


Subject: LAW

Production of Courseware

 - Content for Post Graduate Courses



Paper : ADVANCED CONSTITUTIONAL LAW

Module : PUBLIC INTEREST LITIGATION



ज्ञान-विज्ञान विमुक्तये

  
A Gateway to All



Component - I - Personal Details

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Component - I (B) Description of Module

	Description of Module
Subject Name	Law
Paper Name	Advanced Constitutional Law
Module Name/Title	Public Interest Litigation
Pre-requisites	Understanding the concept of Public Interest Litigation its evolution and development.
Objectives	To have an in-depth knowledge about the concept and its contribution in attainment of Social Justice
Keywords	Public, Interest, litigation, Social ,Justice



## Component - II

### Module I Public Interest Litigation

#### Structure:

1. Introduction
2. Public Interest Litigation Defined
3. Public Interest Litigation: Nature and Purpose
4. Seeds of PIL in Indian Jurisprudence
5. Evolution of Public Interest Litigation in India
6. Locus Standi and Public Interest Litigation
7. Preservation and Protection of Ecology and Environment
8. Conclusion
9. Learning Outcomes

#### INTRODUCTION

Public Interest Litigation means litigation filed for safeguarding the interest of the public at large. It 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 or community has pecuniary interest or have some interest because it will affect their legal right or liabilities.<sup>1</sup>

At first glance 'Public Interest Litigation' has three words in it that by themselves are not very difficult to understand. Yet as the Supreme Court of India has observed, in the case of *Janata Dal v. H.S Choudhary*<sup>2</sup> 'The question what Public Interest Litigation means and it has been deeply surveyed, explored and explained not only by various judicial pronouncements in many countries but also by eminent judges, jurists, activists, lawyers, outstanding scholars, journalists and social scientist etc with vast erudition'.

#### Public Interest Litigation Defined

Public Interest Litigation has been defined in the Black's Law Dictionary (6<sup>th</sup> Edition) as under: "Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government...."

Justice P.N. Bhagwati in *S.P. Gupta v. Union of India*<sup>3</sup>, explained PIL as

*"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in*

<sup>1</sup> Dr.Kailash Rai, *Public Interest Lawyering, Legal Aid and Para Legal Services* ( Sixth Edition, Central Law Publication, 2009) 22

<sup>2</sup> (1992) 4 SCC 305.

<sup>3</sup> AIR 1982 SC 149.



*contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.”*

To sum up, it can be said that the expression ‘Public Interest’ is an ‘Elusive Abstraction’ meaning general social welfare or regard for social good. The expression ‘predicates interest of the general public in matters where a regard for social good is of the first moment’. The expression in common parlance means an act beneficial to the general public.<sup>4</sup>

### **PUBLIC INTEREST LITIGATION: NATURE AND PURPOSE**

The nature of Public Interest Litigation has been very extensively explained by P.N Bhagwati J. in the case of *People's Union for Democratic Rights and Ors. v. Union of India and Ors*<sup>5</sup>, popularly known as *Asiad Labour Case* as:

Public interest litigation which is strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and indicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.

Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.<sup>6</sup> The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.<sup>7</sup>

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<sup>4</sup> (1985) 5 Andh LT 567.

<sup>5</sup> AIR 1982 SC 1473

<sup>6</sup> *Ibid.*

<sup>7</sup> AR Desai, *Violation of democratic Rights in India* (Popular Prakashan Private Limited, Bombay, 1986) 156



By analysing the above case the nature of Public interest Litigation can be stated as:

- It is a strategic arm of the Legal Aid Movement
- Intended to bring justice within the reach of poor masses.
- Public Interest Litigation is a different kind of litigation from traditional litigations
- It is brought before the court not for the purpose of enforcing rights of one individual against other.
- Public Interest Litigation is a cooperative or collaborative effort of the state and the court to make social justice available to vulnerable sections of community.

#### INTERESTING FACTS:

- The seeds of Public Interest Litigation were sown in India by Justice Krishna Iyer and the word was coined by Justice P.N Bhagwati.
- The PIL discourse in India can be divided into three broad phases which differ from each other in terms of the following four variables: who initiated PIL cases; what was the subject matter/focus of PIL; against whom the relief was sought; and how judiciary responded to PIL cases
- Public Interest Litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest.

