

1 (i) INTRODUCTION AND GENERAL OVERVIEW

The emergence of Public Interest Litigation has recognized that the right to elective 'access to justice' is the most basic and fundamental human right in the welfare state which guarantees social rights. For the enjoyment of the traditional legal right as well as the new social rights this tool pre-supposes the mechanisms for their elective protection and the traditional conception of adjudication. Moreover the assumptions on which it is based are proving to be inadequate for the operation of the Public Interest Litigation. Consequently, the courts have liberalized the standard of locus standi to meet the challenges of the time. In Indian law, PIL means litigation for the protection of public interest. It is litigation introduced in a court of law not by the aggrieved party but by the court itself or by any other private party. It is not necessary for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation empowers the public promoting judicial activism.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual.

"PUBLIC INTEREST LITIGATION"

In simple words, it means litigation filed in a court of law, for the protection of "Public Interest", such as those against pollution, terrorism, constructional hazards or those for road safety etc.

Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges considering the interest of public at large. Although, the main and only focus of such litigation is "Public Interest", there are various areas where Public interest litigation can be filed. For e.g.

- Violation of basic human rights of the poor
- Content or conduct of government policy
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights

In Black's law Dictionary (Sixth Edition), "Public Interest" is defined as follows:

"Public Interest. –

Something in which the public, the community at large has something 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 interest of the particular localities, which may be affected by the matters in question. Interest shared by the citizens generally in affair of local, state or national government....."

Examples of PIL (Public Interest Litigation)

The Bombay High Court on 31 August, 2006 directed the broadcasters to give an undertaking that they will abide by the Cable Television Network Act 1995 as well as the court's orders by tomorrow, in view of larger public interest.

A division bench comprising Justices R M Lodha and S A Bobde were hearing a Public Interest Litigation (PIL) filed by Professor Pratibha Nathani of St Xavier's College alleging that films without certification by the Censor Board for

Film Certification (CBFC) allowing 'free public exhibition', were being shown on cable channels, which have a negative impact on children. Hence, such films should not be shown and action be taken against those still running such content on their channels.

The court directed the cable operators and channels to screen only 'U' and 'U/ART.' certified films.

However, before that order, the police had taken action against the Multi-system operators and seized their decoders due to which they could not telecast certain channels. Assistant Commissioner of Police Sanjay Apranti told the court that they did not have a problem if the channels provided the cable operators with new decoders.

Also, Zee Television and Star Television networks applied for the declaration in writing that they would abide by the said act and court orders. The court also directed seven channels -- Star Movies, Star One, Star Gold, HBO, ZEE Movies, AXN and Sony Max -- to furnish a list of all the films that they were to screen to the police.¹

Public Interest Litigation is by and large issue-oriented where in legal representation is viewed as an integral part of efforts to make society live up to those desirable goals for which it came into existence. Further, Public Interest Litigation is a kind of political interest group that uses the tool as a vehicle. The great advantage of PIL of course is that appeal to legal principles short – circuits the political process where the interests of unorganized people are safely represented and often disagreed.

¹ www.legalserviceindia.com visited on

The emergence and growth of public-interest law movement in the United States owes much to the substantial resource investment from the government and private foundation. The Public Interest Litigation in United States was espoused by specialized public interest law firms. The issues within the ways of PIL, the United States are primarily concerned with the civic participation in governmental decision making. In brief, the Public Interest Litigation movement in the United States involves innovative uses of law, lawyers and courts to secure greater fidelity to the parlous notions of legal liberalism and interest group pluralism in an advanced industrial capitalistic society.

However the PIL movement in India is primarily concerned with exposing the repression, oppression and exploitation of unorganized poor masses by the agencies of state as well as the governmental lawlessness. For instance, in the cases of under trials Bhogalpur Blinding case , Asiad labour, bonded labour, pavement dwellers, inmates of protective home etc Public Interest Litigation in India has acquired certain unique characteristics not found anywhere else. For instance, the courts have entertained letters, post-cards, telegram relating to any legal grievance of poor masses addressed to the judge or to the court by any public spirited person as writ petition under Article 32 or Article 226. Secondly, this social litigation movement in India is primarily 'judge – induced, thus advocating active assertion of judicial power to ameliorate the miseries of masses.

