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## PUBLIC INTEREST LITIGATION IN INDIA: SOCIAL JUSTICE AND DEVELOPMENT

**Chippy G. Krishnan**

Assistant Professor, Centre for Legal Studies, Gitarattan International Business School,  
Rohini, New Delhi.

### ABSTRACT:

Public Interest Litigation has an important role in development of society by making justice more accessible to the weaker impoverished and disadvantaged sections of the society. Deviation from the formal justice delivery to the informal justice delivery system by relaxing the principle of locus standi helped the country move more closer to the objectives enshrined in our Indian Constitution as well as helped in rendering justice in all forms which all together lead to the development of Indian society by making all the organs of government accountable.



This article mainly concentrates on how the concept of public interest litigation in India developed and flourished and why there is a need to maintain a check on Public Interest Litigation so that through the backdoors of Public Interest Litigation judiciary shouldn't be entertaining frivolous or other ligations which is completely of business interest, political interest or private interest. The article also throws light on how important it is for the judiciary at the same time to stick-on to the doctrine of separation of powers which is a basic structure of Indian Constitution rather than intervening too much into other wings of government.

**KEYWORDS:** Public Interest, Locus Standi, Social Change, Social Justice, Judiciary, Judicial Activism, Development of Society.

### INTRODUCTION

The development of every society comes from the social change that occurs from time to time, which can be either revolutionary change or gradual slow and steady change. The drastic shift of society from police state to welfare state lead to the development of society altogether came through various reforms and enacting various statutes for rendering

social justice.

If we look at the present world we can see that wealth is not equally distributed as it is confined only to few sects of people. Social justice aims at development of society by removing inequality prevailing in the country. Social justice ensures liberty equality and also helps in protecting and maintaining the rights of individual in every society. So in

order to achieve complete social justice inequality should be uprooted from the society and instead equal opportunity should be guaranteed to all citizens.

The Supreme Court in *Balbir Kaur v. Steel Authority of India*<sup>1</sup> held that the concept of social justice is the yardstick to the justice administration system or legal justice and it would be an obligation for courts to apply the law depending upon the situation

in a manner whichever is beneficial for the society<sup>1</sup>

In *Consumer Education and Research Center v. Union of India*<sup>2</sup> the Supreme court clearly held that social justice is an important device to ensure that life is meaningful and livable enough with due dignity. Social justice is that revolutionary concept that will make the rule of law dynamic and thereby giving meaning and significance to the ideal of welfare state.

Thus for a society to develop the first and foremost requirement is social justice. Public Interest Litigation is the initiative through which social justice and development is aimed.

The Judiciary has become active since the origin of public interest Litigation in order to meet with the constitutional makers aim, aspirations and ideals for a revolutionary change, which was very well reflected in the Preamble of the Indian Constitution.

With the introduction PIL human rights flourished in such way that people became more aware of their rights dignity and with the help of public spirited persons and NGO's justice was rendered to the marginalized sections of the society.

We always stick-on to the thumb rule that whenever there is a tug of war between the public interest and private interest the public interest should win; that is if the public interest and the private interest cannot go hand in hand then the private interest should pave way to the public interest in such a way that let the public interest move first. So it is clear that public interest is of utmost importance and if due consideration is not given to public interest it will lead to denial of justice in all forms.

If look into Indian scenario we can see there are two phases of judiciary one the traditionalistic justice delivery system and the other is informal justice delivery system where judiciary give away with the policy of laissez fair, a policy of non-interference, and gets into action for if there is any lapse or lacuna from the part of executive or other governmental bodies. This shows that access to justice as well as speedy justice is of paramount importance rather than sticking on to the procedural formalities of law.