Experience’:

*“The judiciary has to play a vital role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups.”<sup>8</sup>*

The Supreme Court has evolved the strategy of SAL in response to what the late Mauro Cappelletti called the ‘massifications phenomenon’.<sup>9</sup> Today, in contemporary society, due to the massification phenomenon, human actions and relationships assume a collective rather than a merely individual character. They refer to groups, categories, and classes of people rather than to one or a few individuals alone. They refer to more than just the basic rights and duties of individuals contained in the eighteenth or nineteenth century declarations of human rights. They

<sup>8</sup> Cited by Justice YK Sabarwal, PIL and Legal Services Authority, Nyaya Deep, Vol I, Issue II, 1998, 46

<sup>9</sup> Mauro Cappelletti, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (European University Institute, 1978)



refer to meta-individual, social, and collective rights and duties of associations, communities, and class.<sup>10</sup> These social and collective rights require active intervention by the State and other public authorities for their realization.<sup>11</sup>

But such an endeavour immediately raises the problem that how can an individual-centric system of law, which deals with mechanical, slot machine-type justice meet the challenges of the collective claims of groups, especially disadvantaged groups and dispense well-balanced equitable distributive justice which lawyers, judges, and social activists have to resolve.<sup>12</sup> The Supreme Court and High Courts in India have tried to make innovative use of judicial power in an attempt to resolve this problem.<sup>13</sup>

The jurisdiction has been created and carved out by the judicial creativity and craftsmanship. In *M. C. Mehta & Another v. Union of India & Others*<sup>14</sup>, this Court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for the enforcement of fundamental rights. Instead, it also lays a constitutional obligation on this Court to protect the fundamental rights of the people. The Court realized that because of extreme poverty, a large number of sections of society cannot approach the court. The fundamental rights have no meaning for them and in order to preserve and protect the fundamental rights of the marginalized sections, the courts by judicial innovation and creativity started giving necessary directions and passing orders in the public interest.

Recognizing the need to engage with the egalitarian Constitutional philosophy, some judges took the lead in raising concerns about improving access to justice for the underprivileged. In a report on legal aid published in 1971, Justice P.N. Bhagwati had observed: “*Even while retaining the adversary system, some changes may be effected whereby the judge is given a greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in administration of justice.*”<sup>15</sup>

The Committee on Judicature consisting of Justice V.R. Krishna Iyer and Justice Bhagwati referred to Social Action Litigation as a supplemental tool to grassroots legal services programmes, in their report published in 1977. Soon after, these two judges took the lead in promoting the same by taking *suo moto* cognisance of matters on the basis of letters addressed to them. However, before describing the use of PIL in some significant instances, it is important to understand the other limb of the Indian judiciary’s ‘activist’ turn – i.e. a change in the understanding of constitutional rights.<sup>16</sup>

<sup>10</sup> William F. Felice, *Taking Suffering Seriously –The Importance of Collective Human Rights*, (State University of New York Press, 1996)

<sup>11</sup> PN Bhagwati & C.J. Dias, ‘The Judiciary in India: A Hunger And Thirst For Justice’, (2012) NUJS LAW REVIEW, April - June, 171

<sup>12</sup> P. N. Bhagwati, ‘Judicial Activism and Public Interest Litigation’, (1984-1985), 23 Columbia Journal of Transnational Laws, , 561-568

<sup>13</sup> *Ibid.* p.10.

<sup>14</sup> AIR 1987 SC 1086.

<sup>15</sup> Ashok Desai & S. Muralidhar, ‘Public Interest Litigation: Potential and Problems’ in B.N. Kirpal et. al. (eds.), *Supreme but not infallible* (Oxford University Press, 2000) 161

<sup>16</sup> Growth Of Public Interest Litigation In India, Address by Justice K.G. Balakrishnan, Chief Justice of India , Singapore Academy of Law, Fifteenth Annual Lecture , October 8, 2008.



Largely due to the efforts of the Supreme Court, PIL has been effectively conceptualized and it is now in the process of being institutionalized. PIL has come to be recognized as an effective weapon in the armory of the law for securing implementation of the constitutional and legal rights of the under-privileged segments of society and for ensuring social justice to them.<sup>17</sup>

## EVOLUTION OF PUBLIC INTEREST LITIGATION IN INDIA

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamgar Sabha v. Abdul Bhai*<sup>18</sup> and was initiated in *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*<sup>19</sup>, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar Union v. Union of India*<sup>20</sup> and the idea of 'Public Interest Litigation' blossomed in *S.P. Gupta and others vs. Union of India*<sup>21</sup>.