Judiciary, being the sentinel of constitutional statutory rights of citizens has a special role to play in the constitutional scheme. It can review legislation and administrative actions or decisions on the anvil of constitutional law. For the enforcement of fundamental rights one has to move to the Supreme Court or to the various High Courts directly by invoking Writ Jurisdiction of these courts. But the high cost and complicated procedure involved in litigation, however, makes

equal access to jurisdiction in mere slogan in respect of millions of destitute and underprivileged masses stricken by poverty, illiteracy and ignorance. The Supreme Court of India pioneered the Public Interest Litigation (PIL) thereby throwing upon the portals of courts to the common man.

Till 1960s and 70's, the concept of litigation in India was still in its rudimentary form and was seen as a private pursuit for the vindication of private vested interests. Litigation in those days consisted mainly of some action initiated and continued by certain individuals, usually addressing their own grievances/problems. Thus, the initiation and continuance of litigation was the prerogative of the injured person or the aggrieved party. This was greatly limited by the resources available with those individuals. There were very little organized efforts or attempts to take up wider issues that affected classes of consumers or the general public at large. However, this entire scenario changed during eighties with the Supreme Court of India leading the concept of public interest litigation (PIL). The Supreme Court of India gave all individuals in the country and the newly formed consumer groups or social action groups, an easier path to law and introduced in their work, a broad public interest perspective.

With the emergence of the PIL on Indian legal system, two schools of thought have simultaneously emerged. One school considers the Public Interest Litigation as unwarranted expansion of 'judicial power which is aimed at upsetting the already well established principles and, as an encroachment on the legislative as well as executive power and as a conspiracy on the part of lawyers, judges, press and social – organizations to undermine the democratic process.

On the other hand, the other school considers the Public Interest Litigation an important tool to represent the unrepresented and unorganized interest in the various social and political processes, to provide socio-economic justice to the

unorganized poor-masses of the country through judicial process in case failure of the other organs of the state in this respect to make the democratic system in India a participative democratize system in India.

The emergence of PIL raise several fundamental questions relating to the role of the court, role of the lawyers, role of people, role of press, role of voluntary groups and organizations.

Further, a brief analysis of the experience of America in public interest law movement and its problems has been done in this thesis. For the comparative analysis, Public Interest Litigation provides measuring unit to probe the validity, utility and 'justice' of legal developments in a given country. Moreover, the American experience provides a relevant message for Indian Legal system which we can use to objectively measure our development in PIL area.

The social back drop of the problem in India is projected in the lines of poetry quoted in Nehru's auto-biography.

*"Bowed by the weight of centuries he leans,
Upon his hoe and grazes on the ground,
The emptiness of ages on his trace on mistake, and on his
back the burden of the world."*

And the process of transformation of non-being into human – beings and what its involved is eloquently described in the beautiful lines of **Rabindra Nath Tagore**.

*"Into the mouths of these dumb, pole and weak,
We have to infuse the language of the soul.
Into the hearts of their weary and warn, any and forlorn,
We have to minister the language of humanity."*

Framing of Constitution is the culmination of aspirations of large masses of citizens particularly the emancipated class and a result of the freedom struggle of an enslaved nation.

Judicial activism is not judicial adventurism but development in the realm of law and civilisation all over the world. In India, too, when confronted with social justice there is continuous willingness on the part of the judiciary to part from procedural laws of traditional model in the form of res judicata exhaustion of other remedies etc.

Over 30 Public Interest Litigations pertaining to issues of a wide spectrum which ideally should be dealt by the executive are currently pending in the High Courts and Supreme Court by activists like M.C. Mehta, B.L. Wadhwa, Common Cause Society etc².

1 (ii) DEFINITION SCOPE AND NOMENCLATURE OF PUBLIC INTEREST LITIGATION

There is no specific or particular definition of the term 'Public Interest Litigation' or the Social Action Litigation in any of the legislations enacted by the Indian Parliament so far or even in any of the foreign legislations. In general words Public Interest Litigation means when a case is filed in the court of law by a public spirited person with the intention to get relief for a poor and downtrodden person or group of persons. Some definitions given are as follows:

1. In the **Black's Law Dictionary** it is given as, "*Something in which the public, the community at large, has some pecuniary interest, or some interest by which*

² The Times of India, Delhi Edn. dated. 23th Nov. 2000.

