

## **Dynamic Approach Of Public Interest Itigation:An Overview**

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The Preamble of our Constitution declares that the people of India have solemnly resolved to constitute India into a Sovereign, Socialistic, Secular, and Democratic Republic. The people are both the sovereign and subject under our Constitution. One of the main goals of the constitution is securing justice to all citizens. But this provision will remain a dead letter until such time when every citizen of this country, rich or poor, enjoys equal access to the law. The vast majority of Indian people are living in poverty and ignorance. This poor and the illiterate, ignorant of their right and incapable of opening the doors of justice found justice inaccessible. It is necessary to democratize judicial remedies and to remove technical barriers and fetters against accessibility to justice and try to reach social justice to the exploited sections of the masses.

The Public Interest Litigation is a major effort on the part of the judiciary to provide access to justice to starved millions. Courts in India have recognized departure from strict rules of locus standi in cases where there has been a violation of constitutional or legal rights of persons who by reason of their socially or economically disadvantaged position are unable to approach the court. In such cases member of public have been permitted to maintain petitions for judicial relief. Locus standi is no more hurdles for public interest litigation.

Public Interest Litigation may be taken to mean a legal action initiated in a Court of law for the enforcement of the public interest or general interest in which the public or a class of the community has pecuniary interest or have some interest because it will affect their legal right or liabilities. The word "Public Interest" has been defined in Black's Law Dictionary(6<sup>th</sup> Edition) as something in which the public, or community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected.

In Stroud's Judicial Dictionary it has defined as follows:

"A matter of public or general interest does not mean that which is interest as gratifying curiosity or a love of information or amusement; but that in which a class of community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected".

In report of the Council for Public Interest Law set up by the Ford Foundation in U.S.A. it has been defined as follows:

"Public interest law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in recognition of the fact that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interest. Such groups and interest include the poor, environmentalists, consumers, racial and ethical minorities and others".

In *Janata Dal v. H.S.Choudhary*<sup>1</sup>, Public Interest Litigation has been defined as a 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 *Sheela Barse v. Union of India*<sup>2</sup>, the Supreme Court has made it clear that in a Public Interest Litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. The proceedings in a Public Interest Litigation are intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory or sizeable segments of the society while owing to poverty, ignorance, social and economically disadvantages cannot themselves assert and quite often not even aware of those rights. The technique of Public Interest Litigation serves to provide an effective remedy to enforce these group rights and interests. In order that the public causes are brought before

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<sup>1</sup> A.I.R. 1993 S.C. 892.

<sup>2</sup> A.I.R. 1988 S.C. 2211.

the Courts, the procedural techniques judicially innovated specially for the public interest action recognizes the concomitant need to lower the locus standi thresholds so as to enable public minded citizens or social action groups to act as conduits between these classes of persons inherence and the forum for the assertion and enforcement of their rights.

The Public Interest Litigation aims to provide an effective remedy to the poor, weak and illiterate persons to enforce their rights and interests. From the Preamble of the Constitution it becomes clear that the Constitution emphasized on Equality of Status and of opportunity and equal justice to all persons. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It has been now well established that the aim of both the concepts equality before law and equal protection of law is the equal justice. The contribution confers on the citizens various fundamental rights including the right of equality and right to life and personal liberty. The right to life and personal liberty includes the right to free legal aid. Right to life is taken to mean right to live with human dignity free from exploitation. The guarantee of equality or equal justice or the fundamental rights conferred on the citizens would be meaningless if they cannot be enforced by poor, illiterate or weak persons.

The Directive Principle of State Policy contained in Article 38 and 39A have also been taken into account in allowing the development of the Public interest litigation. According to Article 38 the State shall strive to promote the welfare of the people securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the natural life. It also provides that the State shall in particular strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

According to Article 39A the State shall secure that the operation of the legal system promotes justice, on a basis, of equal opportunity and shall in particular provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The rule of law which permeates the entire fabrics of the Constitution of India forms one of its basic structures, requires that poor or illiterate persons should be assisted in enforcing their rights. If the poor persons cannot enforce the rights given to them by law because of poverty, there will be no rule of law in real sense. On account of all these reasons the locus standi concept has been relaxed and any public spirited person or group or organization is allowed to file public interest litigation

### **Objective behind PIL**

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and publicity seeking is not lurking. It is to be used as an effective weapon in the of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration.