The PIL discourse in India could be divided into three broad phases.<sup>22</sup> One will notice that these three phases differ from each other in terms of at least the following four variables: who initiated PIL cases; what was the subject matter/focus of PIL; against whom the relief was sought; and how judiciary responded to PIL cases.<sup>23</sup>

## LOCUS STANDI AND PUBLIC INTEREST LITIGATION

The higher Courts exercised wide powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the courts have also given guidelines and directions. The courts have monitored implementation of legislation and even formulated guidelines in absence of legislation.

The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies. If the cases of the decades of 70s and 80s are analyzed, most of the public interest litigation cases which were entertained by the courts are

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<sup>17</sup> *Ibid.* p.11.

<sup>18</sup> AIR 1976 SC 1455.

<sup>19</sup> AIR 1981 SC 298.

<sup>20</sup> AIR 1981 SC 344.

<sup>21</sup> AIR 1982 SC 149.

<sup>22</sup> Dam divides SAL in three functional phases: creative, lawmaking and super-executive. Shubhankar Dam,

“Lawmaking Beyond Lawmakers: Understanding the Little Right and the Great Wrong (Analyzing the Legitimacy of the Nature of Judicial Lawmaking in India’s Constitutional Dynamic)” (2000), 13 Tulane Journal of International and Comparative Law, 109. This division, however, does not fully explain the complexity of PIL, because it focuses only on one aspect of it.

<sup>23</sup> Pritam Kumar Ghosh, ‘Judicial Activism and Public Interest Litigation in India’, (2013), Vol.1 Galgotias Journal of Legal Studies, 77



pertaining to enforcement of fundamental rights of marginalized and deprived sections of the society. This can be termed as the first phase of the public interest litigation in India.<sup>24</sup>

The court while interpreting the words "person aggrieved" in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Ors.*<sup>25</sup> observed that "the traditional rule is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule".

### ***Liberalization of Rule of Locus Standi:***

The rule of locus standi was relaxed in *Bar Council of Maharashtra v. M.V. Dabholkar and Ors.*<sup>26</sup> where the court observed that a new class of litigation public interest litigation- where a section or whole of the community is involved (such as consumers' organizations or NAACP- National Association for Advancement of Colored People-in America), emerges in a developing country like India which better fulfils the rule of law if it is to run close to the rule of life. In *The Mumbai Kamgar Sabha, Bombay v. Abdulbhai Faizullabhai and Ors.*<sup>27</sup> the apex Court made conscious efforts to improve the judicial access for the masses by relaxing the traditional rule of locus standi.

Public interest litigation acquired a new dimension – namely that of ‘epistolary jurisdiction’ with the decision in the case of *Sunil Batra v. Delhi Administration*,<sup>28</sup> It was initiated by a letter that was written by a prisoner lodged in jail to a Judge of the Supreme Court. The prisoner complained of a brutal assault committed by a Head Warden on another prisoner. The Court treated that letter as a writ petition, and, while issuing various directions, opined that: “...technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found”.

### ***Foundations of Change***

In *Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, Patna*<sup>29</sup> P. N. Bhagwati, J. has observed that the poor in their contact with the legal system have always been on the wrong side of the line. They have always come across 'law for the poor' rather than law of the poor'. The result is that the legal system has lost its credibility for the weaker section of the community.

*Hussainara Khatoon* case is not only very early in the history of the public interest litigation but it displays in a most dramatic and compelling way so many of the key features of Indian Public Interest Litigation. On January 11, 1979, Kapila Hingorani filed a habeas corpus petition in the

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<sup>24</sup> 2010 (1) SCALE 492.

<sup>25</sup> (1976) 1 SCC 671.

<sup>26</sup> 1976 SCR 306.

<sup>27</sup> AIR 1976 SC 1455.

<sup>28</sup> (1978) 4 SCC 494.

<sup>29</sup> AIR 1979 SC 1369.





SC on behalf of nineteen undertrial prisoners mentioned in the two articles by R.F. Rustamji, a member of National Police Commission. The first named petitioner was Hussainara Khatoon, a young woman who had fled with her family from Bangladesh some time in 1975. She was arrested and held in protective custody in jail for four years, even though Indian Government had issued instructions that all those arrested under the Foreigners Act coming from Bangladesh should be released on bond.<sup>30</sup>

From this moment of inception, the *Hussainara Khatoon* case helped establish the most important features: A petition need not be filed by a person whose own legal rights are at issue; can be brought by any public spirited citizen; need not be based on personal knowledge but can be supported by material like newspaper articles; both important legal principles and substantial relief can be created at preliminary stage and scope of litigation can be expanded beyond the initial petition.