In order safeguard a democratic country like India Public Interest Litigation was a need of the hour. Public Interest litigation means in the interest of general public any public spirited person or collective groups or NGO's Can knock the doors of court on behalf of persons whose rights are affected. The Supreme Court in *D.S. Nakara v. Union of India* held that social justice must prevail over any technical rule<sup>3</sup>

The former chief Justice of India, P.N. Bhagwati observed:<sup>4</sup>

*"Today a vast social revolution is taking place in the judicial process, the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and device new strategies for providing access to justice to large masses of the people who are denied their basic human rights and to whom freedom and liberty has no meaning."*

Public interest litigation is a product of judicial activism where judiciary steps out of its boundary to interfere with the government when there is a willful neglect or lapse to solve the issues relating to various constitutional or statutory duties

The object behind public interest litigation is to ensure that the interest of public as well as protection of legal or constitutional rights of the poor helpless marginalized and oppressed groups or individuals and for rendering and ensuring social and economic justice to them.<sup>5</sup>

### **EVOLUTION OF PUBLIC INTEREST LITIGATION TO RENDER SOCIAL JUSTICE**

The seeds of Public Interest Litigation in India has been sown by Justice Krishna Iyer in *Mumbai Kamagar Sabha v. Abdul Thai*<sup>6</sup> In *Fertilizer Corporation Kmgar v. Union of India*<sup>7</sup> and in *S F Gupta and*

<sup>1</sup> .AIR 2000 SC 1596

<sup>2</sup> 1995 SCC (3) 42

<sup>3</sup> AIR 1983 S.C 130

<sup>4</sup> S.P. Gupta v. Union of India AIR 1982 SC 49 C189.

<sup>5</sup> . P.M. Bakshi, Public Interest Litigation, Second Edition, Asoka Law House, New Delhi, 2006,p.22

<sup>6</sup> . AIR 1976 SC 1455

*others v . Union of India*<sup>8</sup> Public Interest Litigation was well explained by the judges as well as the reasons for relaxing *locus standi* was explained.

The very famous case of *HussainaraKhatoon v. State of Bihar*<sup>9</sup> was the first case reported with the tag of Public Interest Litigation wherein an advocate filed a PIL on the basis of two news reports published in The Indian Express News Papers with respect to inhuman conditions of under trial prisoners in various jails of Bihar. The court ordered the release of nearly forty thousand prisoners and ruled that right to speedy trial is a part of fundamental rights under part III of Indian Constitution.

Thus by entertaining Public Interest litigation the court has guaranteed that human rights and to provide social justice which forms the part of basic structure of our constitution<sup>10</sup> The Honorable Supreme Court has also held that right to social justice is a fundamental right<sup>11</sup> "PIL was entirely a judge- led and judge-dominated movement."<sup>12</sup>

The Preamble of Indian Constitution 1950 aims to secure to all its citizens Justice -social, economic and political liberty of thought, expression, belief, faith and worship and equality of status and of opportunity. These terms were coined by the constitutional assembly with the intention to make a revolutionary social change in India by the help of part III and Part IV of Indian Constitution<sup>13</sup>. The various provisions of fundamental rights directive principles and Independence of judiciary altogether provided a better constitutional base to the evolution of Public Interest Litigation in Indian Soil<sup>14</sup>. Fundamental rights cannot even be taken by any amendment of the constitution<sup>15</sup> Right to constitutional remedies under Article 32 and Article 226 of Indian constitution itself is also a fundamental right<sup>16</sup> The question before the court was with respect to which is superior in Indian Constitution, part III or part IV .The court finally came to a settled position by saying that both Fundamental rights and directive principles are of equal importance and both supplement and complement each other and the harmony between part III and part IV also forms an essential part of basic structure of the constitution<sup>17</sup> Thus judiciary with its power of judicial review became a watchdog by wholeheartedly welcoming all the PIL cases.

The Indian Supreme Court like a warrior has used law as a tool to achieve social justice during the post emergency period.<sup>18</sup> The long standing principle of '*locus standi*' (the one who is aggrieved or one whose right has been affect or violated only have the right to file a case have been relaxed<sup>19</sup> by two eminent jurists Justice V. R. Krishna Iyer and P. N. Bhagwati for providing access to justice for poor deprived illiterate exploited and needy people and thus introduced Public Interest litigation into the Indian soil.

In *Sunil Batra v Delhi Administration*<sup>20</sup> it was clearly held that the term 'appropriate proceedings' mentioned in Article 32 of the constitution should be interpreted in such a way that the object and purpose behind that article is achieved and thus writs even in the form of letter post card or telegram can be accepted.