The Supreme Court has widely enlarged the scope of public interest litigation by relaxing and liberalizing the rule of standing by treating letters or petitions sent by any person or association complaining violation of any fundamental rights. It has also entertained writ petitions, filed under Article 32 of the Constitution by public-spirited and policy-oriented activist, persons or journalists of any organization rejecting serious challenges made with regard to the maintainability of such petitions. It has rendered many virtuosic pronouncements and issued manifold directions to the Central and the State Governments, local and other authorities within the territory of India or under the control of the government of India for the betterment of the public at large, in many fields, in conformity with constitutional prescription of what constitutes the good life in a society's just democracy.

The locus standi rule has been enhance provide down-trodden, oppressed and exploited sections of society easy access to justice. Its philosophy has been this that where a legal wrong or legal injury is caused to a person or a determinate class of persons by reason of violation of their fundamental rights or legal rights and such person or class is not able to approach the court for relief due to poverty or socially and economically disadvantaged position, any public spirited person or social activist or social action organization may file petition or application for writ, order or direction in the High Court under Article 226 and in case of violation of

the fundamental right of such person or group may file petition or application in the Supreme Court under Article 32. Earlier its object was to relax the locus standi principle mainly when the petition or application was filed by the social activist on behalf of the person or class of persons who were not able to approach the Court for enforcement of their right because of being poor and down trodden or in socially and economically disadvantaged position. It was therefore, named as Social Action Litigation. This indicates that its aim was to provide social justice or to prevent social injustice. However, very soon its scope was enlarged and such position or application were allowed not only in case of down-trodden or socially and economically backward person or class of persons but also in other cases where the writ or petition was filed to protect the public interest or common interest. The expression "Public Interest Litigation is more popular than the Social Action Litigation."

Thus, where a legal wrong or legal injury is caused to any person or a determinate class of persons by reason of violation of any Constitutional or legal rights and such person or class of determinate persons are unable to approach the Court because of being poor or illiterate or socially and economically disadvantaged position, a public spirited person or organization or group or social activist or social organization may file petition or submit application for the appropriate writ, order or direction of the High Court under Article 226 and in case of violation of any of the Fundamental Rights such person or organization or group may maintain petition or application in the Supreme Court under Article 32.

.. As per the traditional locus standi principle, thus only a person whose own right has been infringed can bring action in the Court for relief. The infringement must be substantial and direct. If a person suffers legal injury alongwith other persons he can bring action in the Court for relief only where he proves that he has suffered some special injury over and above the injury suffered by the other persons.

The social action litigation or public interest litigation is the new development and its development has liberalized the traditional principle of locus standi. In such litigation any social or public spirited person acting in good faith can bring action in the Court for judicial relief for the legal injury caused to the public interest or general interest of the society or a determinate class of society. Its object is to bring justice within the reach of the poor masses or deprived and exploited sections of society. It protects and promotes social justice and rule of law in the country. If the legal rights of the poor and down trodden persons are violated but they can seek redress of the injury caused to them by reason of poverty, illiteracy, fear etc any social activist or public spirited person can bring action in Court on their behalf of seek judicial relief. Social interest litigation or public interest litigation is usually non adversial as relationship between the parties is not of conflict but cooperation. The petitioner, the covenant or public officer and the Court all act in cooperation and tries to see that the fundamental or other legal rights become meaningful for the poor, down-trodden and illiterate masses. In such litigation the Court provides a forum for result oriented discussion so as to do needful for protecting the social or public interest. For example in *Sheela Barse Vs. State of Maharashtra*<sup>3</sup>, a journalist, Sheela Barse, bring a public interest litigation revealing the custodian violence done to women in Bombay Central Jail. The Court provided a forum for discussion as to the steps to be taken to protect the women prisoners. The State of Maharashtra provided full cooperation is lying down the guidelines for this purpose and it accepted most of them. However, such guidelines for this purpose and it accepted most of them. However, such non-adversial litigation will work satisfactorily only when both the parties accept the facts of the case and comes to the acceptable conclusion, where both parties do not accept the facts, the Court p[lays active role and makes investigation in the facts and for this purpose it may appoint commission. The Commission submits its report containing the facts etc and proposal as to remedial reliefs. The copies of the report is supplied to the parties concerned so that they may have opportunity to dispute the facts etc by filing an affidavit if they want to do so. Thereafter the Court decides the issues arising from the petition in *Bandhu Mukti Morcha Vs. Union of India*<sup>4</sup>.

