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Public Interest Litigation: An Indian Scenario

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Abstract

Public interest litigation serves a vital role in the civil justice system. It offers a ladder to justice to the disadvantaged sections of the society, provides an avenue to enforce diffused or collective rights, and enable civil societies to not only spread awareness about human rights but also allows them to participate in government's decision making. It facilitates an effective realization of collective, diffused rights for which individual litigation is neither efficient nor a practicable method. The range and scope of Public Interest Litigation is vast as it is a mechanism to agitate any socio-economic public issue before the court which can be brought within the legal and constitutional mould. The concept of Public Interest Litigation can be understood as being concomitant to Art.32 with regard to Supreme Court and to Art.226 with regard to High Court. A public interest litigation writ petition can be filed in the Supreme Court under Art.32 only if a question concerning the enforcement of a fundamental right is involved. Under Art.226, a writ petition can be filed in a High Court whether or not a fundamental right is involved.

Keywords: Public, Interest, litigation, Constitution, citizens, Supreme Court, High court

1. Introduction

Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of "Locus Standi" that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of public spirited citizens for the enforcement of constitutional- legal rights. Now, any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition.

Oxford English Dictionary 2nd Edn. Vol. XII) The words 'Public Interest' mean "the common well-being also public welfare (and the word 'Litigation' means "a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy." Thus, the expression 'Public Interest Litigation' means "some litigation conducted for the benefit of public or for removal of some public grievance." [1] In simple words, public interest litigation means, any public spirited citizen can move/approach the court for the public cause (or public interest or public welfare) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution or before the Court of Magistrate under Sec. 133 of the Code of Criminal Procedure, 1973.

Justice Krishna layer in fertilizer Corporation Kamgar Union v. Union of India [2], (1981) enumerated the following reasons for liberalization of the rule of Locus Standi:-

1. Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights.
2. Social justice wants liberal judicial review administrative action.
3. Restrictive rules of standing are antithesis to a healthy system of administrative action.
4. Public interest litigation is essential for participative public justice".

Therefore, a public minded citizen must be given an opportunity to move the court in the interests of the public. Further, the Supreme Court in S.P. Gupta vs. Union of India [3], popularly known as—Judges 'Transfer Case', Bhagwati J. firmly established the validity of the public interest litigation. Since then, a good number of public interest litigation petitions were filed.

2. Meaning of Public Interest Litigation

Public interest litigation as an exception to the general rule that only the person whose fundamental right is infringed or threatened to be infringed can file petition under the Article 32. The court now permits public interest litigation or social interest litigation as the instance of 'public spirited citizens' for the enforcement of the constitutional and legal rights of any persons

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or group of person who because of their poverty or socially or economically disadvantaged position are unable to approach the court for relief.

Public interest litigation [pro bono publico litigate] is litigation at the instance of a public spirited citizens espousing cause of others.

"Public interest Litigation", in simple words, means, litigation filed in a court of law, for the protection of "Public Interest" (nebulous entity), such as pollution, Terrorism, Road safety, constructional hazards etc

Professor Baxi prefer them social Action litigation instead of public interest litigation. The aim of public interest litigation is to provide justice to the weak meek, uneducated, the poorest poor, deprived the urban and rural unorganized labours sector, women, children, handicapped and down trodden, Indians under the provisions of the constitution relaxing the locus Standi.

Justice Krishna Iyer in A, B.S.K Singh [Rly] v. Union of India [4] declared that 'access to justice' through 'class action' 'public interest litigation' and representative proceedings' is the present constitutional Jurisprudence'

The expression 'public interest litigation' was first articulated by the Apex court in Fertilizer Corporation Kamgar Union, [5] although the concept of 'public interest litigation' was discussed earlier, without assigning the terminology in Mubhai Kamgar Shabha v. Abdulbhai Faizulbhai and Maharaj Shingh v, State of U.P [6], the concept was crystallized in S. P Gupta v. Union of India and elaborated further in served subsequent Judgment.

Public Interest litigation' is something in which the public, the community at large has some pecuniary interest or some interest by which their right or liabilities are affected' Litigation is a law suit in court.

In Janta Dal v. H.S Chaudhry. [7], public interest litigation has been defined as 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 have pecuniary interest, or some interest by which their legal right or Liberties are affected'.

In S.P. Gupta and others v. president of India and Others [8], the court has established the rule regarding the public interest litigation. The court has held that any member of the public having' sufficient interest' can approach the court for enforcing constitutional or legal right of others persons and redressal of a common grievance.