<sup>7</sup> AIR 1981 sc149

<sup>8</sup> . AIR 11982 SC 149

<sup>9</sup> AIR 1979 SC 1360

<sup>10</sup> Sadhuram v. Pulin AIR 1984 SC 1479 para 30

<sup>11</sup> CES. C- Ltd v. Subhash Chandra Bose AIR 1992 SC 573

<sup>12</sup> UpendraBaxi, "Taking Suffering Seriously: Social Active Litigation in the Supreme Court of India", in Supreme Court on Public Interest Litigation, and JaggaKapur, 1998

<sup>13</sup> Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford: Clarendon Press, 1966), p.27

<sup>14</sup> Public Interest Litigation in India: A Critical Review Surya Deva, Civil Justice Quarterly Issue 1, 2009

<sup>15</sup> L. Chandra Kumar v. Union of India, AIR 1997 SC 1125

<sup>16</sup> Indira Nehru Gandhi v. Raj Narain AIR 1975 SC 2299

<sup>17</sup> Minerva Mills v. Union of India AIR 1980 SC 1789

<sup>18</sup> UpendraBaxi, "Taking Suffering Seriously: Social Action Litigation in Supreme Court Of India" 4 *Third World Legal Studies* 107 (1985)

<sup>19</sup> Ashok Kumar Pandey v. State of W. B., (2004) 3 SCC 349

<sup>20</sup> AIR 1980 SC 1579

## JUDICIAL APPROACH

When the Indian Judiciary gave a green signal for PIL there were plethora of cases that came in front of the court which resulted in interpreting and expanding the existing fundamental rights, by creating new fundamental rights. Right to life under Article 21 of the Indian Constitution was the one which underwent drastic change through this. Right to life doesn't confine to mere animal existence rather it means much more than that i.e. to live with due dignity<sup>21</sup>. The ambit of Article 21 has widened to include right to livelihood<sup>22</sup>, prisoners right<sup>23</sup>, speedy trial<sup>24</sup>, shelter<sup>25</sup>, health<sup>26</sup>, Privacy<sup>27</sup>, free and compulsory education up to the age of 14 years<sup>28</sup>, pollution free environment<sup>29</sup>, clean and safe drinking water<sup>30</sup>, free legal aid<sup>31</sup>.

*M. C. Mehta v. State of Tamil Nadu*<sup>32</sup> famously known as Child Labour Abolition case was a public Interest litigation filed under Article 32 of the Indian Constitution to abolish the child labour wherein the Supreme Court held that children of any age group below 14 years cannot be employed in any hazardous industry or mines or other works and also issued various directions to the government to abolish the child Labour which includes setting up of Child Labour Rehabilitation welfare Fund.

In *S.P. Gupta v. President of India*<sup>33</sup> the court was of the view that under Article 32 of Indian Constitution the Supreme Court and under Article 226 the high court can very well entertain writ petitions from public spirited persons and social action groups to safeguard the fundamental rights of those who are in a disadvantaged situation either due to their social economic political status or due to their poverty illiteracy helplessness or disability unable to enforce their fundamental rights through court of law.

The court thus became a guardian angel in protecting the fundamental rights of the people. In many a case the court gave orders and guidelines and directions to the government to fill up the lacuna existing with respect to subject in question and take appropriate measures required for ensuring the justice. This is when a question before the judiciary comes up and there no specific law or rule with respect to that particular topic in question the judiciary will get into action by filling up the vacuum or lacuna that is left by legislature, by giving guidelines and directions to the legislature.<sup>34</sup>

Thus through public interest litigation drastic change occurred in the society which led to the development of society. The court was bold enough to break all the barriers from entertaining PIL filed by lawyers public spirited persons NGO's collective groups etc. and was invoked even against the private individuals private organizations rather than invoking only against state.

The judiciary thus stepped into many areas through PIL like sexual harassment of women at workplace, bonded Labour, corruption, Environmental Protection, prisoner's rights scheduled caste scheduled tribes, sex workers, destitute and much more. PIL thus became an instrument of social change by promoting and ensuring rule of law and thereby making the government and its organ transparent and accountable in all means<sup>35</sup>.