The Supreme Court has been made the guardian and protector of the Constitution. The Constitution has assigned it the role to ensure rule of law including the supremacy of law in the country. For this purpose it has been conferred wide power of judicial review.

Judicial activism may be taken to mean the movement of the judiciary to probe into the inner functioning of the other organs of the Government i.e. executive and legislature. The Judicial activism is no doubt the result of inactiveness to make law and of the executive to implement the law but both the organs have failed to discharge their functions satisfactorily. In such circumstances it is not the power but duty of the Court to uphold the constitution and compel the other organs of the Government to discharge their functions properly. The supreme Court being the guardian of the Constitution cannot remain silent spectator. It can direct the legislature and executive to discharge the functions assigned to them by the Constitution. No doubt, the doctrine of separation of powers says that each organ of the Government should perform its own functions and should not interfere with the functioning of other organs or should not usurp the functions or powers of the other organs

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<sup>3</sup> . A.I.R. 1983 SC 378.

<sup>4</sup> . AIR 1984 SC 802

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The main object of judicial activism is to maintain the rule of law in the country. The rule of law requires each organs of the Government to perform the functions assigned to it by Constitution. If the legislature does not make required law and the executive does not execute the law, does not arrest the law breakers and does not collect evidence against them, there will be complete death of the rule of law. The Court cannot be and should not be a party to it as it is the guardian of the Constitution and protector of the rule of law in the country. It has rightly said that no safeguard the rule of law, on the foundation of which the super structure of democratic rule rests, judicial intervention becomes the need of the hour.

Article 13, 32, 141 and 142 are of considerable importance in Judicial Activism. Article 32 makes the Supreme Court as the protector and guarantor of the fundamental rights. The Supreme Court has been conferred wide power of judicial review. In the exercise of the judicial power it can examine the constitutionality of the executive or legislative act. The High Court has also been conferred the power of judicial review. Thus, the Supreme Court and the High Court both can examine the act of the executive and legislature and can declare it void if found in contravention of the constitutional provisions.

Article 141 makes it clear that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The Article indicates that the power of the Supreme Court is to declare the law and not to enact it, but in the course of its functions to interpret the law, it alters the law.

Article 227 confers on the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. On this basis the Supreme court has held that the decision of the High Court is binding on all Courts and Tribunals subject to its supervisory jurisdiction.

Article 142(1) provides that the Supreme Court in the exercise of its jurisdiction, may pass such decree or make such order as it necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, in such manner as the President may be order prescribe.

Article 142(2) provides that subject to the provision of any law made in this behalf by Parliament, the Supreme Court shall as respect the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents or the investigation or punishment of any contempt of itself.

In a case the Supreme Court has made it clear that from Article 142(2) it is evident that the express substantive statutory provisions dealing with the specific subject cannot be ignored by the Supreme Court. The statutory power of the statutory body cannot be assumed by the Supreme Court.

Development of public interest litigation has also provided significant assistance in making the judicial activism meaningful. Now the Court entertains public interest litigation at the instance of any public spirited citizen or organization action bona fide for the enforcement of fundamental right of a person in custody or of a class or group of persons who by reason of poverty or disability or socially or economically disadvantaged position find it difficult to approach the Court for redress. The Court has given several important directions to the executive and legislature at the instance of the Public Interest Litigation. On account of the Public interest litigation and enforce the public duties. Several directions and orders relating to environment protection, labour welfare, equal pay for equal work, Rights of Accused and Prisoners, Right to life, investigation by C.B.I. or police, human rights, etc have been issued in Public Interest Litigation cases.

Pursuing with the object of the directive contained in Article 48-A, the Supreme Court in recent years, has entertained various petitions regarding control of environmental pollution and safeguarding of wildlife. Right to get pollution free air, water etc have been included in the guarantee of Article 21.

In **Re Bhavani River Vs. Sakthi Sugar Ltd**,<sup>5</sup>, the discharge of objectionable effluents from distillery in river and adjoining areas was taken very seriously. The Supreme court held that the High Court fell in error to dispose of the writ petition merely on the consent of the Pollution control Board. The Supreme Court remanded the writ petition to the High Court for its fresh disposal in accordance with law.