3. Origin of Public Interest Litigation in India

Public interest litigation, at least as it had developed in India, is different from class action or group litigation. Whereas the latter is driven primarily by efficiency considerations, the Public Interest litigation is concerned at providing access to justice to all societal constituents. Public Interest Litigation in India has been a part of the constitutional litigation and not civil litigation. Therefore, in order to appreciate the evolution of Public Interest Litigation in India, it is desirable to have a basic understanding of the constitutional framework and the Indian judiciary [9]. After gaining independence from the British rule on August 15, 1947, the people of India adopted a Constitution in November 1949 with the hope to establish a sovereign socialist secular democratic republic [10]. Among others, the Constitution 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) [11]. These aims were not merely inspirational because the founding fathers wanted to achieve a

social revolution through the Constitution [12]. The main tools employed to achieve such social change were the provisions on fundamental rights and the directive principles of state policy, which Austin described as the conscience of the Constitution [13].

In order to ensure that Fundamental rights did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. As we will see below, provisions related to fundamental right, directive principal of state policy and independent judiciary together provided a firm constitutional foundation to the evolution of public interest litigation in India. Part III of the Constitution lays down various fundamental rights and also specifies grounds for limiting these rights. As a right without a remedy does not have much substance [14], the remedy to approach the Supreme Court directly for the enforcement of any of the Part III rights has also been made a fundamental right [15]. The holder of the fundamental rights cannot waive them. Nor can the fundamental rights be curtailed by an amendment of the Constitution if such curtailment is against the basic structure of the Constitution. Some of the fundamental rights are available only to citizens while others are available to citizens as well as non-citizens [16], including juristic persons. Notably, some of the fundamental rights are expressly conferred on groups of people or community. Not all FRs are guaranteed specifically against the state and some of them are expressly guaranteed against non-state bodies Even the state "is liberally defined in Art.12 of the Constitution to include, the Government and Parliament of India and the Government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India. The founding fathers envisaged the judiciary as a bastion of rights and justice [17]. An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the fundamental rights was conferred on both the Supreme Court and the High Court's [18] the courts that have entertained all the public interest litigation cases. The judiciary can test not only the validity of laws and executive actions but also of constitutional amendments. It has the final say on the interpretation of the Constitution and its orders, supported with the power to punish for contempt, can reach everyone throughout the territory of the country. Since its inception, the Supreme Court has delivered judgments of far-reaching importance involving not only adjudication of disputes but also determination of public policies and establishment of rule of law and constitutionalism, The misuse of public interest litigation in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which public interest litigation was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the public interest litigation

4. Nature of Public Litigation

The public interest litigation which is a 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., one making claims seeking relief against the other and that other opposing such claim or resisting such relief. Public inters 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 the constitutional and legal rights of large numbers of people who poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destruction of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the protection of law must be available only to a fortunate few or that the law should be allowed to be prosecuted by the vested interest for protection and upholding the Status quo under the guise of enforcement of their Civil and Political rights.

5. Admission Public Interest Litigation in Court

The Supreme Court and High Court have to allow litigation in public interest for the redressal of a common grievance if it is found that

1. The impugned action is violative of any of the fundamental rights guaranteed by the Constitution of India and relief is sought for its enforcement.
2. The action complained of is palpably illegal or mala fide and affects the group of person who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.
3. The person or a group was approaching the court in public interest litigation for redressal of public inquiry arising from the breach of public duty or from violation of some provision of the constitutional law.
4. The purpose of the public interest litigation should not be abused by politician or others busy bodies for political or unrelated objective, every default on the part of the state or public authority being not justifiable in such litigation.
5. The person approaching the court should come with clean hands and lean heart, clean objective.

6. The Scope of Public Interest Litigation

Ordinarily, a letter or petition falling under the following categories has been entertained as public interest litigation; ^[19]

- ❖ Violation of basic human right of poor
- ❖ content and conduct of government policy
- ❖ Compel municipal authorities for perform a public duty,
- ❖ Bonded Labours,
- ❖ Neglected Children,
- ❖ Nonpayment of Minimum Wages,
- ❖ Protection of pavement dwellers and slum-dwellers,
- ❖ fresh Trade in Protective Home,
- ❖ 6Atrocities of women,
- ❖ Ill-treatment of Prisons,
- ❖ Injustice done to children in Jail,
- ❖ Protection against police harassment,
- ❖ Atrocities against Sc, ST and EBCS, Petition of riot victims
- ❖ Petition relating to Family Pension,
- ❖ Ethics Medical Profession,
- ❖ Environmental Pollution,

7. Abuse or Demerit of Public Interest Litigation

It has been pointed out that the public interest litigation would develop uncertainty as to the admission of the petition for hearing. It is said that there are no guidance as to the cases which should be admitted and the cases which would not be admitted. Due to this the public interest litigation has become predictable.