<sup>21</sup> Kharak Singh v. State of UP AIR 1963 SC 1295

<sup>22</sup> Olga Tellis v. Bombay Municipal Corp AIR 1986 SC 180

<sup>23</sup> Prem Shankar v. Delhi Administration AIR 1980 SC 1535

<sup>24</sup> Hussainara Khatoon v. State of Bihar AIR 1979 SC 1369

<sup>25</sup> Gauri Shankar v. Union of India (1994) 6 S.C.C. 349

<sup>26</sup> **Parmanand Kataria v Union of India AIR 1989 SC 2039**

<sup>27</sup> Kharak Singh v. State of UP AIR 1963 SC 1295

<sup>28</sup> Unni Krishnan v. State of AP (1993) 1 S.C.C. 645

<sup>29</sup> M C Mehta v. Union of India (1996) 6 S.C.C. 750

<sup>30</sup> A.P. Pollution Control Board II v. M V Nayudu (2001) 2 S.C.C. 62

<sup>31</sup> Hussainara Khatoon v. State of Bihar AIR 1979 SC 1369

<sup>32</sup> AIR 1991 SC 417

<sup>33</sup> AIR 1982 SC 149

<sup>34</sup> Vishaka v. State of Rajasthan AIR 1997 SC 3011; D. K. Basu v. State of West Bengal AIR 1997 SC 610.

<sup>35</sup> Surya Deva, "Who will Judge the Judges: A Critical Purview of Judicial Activism" (1997) 1 Delhi University Law Journal 30

Public Interest Litigation was so deeply rooted all throughout the years since its origin that after a particular time period anything and everything came in front of the court in the name of Public Interest Litigation. Many of the petitions filed before the court with tag line of public Interest Litigation was actually not hitting the object behind which Public Interest Litigation was introduced. Lot of frivolous petitions were filed by people through the means of public Interest Litigation. Most of the Litigations were of either of private interest, business interest, political interest etc. There were even lot of circumstances where the higher Judiciary encroached in to the fields of executive and legislature and performed many a functions which was purely ultravires.

Judiciary being the apex body who declared separation of powers forms part of basic structure of Indian Constitution itself deviated a lot from the doctrine of separation of powers as enshrined in our Indian Constitution and encroached a lot into the other organs. Judiciary should always strike a balance between securing the ends of justice and confining itself to the public Interest Litigations filed in the best interest of public and rejecting the frivolous ones. There are plethora of case laws which gives us an insight on how the Indian judiciary rejected frivolous petitions filed under the name tag of Public Interest Litigation

## CONCLUSION

Law whether it is formal or informal, should be in such a way that it aims for meeting the ends of justice and should be accessible to all sections of the society. Public Interest Litigation is that particular instrument through which court defines and extends the meaning and ambit of human rights in India and made justice more accessible to the weaker sections of the society. Public Interest Litigation would definitely be an instrument of social justice if the judiciary is always vigilant enough to accept the public interest litigations and blocking the frivolous ones entering in the name of PIL. To conclude I would like to quote the present chief justice of India RanjanGagoi :

*"In the journey of a nation, when the legislative and executive wings gets swept away from their duties and goals under the constitution by waves of populism, it is for the judiciary to rise and stand up to the populist forces and protect the constitutional ethos. If a judicial system fails to enjoy public confidence, its deliverables would never constitute 'justice'."*

Public Interest Litigation is inevitable in any society as it could achieve all those objectives which could never be achieved through the medium of conventional private litigation. The apex court has contributed a lot to achieve the goal of social justice through the medium of Public Interest Litigation and thereby playing a vital role in making India closer enough to the ideal of welfare state and rendering social justice which was dream come true for a developing country like India.

The Indian Judiciary like a warrior enforced the Directive principles through the doors of fundamental rights by interpreting and widening the ambit. There is no doubt that Public Interest Litigation Jurisprudence of India can definitely contribute a lot to whole world and which will be helping the other nations in structuring a better form of Public Interest Litigation in their soil for achieving the ends of social justice.



**Chippy G. Krishnan**

Assistant Professor, Centre for Legal Studies, Gitarattan International Business School, Rohini, New Delhi.