covenant on Economic, Social, and Cultural Rights. Women's rights to a respectable standard of life are inextricably tied to their rights to employment, food, water, sanitation, and social security.

For women's equality and the benefit of society as a whole, their rights to land, property, and housing are essential. Women's control and rights over property, including land, particularly in rural economies, define their living conditions and are essential to their daily survival, financial security, and physical safety as well as that of their children. Despite the fact that women and female-headed households benefit greatly from these rights, women nevertheless experience a disproportionate lack of tenure security. When property is registered in the name of a man—that of a parent, sibling, or spouse—this is often the case. In the event of a separation, divorce, or widowhood, the man or his family typically keeps their rights to the land or property; however, the woman either becomes homeless or is forced to share the property with her in-laws without any authority over it (Settlements & Sweden, 1999).

Millennium Development Goals

Eight time-bound development objectives, including one on maternal mortality reduction and one on gender equality and women's empowerment, were agreed upon by the international community in 2000 and were set to be accomplished by 2015.

The third Millennium Development Goal focuses on women's rights and aims to empower and advance gender equality. But its matching goal is limited to doing away with gender differences in schooling by 2015. Although granting girls access to school is essential to attaining gender equality, this specific goal is insufficient to track advancements in women's empowerment and gender equality.

Goal 3 also contains indicators, but no deadlines or benchmarks, regarding the proportion of women in paid jobs in national parliaments and the non-agricultural economy.

In 2010, the Secretary-General launched the Global Strategy for Women's and Children's Health, which featured important global efforts to enhance the health of women and children. To achieve significant progress, gender equality and human rights must be included in both the post-2015 development agenda and the Millennium Development Goals.

Constitutional Provisions for Women's Rights

Gender equality is supported by the Indian Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles of State Policy. The Constitution not only guarantees equality for women but also grants the State the power to pass laws that discriminate positively against men. Within the framework of a democratic society, women's advancement in a variety of disciplines has been the focus of our legislation, development strategies, plans, and programs. Furthermore, India has accepted several international treaties and human rights accords that ensure the equality of women. An important one is the 1993 ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Khan, 2019).

Preamble

The Indian Constitution's Preamble states that all of its people shall have access to social, economic, and political justice, meaning that neither males nor women should be excluded from the benefits of justice. Once more, the Indian Constitution's preamble lists a number of objectives, one of which is "the quality

of status of opportunity" for all Indians, male and female. (Rout, 2017).

Fundamental Rights

Article-14 offers men and women "equality before the law."

Article-15(1) says that "the state is not to discriminate against any citizen on grounds only on religion, race, caste, sex, place of birth or any of them."

Article-15(3) says that "the state to make any special provision in favour of women and children."

Article-16 provides "equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state."

Article-19 ensures that every person, male and female, has "the right to freedom of speech and expression."

Article-21 provides that "No person (both men and women) shall be deprived of his life or personal liberty except according to procedure established by law".

Article-23 of the Constitution expressly forbids the trafficking of persons.

Article-25 By the Indian Constitution, all people, men and women alike, are equally entitled to freedom of conscience and the freedom to openly profess, practice, and spread any religion, subject to the community's health, morals, and public order (Laxmikanth, 2015).

Directive Principles of State Policy

Article-39 (a) asserts that "equal rights to an adequate means of livelihood are enjoyed by all citizens, men and women alike."

Article-39 (d) guarantees that "men and women receive equal compensation for equal work."

Article-39 (e) distinctly instructs "the state not to abuse the workers' strength and health, both men and women."

Article-42 instructs "the state to make provisions for maternity relief and for securing just and humane conditions of work."

Article-46, the state is directed to "promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation."

Article-47, stated that "raise the level of nutrition and the standard of living of its people" (Laxmikanth, 2105).

Fundamental Duties

Article-51 (a) (e) is especially relevant to women and states: "Every Indian citizen shall endeavor to foster harmony and the spirit of common brotherhood among all Indians, transcending religious, linguistic, regional, and sectional diversities, and to abstain from practices demeaning to the dignity of women" (Laxmikanth, 2015).

Women's Representation in Local Bodies

Article-40 "The state shall take steps to organize village panchayats," according to Directive Principles of State policy. Articles 243-D and 243-T of the 1992 Constitution's 73rd and 74th Amendment's reserve seats for women in elections to panchayats and municipalities. (Laxmikanth, 2015).

Legislative Provisions of Women's Rights

The State has enacted several laws to uphold equal rights, combat social discrimination, put a stop to different types of violence and atrocities, and offer support services, particularly to working women, in order to carry out the Constitution's mission.