In *Prem Shankar Shukla v. Delhi Administration*<sup>31</sup>, a prisoner sent a telegram to a judge complaining of forced handcuff on him and demanded implicit protection against humiliation and torture. The court gave necessary directions by relaxing the strict rule of locus standi. In *Fertilizer Corporation Kamgar Union v. Union of India*<sup>32</sup> Krishna Iyer, J. and Bhagwati, J. had to answer in affirmative as to whether the workers in a factory owned by government had locus standi to question the legality of sale of the factory. In *People's Union for Democratic Rights and Ors. v. Union of India*<sup>33</sup> the Court observed that PIL which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character.

Public Interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended 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 un-redressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government.<sup>34</sup> The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.

Justice Bhagwati in in *S.P. Gupta v. President of India and Ors.*<sup>35</sup> altogether dismissed the traditional rule of standing, and replaced it with a liberalized modern rule. The Court awarded standing to advocates challenging the transfer of judges during Emergency. Describing the traditional rule as an "ancient vintage" of "an era when private law dominated the legal scene

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<sup>30</sup> Clark D. Cunningham, 'The World's Most Powerful Court: Finding the Roots of India's Public Interest Litigation, Revolution in the Hussainara Khatoon Prisoners Case', in SP Sathe & Sathya Narayan (eds.), *Liberty, Equality And Justice: Struggles for a New Social Order*, EBC Publishing (P) Limited, Lucknow, 2003, 83.

<sup>31</sup> AIR 1980 SC 1535.

<sup>32</sup> AIR 1981 SC 344.

<sup>33</sup> AIR 1982 SC 1473.

<sup>34</sup> *Ibid.* p.30.

<sup>35</sup> AIR 1982 SC 149.



and public law had not been born," the Court concluded that the traditional rule of standing was obsolete. In its place, the Court prescribed the modern rule on standing where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ, in the High Court under Article 226, and in case of breach of any fundamental right, in this Court under Article 32.

Finding that the practicing advocates "are vitally interested in the maintenance of a fearless and an independent Judiciary," the Court granted standing to the advocates under the modern rule to bring cases challenging the transfer of judges during Emergency.<sup>36</sup>

### ***Preference of Litigational Competence over Aggrieved Person***

The distinct features of public interest actions, with their foundations in the Constitution and as a tool of citizen's participation call for a distinct and flexible principle of litigational competence and the concept of aggrieved person as understood and relevant to the invocation of the justice delivery system stands substituted by the principle of litigational competence as seen to be appropriate to Public Interest Litigation.<sup>37</sup>

In this regard the court has tried to place persons in any of the following categories:

- i. Persons duly affected or injured whether or not belonging to any class or group<sup>38</sup>
- ii. Persons whose pursuits relate to advancement of causes dealt with by or regulated by any particular statute<sup>39</sup>
- iii. Persons engaged in rendering assistance, aid or support to the disadvantaged or disabled sections in espousing issues of public welfare<sup>40</sup>
- iv. Persons in public life or of repute, eminence<sup>41</sup>
- v. A complete stranger
- vi. Busybody or middle-some interloper

Today a revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods for the purpose of providing access to justice to large masses of people. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal injury

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<sup>36</sup> AIR 1982 SC 149.

<sup>37</sup> *Ibid.* p.12.

<sup>38</sup> AIR 1993 SCC 436.

<sup>39</sup> (1988) 1 SCC 471.

<sup>40</sup> Civil liberties, groups associations, social support groups etc.

<sup>41</sup> 1983 (2) SCC 308.



and because of their socially or economically disadvantaged position are unable to approach the Court.

## **PRESERVATION AND PROTECTION OF ECOLOGY AND ENVIRONMENT**

In comparison to the first phase, the filing of PIL cases became more institutionalized; several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis. The courts, for instance, took resort to judicial legislation when needed, did not hesitate to reach centres of government power, tried to extend the protection of FRs against non-state actors, moved to protect the interests of the middle class rather than poor populace, and sought means to control the misuse of PIL for ulterior purposes.

The second phase which started sometime in the 1980's specifically relates to the courts' innovation and creativity, where directions were given to protect ecology and environment. There are a number of cases where the court tried to protect forest cover, ecology and environment and orders have been passed in that respect.<sup>42</sup> Louise Erdrich Bigogress, an environmentalist has aptly observed that "grass and sky are two canvasses into which the rich details of the earth are drawn."