In **Vellore Citizens Welfare Forum Vs. Union of India**, the Supreme Court has held that the precautionary principle and the polluter pays principle have been accepted as part of the law of land. The Court has explained the meanings of these principles. The court has said:

“The Precautionary Principle in the context of the municipal law means (i) Environmental measures- by the State government and the statutory authorities- must anticipate, prevent and attack the causes of environmental degradation. (ii) where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (iii) the onus of proof is on the actor or the developer/ industrialist to show that his action is environmentally benign”. The Court has further said :

“The Polluter pays principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation”.

The Supreme Court has directed the Central Government to constitute an authority and confer thereon all the powers necessary to deal with the situation created by the tanneries and other polluting industries in Tamil Nadu. This authority shall implement the precautionary principle and polluter pays principle and also assess the losses to the ecology/environment in the affected areas. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him.

In **M.C.Mehta Vs. Union of India**<sup>6</sup>, the Supreme Court directed the Nagar Mahapalika, Kanpur to comply with the statutory obligation under the Water Prevention and Control of Pollution Act, 1974 and take necessary action to prevent the pollution of the river Ganga. It also directed the Nagar Mahapalika, Kanpur to submit its proposals for the prevention of the pollution. It also directed it to take necessary action against the industries responsible for the pollution. It also directed that the licences to the new industries should be granted only to those who make adequate arrangement for the treatment of trade effluent flowing out of the factories.

In **M.C.Mehata Vs. Union of India**<sup>7</sup>, the Supreme Court has held that the direction to convert all buses operating in Delhi to CNG fuel mode has been given for safeguarding the health of the people and their right to it provided and protected by Article 21 and therefore, it would override the provisions of every statute including the Motor Vehicles Act. It has also been made clear that norms fixed under the Motor Vehicles Act are in addition to and not in derogation of the requirements of the Environment Protection Act.

In **M.C.Mehta Vs. Kamal Nath**<sup>8</sup>, the Supreme Court has held that the environment pollution is a tort against the community. However, the Supreme Court has made it clear that change in environment does not per se violate any right under Article 21 especially when ameliorative steps are taken not only to preserve but to improve ecology and environment and in case of displacement, prior relief and rehabilitation measures take place pari passu with the construction of the dam (**Narmada Bachao Andolan Vs. Union of India, AIR 2000 S.C. 375**),

In the said case the Court has held that environment pollution is tort against the community and therefore a person who is guilty of causing pollution has to pay compensation for restoration of the environment

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<sup>5</sup> . A.I.R. 1998 SC 2578.

<sup>6</sup> . (1998) 1 S.C.C. 471.

<sup>7</sup> A.I.R. 2001 S.C. 1948.

<sup>8</sup> . A.I.R. 2000 S.C. 1907.

and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. In addition to damages, the person guilty of causing pollution can also be held liable to pay exemplary damages. But in the proceedings under Article 32 and 226 the Court can not levy fine on the polluter. For fine the polluters should be prosecuted under the Water Prevention and Control of Pollution Act, 1974, Air Prevention and Control of Pollution Act 1981 and Environment Protection Act, 1986. A person thus guilty of contravention of provisions of any of the three Acts stated above which constitutes an offence and in case the offence is found proved then alone he can be punished with imprisonment and fine or both. Fine cannot be imposed even under Article 142 because the Supreme Court cannot ignore the substantive provisions of a statute and pass orders concerning an issue which can be settle only through a mechanism prescribed in another statute.

The public interest litigation cases have revealed the plight of the labour classes and inactiveness on the part of the government to implementing the labour law and provide opportunity to the Court to provide appropriate relief. The Supreme Court in **Bandhu Mukti Morcha Vs. Union of India, A.I.R. 1984 S.C. 802**, has made it clear that the right to life guaranteed by Article 21 should be taken to mean right to live with human dignity free from exploitation. In this case the Court has held that the State is bound to ensure the observance of the labour legislation enacted for securing the workmen of life of human dignity and inaction of part of the State in implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21. In this case, the Supreme Court was informed through a letter that bonded labour was in existence in stone-quarries in Faridabad. The Supreme Court appointed a commission to visit the said stone-quarries and make enquiries and submit its report to the court.