The following are some laws that specifically protect the rights and interests of women:

1. The Family Courts Act, 1954
2. The Special Marriage Act, 1954
3. The Hindu Marriage Act, 1955
4. The Hindu Succession Act, 1956 with amendment in 2005
5. Immoral Traffic (Prevention) Act, 1956
6. The Maternity Benefit Act, 1961 (Amended in 1995)
7. Dowry Prohibition Act, 1961
8. The Medical Termination of Pregnancy Act, 1971
9. The Equal Remuneration Act, 1976
10. Indecent Representation of Women (Prohibition) Act, 1986
11. Commission of Sati (Prevention) Act, 1987
12. The Protection of Women from Domestic Violence Act, 2005
13. The Prohibition of Child Marriage Act, 2006
14. The Protection of Children from Sexual Offences (POCSO) Act, 2012
15. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
16. The Criminal Law (Amendment) Act, 2013

Special Initiatives for Women

National Commission for Women: The government created this statutory institution in January 1992 specifically to do research, monitor matters relating to women's legal and constitutional safeguards, examine existing legislation and suggest amendments as necessary, etc (Anuradha, n.d.).

Reservation for Women in Local Self-Government: Regardless of whether they live in an urban or rural area, women are guaranteed one-third of the seats in all elected local authorities by the 73rd Constitutional Amendment Acts, which were passed by Parliament in 1992.

The National Plan of Action for the Girl Child (1991-2000): The strategy is to guarantee the female child's survival, safety, and growth with the ultimate goal of laying the groundwork for a better future for her.

National Policy for the Empowerment of Women, 2001: A "National Policy for the Empowerment of Women" was created in 2001 by the Ministry of Human Resource Development's Department of Women and Child Development. This strategy's main objectives are the advancement, development, and empowerment of women.

Judicial Intervention of Women's Rights

The process of judicial intervention gives all legislatively adopted laws and constitutional provisions their true significance and purpose. Court cases have addressed the Constitution's mandate as well as the several statutes that support women's protection from discrimination in a number of spheres of their social, economic, and political lives. India's higher courts have established a gender jurisprudence that has given the Constitution's protection against discrimination against women substance and life through a range of tactics, such as social action litigation, judicial activism, judicial review, and the duty to protect fundamental rights. An extensive summary of the court's involvement in several situations where decisions have been made to improve women's status is provided below.

1. **Court involvement in the education-related issue:**
 - *P. Sagar v. State of Andhra Pradesh*
 - *Padmaraj Samarendra v. State of Bihar*

2. **Court Involvement in Employment Matters:**
 - *Miss C.B Muthamma, I.F.S v. Union of India*
 - *Air India v. Nargesh Meerza and others*
 - *A.N. Rajamma v. State of Kerala*
 - *Peoples Union for Democratic Rights v. Union of India*
3. **The Judiciary's Humanitarian Intervention with Sex Workers and Sexually Abused Women**
 - *Budhadev Karmaskar v. State of West Bengal*
4. **The judiciary's involvement in preventing acid assaults and controlling and limiting the sale of acid**
 - *Laxmi v. Union of India*
5. **The judiciary's role in maintaining the criminal law's particular provisions for women**
 - *Yusuf Abdul Aziz v. State of Bombay*
 - *Sowmithri Vihnu v. Union of India*
 - *Revathi v. Union of India*
6. **The recognition of women's guardianship rights by judicial intervention**
 - *Githa Hariharan v. Reserve Bank of India*
 - *ABC v. The State (NCT of Delhi)*
7. **Long-term judicially inferred cohabitation as regarded marriage**
 - *Dhannulal and ors. V. Ganeshram and ors*
8. **The judiciary's role in upholding women's rights in relation to surrogacy maternity benefits**
 - *P Geetha v. Kerala Livestock Development Board Ltd*
9. **A judge granting women the same property rights as males**
 - *Pratap Singh v. Union of India*
 - *Jagannath Pillai v. Kunjithapadam Pillai*
10. **The court's role in defending rape victims**
 - *Delhi Domestic Working Women's Forum v. Union of India*
 - *Chairman, Railway Board v. Chandrima Das*
 - *State of Madhya Pradesh v. Madan Lal*
11. **The judiciary's function in defending women's freedom**
 - *Surjit Singh Thind v. Kanwalji Kaur*
 - *Lata Singh v. State of Uttar Pradesh*
12. **Judicial Intervention in protection of women from exploitation**
 - *Gaurav Jain v. Union of India*

Public Interest Litigation in India

A number of rulings by Indian Supreme Court judges in the late 1970s and early 1980s helped to establish PIL. Their intention was to "promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed (Hashim, 2013).

Through PIL, the Court has addressed a very wide range of human rights issues, including rights abuses, suffered by women. "PIL is a response to the needs of society, particularly the society of women who have been badly treated for centuries." Women in India had not been politically mobilized enough to bargain in an electoral setting or to raise the resources necessary to support struggles through the adversarial judicial process. The development of PIL is therefore of critical importance to the advancement of gender justice in India.

Landmark PIL Case

This part focuses on an important Supreme Court judgement- Vishaka v. State of Rajasthan, a 1997 decision combating sexual harassment in the workplace. This case study illustrates variations in the judiciaries and petitioner's approaches toward litigation regarding women's rights, as well as the critical impact of the context in which such actions are brought.