One of the earliest cases brought before the Supreme Court related to Oleum Gas leakage in Delhi in *M.C. Mehta and Anr. v. Union of India and Ors.*<sup>43</sup>. The court in this case has clearly laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no such harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The court directed that the enterprise must adopt highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

In *Rural Litigation and Entitlement Kendra, Dehradun and Ors. v. State of U.P. and Ors.*<sup>44</sup>, Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology. Environmental PIL has emerged because of the court's interpretation of Article 21 of the Constitution. The court in *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. and Ors.*<sup>45</sup> observed that every citizen has fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to take recourse to Article 32 of the Constitution.

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<sup>42</sup> Growth Of Public Interest Litigation In India, Address by Justice K.G. Balakrishnan, Chief Justice of India, Singapore Academy of Law, Fifteenth Annual Lecture, October 8, 2008.

<sup>43</sup> AIR 1987 SC 1086.

<sup>44</sup> AIR 1985 SC 652.

<sup>45</sup> AIR 1990 SC 2060.



Another leading case of *M.C. Mehta v. Union of India and Ors.*<sup>46</sup> relates to pollution caused by the trade effluents discharged by tanneries into Ganga River in Kanpur. The court called for the report of the Committee of experts and gave directions to save the environment and ecology. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. In *Vellore Citizens Welfare Forum v. Union of India and Ors.*<sup>47</sup>, this Court ruled that precautionary principle and the polluter pays principle are part of the environmental law of the country. This Court declared Articles 47, 48A and 51A (g) to be part of the constitutional mandate to protect and improve the environment.

In yet another important decision in the case of *M.C. Mehta v. Kamal Nath and Ors.*<sup>48</sup> Apex Court was of the opinion that Articles 48A and 51A (g) have to be considered in the light of Article 21 of the Constitution. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21. The court also laid emphasis on the principle of Polluter-pays. According to the court, pollution is a civil wrong. It is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages or compensation for restoration of the environment and ecology.

The third phase—the current phase, which began with the 21st century—is a period in which anyone could file a PIL for almost anything. One could argue that it is time for judicial introspection and for reviewing what courts tried to achieve through PIL. As compared to the second phase, the judiciary has seemingly shown more restraint in issuing directions to the government.<sup>49</sup> Although the judiciary is unlikely to roll back the expansive scope of PIL, it is possible that it might make more measured interventions in the future. One aspect that stands out in the third phase deserves a special mention. In continuation of its approval of the government's policies of liberalization in *Delhi Science Forum*, the judiciary has shown a general support to disinvestment and development policies of the Government.<sup>50</sup>

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<sup>46</sup> (1988) 1 SCC 471.

<sup>47</sup> AIR 1996 SC 2715.

<sup>48</sup> (2000) 6 SCC 213.

<sup>49</sup> *Ibid.* p.30.

<sup>50</sup> It is suggested that in recent years the Supreme Court has been influenced by liberalization and corporate business interests at the cost of human rights. See Jamie Cassels, "Multinational Corporations and Catastrophic Law" 31 *Cumberland Law Review*, 2000, p. 311, 330; Parmanand Singh, "State, Market and Economic Reforms" in Parmanand Singh et al. (eds), *Legal Dimensions of Market Economy*, Universal Book Traders, New Delhi, 1997, p.23; Prashant Bhushan, "Has the Philosophy of the Supreme Court on Public Interest Litigation Changed in the Era of Liberalisation?", retrieved from <http://www.judicialreforms.org/files/2%20Philosophy%20of%20SC%20on%20PIL%20%20Prashant%20Bhushan.pdf> on 3<sup>rd</sup> April, 2014.



However, the fact that this judicial attitude might be at the cost of the sympathetic response that the rights and interests of impoverished and vulnerable sections of society is troublesome. The Supreme Court's observations also fuel these concerns: "Socialism might have been a catchword from our history. It may be present in the Preamble of our Constitution. However, due to the liberalization policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away."<sup>51</sup>

It seems that the judicial attitude towards PIL in these three phases is a response to how it perceived to be the "issues in vogue". If rights of prisoners, pavement dwellers, child/bonded labourers and women were in focus in the first phase, issues such as environment, AIDS, corruption and good governance were at the forefront in second phase, and development and free market considerations might dominate the third phase. So, the way courts have reacted to PIL in India is merely a reflection of what people expected from the judiciary at any given point of time.<sup>52</sup>

The recent phase, in particular, deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance. The probity in governance is a sine qua non for an efficient system of administration and for the development of the country and an important requirement for ensuring probity in governance is the absence of corruption. Thus, it may broadly be called as the third phase of the Public Interest Litigation where the Supreme Court and High Courts have passed significant orders.