1. The public interest of litigation would result in the tremendous increase in the litigation. It is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court.
2. The public interest litigation can be misused for private motive or political ends.
3. If court allow the practice of the affected parties addressed letters directly in the name of the judge of the supreme court or High court and they used to convert the letter into the writ petition s, there for would be danger of litigations choosing a judge and in turn judges choosing their litigant.
4. The Suo Motu action by judge upon the newspaper many lead to assume the role of advocate by the judge and thus, acting against the judicial percept nobody should be a judge in his own case [*Nemo judese in resua*].
5. The public Interest litigation may contain half-baked information and that court itself has to search and find the facts relating to the case.

8. Leading Cases on Public Interest Litigation

8.1 Relating To Environmental Problem

The effort of the apex court in environmental pollution control through public interest litigation indeed laudable, particularly when the legislature is lagging behind in bringing the lacuna in the existing legal system and administration is not well equipped to meet the challenges. M.C. Mehat, who filed a number of petition or writs on environmental protection, is a champion for the cause of pollution control.

Rural Litigation and Entitlement Kendra. State of Uttar Pradesh, ^[20] the Supreme Court established the 'right to free pollution' for the first time. In the case, a public interest Litigation was filed for the closure of certain lime stone queries on the ground the say there were serious deficiencies regarding the safety and hazards in them. On the basis of the report of the commission appointed by the court, the supreme court ordered the government to take steps to control the affecting the safety and health of the people living in the area otherwise close them. M.C. Mehta V. Union of India, ^[21] a writ petition filed by M.C. Mehta was admitted as Public interest litigation, relating to gas leakage of chlorine gas from the shriram Food and Fertilizer Manufacturing Plant resulting i death of one person and causing hardship to workers and resident of the locality. The Supreme Court directed the management to take all necessary safety measure before reopen the plant. The court asked the management to deposit a sum of twenty lakhs of rupees by way of securing for payment of compensation claims of the victim of oleum gas leakage with the Registrar of the court. In addition, the management is asked to provide a bank guarantee for a sum rupees fifteen lakhs which should be enchased for the payment of compensation in leakage with this condition the court allowed the plant to work partially. The court held that the compensation should be proportion to the financial capacity of the erring company. It is also held that the directors and the officers who are responsible for the leakage shall be liable to pay for damage.

M.C. Mehta V. Union of India ^[22]. Public interest litigation has been brought before the Apex court about the pollution of the Ganga by tanneries at Jaiman near Kanpur. The court issued direction for the enforcement of the statutory provisions contained in the Water [Prevention and Control Pollution] Act and the Environment protection Acts for the

prevention of nuisance caused by the pollution of the river Ganga. The Supreme Court held that the court was entitled to order the closure of tanneries unless they took Steps to set up treatment plants.

In *M.C. Mehta v. Union of India*,^[23] the court directed to Delhi Administration to, implement the Motor Vehicle Act, 1988 effective from April 1, 1991 and not to admit new diesel and petrol driven vehicles which increase pollution in Delhi.

In *M. C. Mehta V. Union of India*^[24]. The Supreme Court issued direction to the Delhi administration for checking the vehicle pollution in Delhi. The Supreme Court issued direction to the administration to take steps to implement its earlier direction issued for this purpose.

8.2. Women Welfare

Public Interest Litigation s have been brought the issues relating to prostitution and fallen women and their children and other issues related to women welfare before the court and the court has issued several direction for the protection of such women and their Children,.

In *Vishakha V, State of Rajasthan*,^[25] the Apex court has led that the sexual harassment of working women amounts to violation of right of gender equality and right to life and personal liberty under the Art.14 and 21 of the constitution of India. The Apex court chalked out some guidance to be observed at workplace or other institution to provide for effective enforcement of the basic human rights of gender equality and guarantee against sexual harassment in the absence of the enacted law.

In *Gaurav Jain V. Union of India*^[26], a public interest litigation related to an important issues concerning the prostitutes, fallen women and their children has been filed. It has been held that segregating children of prostitute by locating separate schools and providing separate hostels, would not be in the interest of children. Once children are born to prostitute, it is in the interest of such children and of society at large, that the children of prostitute should not be separated from their mother and be allowed to mingle with others and become part of the society. The court has asked the State to rehabilitates the prostitute to lead of life dignity and provide self-employment programmes for them.

8.3 Child Welfare

Article of the constitution of India provides that 'No child below the age of the fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment" In spite of this constitutional provisions, children are forced to work and put to many hardships. Public interest litigation have been filed in the interest of child welfare

In *M.C, Mehta V. State of Tamilnadu*^[27], a public interest litigation of employment of children in match industry has been filed. The court has held that the children below the age of 14 years cannot be employed in any hazardous industry or mine or others work. The court directed that the children cannot be employed in the match factories in the process of manufacturing. However, they can be employed in the process of packing which I done in area away from the place of manufacturing by providing special facilities for their education, health, diet, payment of minimum wages, paying the premium for insurances etc.