In **Sheela Barse(1) Vs. Union of India<sup>9</sup>**, the petitioner Sheela Barse was a journalist and social worker. She filed public interest litigation for the welfare of the children. She brought the attention of the Court towards the unsatisfactory implantation of children laws by several States. The Court was requested to issue direction for the production of complete information about the children in prison and also information about the juvenile Courts, observation homes and schools for children. The Court was also requested to issue directions to all the District Judges in the country to visit jails under their jurisdiction to ensure that children were properly looked after while they were in custody. The Court admired the effort made by the petitioner through the public interest litigation for the welfare of the children and also for her plan to visit different prisons in the country to collect necessary informations about the children in jails and juvenile courts, etc. The Court directed the Central Government to pay Rs.10,000 to the petitioner for expenses and provide the children in jails and juvenile courts etc. The Court directed the all the District Judges to visit the jails to investigate and submit report to the Supreme Court within ten weeks about the conditions of the children in jails, existence of juvenile courts and observation homes within their jurisdiction. The Court expressed its regret that the Children's Act have not been enforced in most of the States. The Court directed that the Children's Act enacted by the States must be brought in force and their provisions be implemented vigorously.

#### **SHORT COMMENT**

The Public Interest Litigation in India has got a very bright future. Of course the members of general public, the social service agencies and especially the lawyers must show high sense of responsibility while bringing to the court any public interest litigation as it should not be motivated with personal gain and it should not put any strain on the court's regular working and time.

Public Interest Litigation is a tool by which a public spirited citizen or social justice organization can seek remedy from the competent court, where any of the constitutional rights, mainly the fundamental rights, of any citizen has been encroached or infringed by the State or any other authority or behalf of that citizen or from common cause. The Courts in India have shown positive interest while entertaining Public Interest Litigation. It is a dynamic approach indeed. Public Interest Litigation is filed before the Court not for the object of enforcing any individual rights against another, but it is intended to promote any highlight public interest which demands that encroachment of constitutional rights or legal rights of people who cannot afford litigation being in economically or socially disadvantaged status, and that their injury should not go unnoticed or unheard.

Public Interest Litigation is a challenge and also opportunity to the government and its personnel to make fundamental human rights purposeful to the poor and deprived people. Thus to provide them economic and social justice which is the essential most element of our constitution, tendency to file Public interest litigation should be welcomed by the government and its personnel because it provides them an opportunity to ensure that the poor or down trodden are getting their economic and social entitlement. While the court entertains the public interest litigation, it attempts to ensure that social and economic programmes are reached to the poor. In other words the court is merely assisting in the realization of constitutional objectives. A public

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<sup>9</sup>. (1986) 3 S.C.C. 596.

interest litigation comes up where any person or a class of persons is, by reason of poverty, helplessness or disability or social or economic disadvantage, incapable to approach the court for relief for such member or public or at the instance of public spirited citizens an application for an appropriate direction order or writ in Supreme Court under Article 32 and 226 before the High Court can be filed with a view to seek judicial redress for the legal wrong or injury caused to such person or to a class of persons.

However, the individual or public spirited citizens who move the court for judicial redress/relief in cased of public interest litigation must be acting bonafide with a view to vindicating the cause of justice.

## **CONCLUSION**

Today's world is at an important crossroads as many societies advanced from authoritarian regime to democracies in which the values of human rights and the rule of law take root. The Public Interest Litigation described in this heading supports this broad movement, while seeking to assure that disadvantaged populations do not become worse off in the process of globalization and law-based reform. Public Interest Litigation serves as an important instrument for publicizing human rights abuses and for helping to provide protection to marginalize groups. Even if a change attitudes about the law and contribute to a climate for reform.. Grantees recognize that the relationship between litigation and social change is complex and incremental, and that litigation comprises only one of many important approaches for reform. However, building a system of justice demands sustained efforts on many fronts; the work requites a long term perspective and a great deal of patience. In that struggle, public interest litigation is an incomplete strategy, but nevertheless an essential on. Adversary litigation and public interest litigation should be given equal priority with regard to disposal. Any individual voluntary organization, private lawyers engaged in public interest litigation must be compensated by the government. . Public interest litigation gone a great service to the matte specially in the file of protection of our environment and human rights. But what we feel now is that the field needs to be properly regulated so that the system can serve the humanity in better way and courts have no occasion to say in future that Public Interest Litigation is a public interest litigation, private interest litigation, political interest litigation or paise income litigation.

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