## CONCLUSION

Public Interest Litigation jurisdiction was innovated essentially to safeguard and protect the fundamental rights of poor, ignorant, or socially or economically disadvantaged persons. The misuse of public interest litigation jurisdiction by the people resulted in flood of evasive and vexatious litigations in the Courts. It follows in waste of valuable time of the Supreme Court and High Courts which are already burdened with huge number of pending cases. The suppression and separation of such litigations from genuine litigations became the great task for the Supreme Court and High Courts.

The power of the Court to entertain any circumstance that may hinder societal growth, or may cause hardship to a class of individuals is not uninhibited. It is carefully regulated with tight reins, and cases of public interest are taken up only after rigorous scrutiny. For instance, in a case wherein a challenge was made to the Government of India's telecommunication policy, the Supreme Court refused to entertain the matter on the ground that it purely concerned a question of policy. Similarly, public interest litigations that have sought to prohibit the sale of liquor or the recognition of a particular language as a national language, or the introduction of a uniform civil code, have been rejected on the ground that these were matters of policy and were beyond the ambit of judicial scrutiny.

The Court has refused to entertain cases that are 'private interest' litigations disguised as 'public interest' litigations. It has also refused to interfere with convictions in criminal cases. In a case

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<sup>51</sup> (2004) 11 SCC 26.

<sup>52</sup> *Ibid.* p.30.



where directions were sought from the Supreme Court to the Central Government to preserve and protect certain temples, the said request was rejected. The Court stated:

*“The matter is eminently one for appropriate evaluation and action by the executive, and may not have an adjudicative disposition or judicially manageable standards as the pleadings now stand.”*

At the time of admitting matters in the form of Public Interest Litigation (PIL), the Courts have to carefully consider whether or not they are overstepping their domain. Upon considering the issues at hand, they must then consider whether the orders they intend to pass can be realistically implemented. There is also a need to keep a watch on the abuse of process by litigants so as to avoid a situation where such cases occupy a disproportionate extent of the Courts’ working time. Justice S.P. Barucha has expressed the need for caution in the following words:

*“This court must refrain from passing orders that cannot be enforced, whatever the fundamental right may be and however good the cause. It serves no purpose to issue some high profile mandamus or declaration that can remain only on paper. It is of cardinal importance to the confidence that people have in the Court that its orders are implicitly and promptly obeyed.”*

It is evident that some instances require courts to draw a balance between the competing interests of different sections, each of whom may articulate their claims as those grounded in public interest. It is in this regard that the Courts engage in a process that seeks to build a consensus among these sections. The device of Public Interest Litigation may have its detractors, but it has played an invaluable role in advancing our constitutional philosophy of social transformation and improving access to justice. It is my sincere hope that this session has rekindled your interest in this continuing socio-legal experiment.

Courts have been consistent in granting relief in SAL cases relating to labour, to victims of custodial violence, and to victims of the excesses committed by the executive. Since previously the targets of the Court’s orders were comparatively junior officials, and certainly not prominent politicians, the issue of judicial activism was not raised by the executive. The present charge of alleged interference by the courts has only now begun to emerge, as those who wield political and economic power are beginning to be threatened by the impact of Public Interest Litigation.

It is important to note that the Indian judiciary has previously dealt with the issue of judicial constraint and public interest litigation. As with any innovation, there is a prospect of capture and abuse. But, so far as PIL is concerned, this has been recognized and addressed through development of procedures (constantly in the process of further refinement) to screen PIL petitions when they are filed.

However, as long as the thirst for justice remains yet to be fully slaked, and as long as the hunger for justice remains yet to be fully-appeased, SAL will continue to hold its unique attraction, not only in the pursuit of justice for the privileged and affluent few but, more importantly, in the pursuit of justice for all.



In-depth understanding of the concept of Public Interest Litigation

Its evolution and development in western countries and India

Learning Outcomes

Locus Standi and its liberalisation in Public Interest Litigation cases

Contribution of Public Interest Litigation in the attainment of Social Justice.