Vishaka v. State of Rajasthan

Vishaka has been described by former Supreme Court justice Pal as "one of the more notable successes of judicial action in redressing violence against women" and recognized by the CEDAW Committee as a "landmark judgement [in India's] tradition of PIL." The Vishaka Court promoted gender justice by directly applying the provisions of constitutional and international law to enact enforceable guidelines against sexual harassment in the workplace, at a time when the public was mobilized to embrace a judicial solution to a significant void in domestic legislation.

Background

The Vishaka PIL case arose out of the gang rape of Bhanwari Devi, a member of a group of women called *sathins*, who are trained by the local government to do village-level social work for honorarium compensation. As part of a governmental campaign against child marriage of one-year-old girl in rural Rajasthan. Members of the local community retaliated first by harassing Bhanwari Devi with threats and imposing a socio-economic boycott on her family. Then, on September 22, 1992, five men raped Bhanwari in the presence of her husband.

Judgement

A three-judge bench of the Supreme Court delivered the Vishaka judgement on August 13, 1997. The decision, written by then-Chief justice J. S. Verma, described Bhanwari Devi's gang rape as an illustration of "the hazards to which [a] working woman may be exposed," "the depravity to which sexual harassment can degenerate," and the urgent need "for safeguards by an alternative mechanism in the absence of legislative measures." The court accepted the responsibility of addressing these matters "by means of the legal system, in order to bridge the gap in the current legislation."

Using a broad reading of the text, the Vishaka verdict recognized sexual harassment as "a clear violation" of the core constitutional rights to equality, non-discrimination, life, and liberty, as well as the ability to follow any job. The Court also cited the Directive Principle of the Constitution, which mandates that the state provide fair and compassionate labor conditions and maternity leave, as well as the Fundamental Duty it places on all Indian citizens to abstain from actions that diminish the worth of women. Worldwide recognition has been accorded to the common minimal acceptances of this right.

Response

A prime example of the workings of PIL-based judicial activism is the Vishaka case. By passing anti-sexual harassment principles into law, critics fear the Court "stepped outside its bounds" and into the "domain of Parliament." But one of the ruling's supporters contended that "Parliament abdicated its responsibility by not taking action on a relevant and very much identifiable problem, and the Court then actually had to step in to plug the gap, otherwise, there may not have been a solution to the problem at all."

The Vishaka rules have been scrupulously adhered to in the public sector. Several government agencies, such as the Central Board of Secondary Education, the Sports Authority of India, and the Ministries of Defense, Agriculture, and Human Resources,

have established internal committees to investigate complaints of sexual harassment (Chadha, 2018).

Impact

The Vishaka verdict has raised awareness of sexual harassment in Indian workplaces and increased accountability for it, which has had a profound effect on the public. Chief Justice D.Y. Chandrachud of the Supreme Court of India discussed the significance of the PIL ruling, saying, "At first, we felt Vishaka was just an elaboration of doctrine." However, if you look at it now, there has been a huge influence in the last four to five years. Women are more conscious of sexual harassment when there are regulations in place, which have been established by public institutions. Everything gets clearer and more organized. Now that there is a platform for talking about these concerns, more women are prepared to come out in the open.

The CEDAW Committee's General Recommendation 19 defines sexual harassment and offers recommendations for state-level initiatives to stop it. The Vishaka Court backed the broad application of international law by highlighting the public promises made by the Indian government at the U.N. Fourth World Conference on Women in Beijing, as well as its legal duties under CEDAW. Justice Verma stated in a recent interview that the reason Vishaka is a milestone case is that it paves a new route. It created new opportunities for the integration of international law into domestic legislation, not just for the purpose of combating sexual harassment. Parliament approved two Acts in reaction to the 2013 Vishaka ruling: the Criminal Law (Amendment) Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

Importance of Context

The Vishaka case serves as a reminder of how crucial well-coordinated mobilization and public acceptance are to a PIL lawsuit's success. The victory of Vishaka was also greatly aided by the Indian media, which gave the case thorough attention, highlighting the crucial influence that public opinion has on PIL proceedings. As a result, the public and other governmental bodies were prepared to embrace the Court's proactive attempts to resolve the issue through the PIL procedure.

Conclusion

In the past, public interest litigation has been a cutting-edge legal process for improving the social and economic rights of underprivileged and oppressed groups, including women in India. PIL in India has yielded incredible outcomes that were unimaginable thirty years ago. Its most significant achievement has been raising the government's level of accountability for women's

human rights. Judges by themselves are unable to effectively combat governmental lawlessness, but they can contribute to the development of a culture in which political authority grows more mindful of human rights. In recent years, PIL has come under fire for a number of reasons, including issues with inequality, judicial ability, and the separation of powers. The most notable finding is that the likelihood of winning a claim for fundamental rights is now much lower for people from privileged socioeconomic groups than for those from disadvantaged groups. Both of those represent a societal turnaround from PIL's initial goal.

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