8.4 Pavement Dwellers

In *Olga Tellis v. Bombay Municipal Corporation*^[28], the petitioner challenged the removal of the huts of pavement

dwellers in Bombay and pleaded that their removal amounted to deprivation of their right to live hood and it was violation of Art.21.

8.5 Labour and Bonded Labours

Article 43 under the directive principal of state, require the state to try to secure by suitable legislation or economic organization or in any others way, to all workers, agriculture, industrial or others, work, a living wages, condition of work ensuring a decent standard of life and full enjoy many of leisure and social and cultural opportunities.

Article 39[d], under directive principles of state, requires that the state shall direct its policy towards securing that there is equal pay for equal work for both men and women. Under Art.42 the State shall make provision for just and humane conditions of work.

8.6. Prohibition of Traffic in Human beings, Beggar and Force Labour

There are two Article 23 and 24 which guarantee the against exploitation. Article 23 prohibit traffic in human being and forced labour and Article 24 prohibit employment of children in factories etc. Article 23 prohibits traffic in human beings, enforced labour, and employment of children below fourteen years, in factories, mines and other dangerous employment. Under fundamental right. Art.23^[1] provides that the system of bonded labour by stating "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provisions shall be an offence punishable in accordance with law".^[29]

8.7 Prohibition of Employment of Children in Factories Etc.

Article 24 of the Constitution of India, prohibits the employment of the Children below 14 years of age in factories and hazardous employment. This provision is certainly in the interests of public health and safety of life of children.

Where the administration failed in the implementation of labour laws, social workers filed writs under the public interest litigation.

In *Bandhu Mukti Morcha V, Union of India*^[30], the Apex court was informed through a letter that bonded labour was in existence in stone -quarries in Faridabad district of the State of Hariyana. The Supreme Court has appointed a commission to visit the said stone -quarries and make enquires and submit its report to the court. The court has held that the State is bound to ensure the observance of their labour legislation enacted for securing the workman a life of human dignity and inaction on part of the State in implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Art.21, the court has directed the government to set right the inhuman living conditions of the bonded labourers.

Deena v, Union of India,^[31] the Court held that labour taken from prisoners without paying proper remuneration was 'Forced labour' and violation of Article 23 of the Constitution.

8.8 Atrocities of Police and Jail authorities: In Human treatment

Police are for the protection of the public and for the maintenance of law and order. If they treat persons in humanity, the court admits public interest litigation to protect the right of individual.

D, K. Basu v, Sate of West Bengal,^[32] a public interest litigation has been filed for the prevention of torture and in

human treatment by the police. The court has held that any form of torture or cruelty, inhuman or degrading treatment of the persons arrested by the police is against Art.21, whether at occurs during the investigation or interrogation or otherwise. The court has issued certain guidance to be followed by the police in all cases of arrest to detention. The court declared that the violation of the guidance rendered him liable to be punished for contempt of court. The proceeding for contempt may be instituted in any High Court of the Country having territorial Jurisdiction over the matter.

In *Kishore Singh v. State of Rajasthan* [33] the Supreme Court held that the use of third degree method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for the human person. The Court also held that punishment of solitary confinement for a long period from 8 to 11 months and putting bar fetters on the prisoners in jail for several days on flimsy ground like loitering in the prison, behaving insolently and in an uncivilized manner, tearing of his history ticket must be regarded as barbarous and against human dignity and hence violative of Article 21, 19 and 14 of the Constitution Krishna Iyer, J. declared, "Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.

8.9 Medical profession and Health Services

The Supreme Court referred to the Union of India through an affidavit) in *Paramanand Kumar Katara v. Union of India* [34], as follows, namely, that: "there are no provisions in the Indian Penal code, Criminal Procedure Code, Motor Vehicles Act, etc., which prevent doctors from promptly attending on seriously injured persons and accident cases before the arrival of police and thus taking into cognizance of such cases, preparation of FIR and other formalities by the police. However, the deponent most humbly submits that the respondent shall always abide by the directions and guidelines given by the Hon'ble Court in the present case. Though the life and liberty of a person is very much protected under Part III of the Constitution (under Art. 21), and though there is a Supreme Court direction that in all accident cases irrespective of the police complaint, it is the fundamental duty on the part of the hospitals (where the injured were taken) to attend on the patients, unfortunately nothing is done in the matter. As a result, many people have been dying without any care or attention. Doctors point out that at least 50 per cent of the fatality can be averted if the victims are admitted to a hospital within the first one hour.

9. Conclusion

We must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politician and others.

At present, the filing of petition of public interest litigation are increasing day by day the court are liberally admitting the public interest litigations. The courts are taking up the public interest litigation *suo motu* on the basis of the reports in newspapers. Even advocate are seeking the help of the court when their interest are infringed.

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