

# PUBLIC INTEREST LITIGATION

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Public interest litigation is an instrument of justice to the 'littlemen' who cannot ask for justice themselves. Public interest law has been uniquely developed in America. It is a name given to efforts to provide representation to previously unrepresented groups and interests. In India it took form of public interest litigation in mid 1970s. It makes justice a reality for those who can not litigate for it themselves without naming it the concept was inaugurated by Mr. Justice V.R. Krishna Iyer in *Mumbai Kamdar Sabha v. Abdulbhai* A.I.R. 1976 S.C. 1465. The learned Judge observed : "Test litigation, representative actions, *pro bono publico* and like are broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on merits by suspect reliance on peripheral, procedural short comings." It was also explained that public interest is promoted by a spacious construction of *locus standi* in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher Courts where remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law. Krishna Iyer, J. used the term public interest litigation for the first time in *Fertilizer Corporation Kamgar Union v. Union of India*, A.I.R. 1981 S.C. 344. He was also to use 'epistolary' jurisdiction. Justice Bhagwati comprehensibly explained the public interest litigation in *S.P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149. He pointed out that where legal wrong committed to 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 appropriate direction, order or writ.

The public interest litigation has broad contours as follow :

1. It includes any legal wrong or injury or illegal burden caused or threatened. It comprehends both violation of fundamental rights and legal rights.
2. The beneficiary of litigation or victim of legal injury may be a person or a determinate class of person not in a position to a claim relief before the Court themselves due to poverty, helplessness, or disability or socially or economically disadvantageous position.
3. Any member of public or a society can maintain an application for appropriate direction etc. on behalf of such a person or class of persons.
4. The High Court can be moved for the infraction of any right—fundamental or otherwise and the Supreme Court can be moved for the violation of fundamental rights only.
5. The Court may be moved by a member of the public by addressing a letter which the Court may convert into a writ petition.
6. In some extreme cases of violation of fundamental right the Court—H.C. and S.C. may move *suo motu*.
7. The Court may issue any direction or order or writ for redressal of grievances. The direction may be require affirmative action or continuous monitoring.
8. The Court may also direct payment of compensation to the persons

wronged.

The public interest litigation is flourishing, but the Supreme Court has not yet been able to formulate the clear rules governing such litigation. Earlier addressing of a letter was enough. As pointed out by Bhagwati, J. in *P.U.D.R. v. Union of India*, A.I.R. 1982 S.C. 1473 "the Court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the Court to such legal injury or wrong." And the Court in turn would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. The practice of addressing public interest letter to particular judges was commented on the ground that the litigants were choosing judge. As in turns out, some judges were choosing their litigants. Tulzapurkar, J. dubbed the letter addressal to particular judges as conferring a privilege on the complainant to have judge or forum of his own choice. It was thought to erode the administrative power of the Chief Justice as well as subversion of the judicial process which enjoins that no litigant can choose his own forum. Like opposition was aired by R.S. Pathak and A.P. Sen, JJ. in *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 802 Fazal Ali and Venkataramiah, JJ. posed ten questions to be answered by the Supreme Court in *Sudipt Majumdar v. State of M.P.*, (1983) 2 S.C.C. 258. Such protest from the judges of the Court themselves led to the procedure of filing of a regular petition on the letter. Some judges of the High Court also started *suo motu* proceedings on the basis of letter to editor with to check miscarriage to justice. This tendency has attracted some criticism on the ground of the lack of means to verify the veracity of contents of letter before commencing the proceedings. With a view to make the process full proof the Supreme Court appoints a District Judge, a Professor of Law, a Journalist, an officer of the Court, an advocate and sometimes a social scientists as commissioner for the purpose of making inquiry or investigation and making report to the Court.

Public Interest Litigation has encompassed a large number of cases of various types. It has been applied in cases of threat to the independence of judiciary, non-payment of equal pay for equal work and minimum wages; cause of old and retired infirm pensioners; release and rehabilitation of bonded labourers working in stone quarries; claim of compensation for victims of unjustified police atrocities and custodial deaths; checking the large scale issuance of ordinances; access to a prisoner complaining about brutal attack and assault by head warden on a fellow prisoner; checking of pollution of time quarries; keeping cleanliness by municipality; relief to Bhopal gas leak disaster, relief to the victim of gas leak from the Shriram Fertilizer and Chemical Plant Delhi, granting relief to Adivasis and other backward people being deprived of livelihood due to eviction from forest land; to prevent environment pollution and so on.

Public Interest Litigation is a welcome move much of its successfulness depends upon the likelihood and degree of response from the implementing agencies. In *Bandhua Mukti Morcha* case the Supreme Court itself noted that Haryana State had not made provisions for drinking water at the right of quarries which it had agree to do. One is to be reminded that judicial activism through public interest litigation can not be a substitute for executives efficiency. To make such laudable litigation purposeful the Court may ensure enforcement through contempt proceeding in case of non-observance of the directions of the Court. Above all the role of social activist, legal aid machinery may serve the desired object. The successfulness of the public interest litigation will depend upon the awakened and public spirited people, like M.C. Mehta and organisations like P.U.D.R., Common Cause, People's Union for Civil Liberties; SAHELI and so on.

Recently on July 12, 2005 the three Judges Bench of the highest Court of the