*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....”*³

2. Advanced Law Lexicon has defined ‘Public Interest Litigation’ as under: “*The expression PIL means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.*”⁴

3. The Council for Public Interest Law set up by the Ford Foundation in USA defined “public interest litigation” in its report of Public Interest Law, USA, 1976 as follows: “*Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.*”

4. Supreme Court in People’s Union for Democratic Rights and Others v/s Union of India and Others⁵ defined ‘Public Interest Litigation’ and observed that the “*Public interest litigation is a cooperative or collabourative effort by the petitioner, the State of public authority and the judiciary to secure observance of*

³ Henry Campbell Black, *Black’s Law Dictionary*, 6th Edition 1990, West Publishing Co., p.1229.

⁴<http://www.legalblog.in/2011/02/public-interest-litigation-definition.html>, (Site last visited, 28/2/12).

⁵ (1982) 3 SCC 235.

constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society.”

5. In **Shriram Food & Fertilizer case**,⁶ the court through Public Interest Litigation directed the company manufacturing hazardous and lethal chemical and gases posing danger to life and health of workmen, to take all necessary safety measures before re-opening the plant.

6. In the case of **M.C. Mehta v Union of India**⁷ -Public Interest Litigation was brought against continuous water pollution of river Ganga so as to prevent any further pollution of the Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions as he is the person interested in protecting the lives of the people who make use of the water of river Ganga.

7. In **Parmanand Katara v Union of India**⁸, Supreme Court held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

8. **State v Union of India**⁹ observes that Public Interest Litigation is a strategic arm of the legal aid movement which intends to bring justice. ‘Rule of Law’ does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be abused and misused for the vested interest by them but rather be available to the public at large.

⁶ M.C. Mehta v Union of India AIR (1986) 2 SCC 176.

⁷ (1988) 1 SCC 471.

⁸ AIR 1989 SC 2039.

⁹ AIR 1996 Cal 218.

Scope of PIL:

The traditional rule of locus standi insists that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right. The rule postulates the competency of a person to maintain a suit or application. According to this rule, a person who has suffered a specific legal injury by reason of violation of his legal right, actual or threatened, can bring an action for judicial redress and third party cannot be permitted to have access to the Court for the purpose of seeking redress on behalf of the person injured. In the strict sense, the rule indicates that to invoke the extraordinary jurisdiction of the Supreme Court under Article 32, the petitioner must show infringement, actual or threatened of fundamental right available to him. In other words the petitioner cannot be permitted to move the Supreme Court for the purpose of seeking enforcement of fundamental right of the other person. But the Courts in India have evolved few exceptions to this narrow and rigid rule of locus standi. This rule is relaxed and modified by the Courts in India in the cases of writs like habeas corpus and quo warranto.

The rule of locus standi was also diluted by the Supreme Court in the cases of new branch of proceedings under Articles 32 and Article 226 known as public interest litigation. This jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution. The essence is the fundamental rights may become meaningless without providing an effective remedy for their enforcement. The proceedings of public interest litigation or social action litigation attempts to provide an adequate and effective remedy for the enforcement of the fundamental rights.

At the beginning, the Supreme Court started to encourage the public spirited citizens who are moving the Court for the purpose of vindicating the

rights of poor masses. In appropriate cases the Court started to direct the State to pay to the petitioner costs of the petition. A petitioner need not incur expenses out of his own pocket for consulting a lawyer and preparing a regular writ petition for enforcement of the fundamental right of the poor and deprived sections of the community. It was well settled that the public interest litigation could be initiated by means of letters and telegrams addressed to the Court. The letter or telegram addressed to an individual Justice of the Court cannot also be rejected merely on the ground that it is not addressed to the Court. In other words a letter or telegram addressed by a public spirited citizen can legitimately be regarded as an 'appropriate proceeding' for the purposes of invoking Article 32 of the Constitution. In addition to this a letter or telegram may be unsupported by an affidavit because the Court found that the purpose of jurisdiction under Article 32 would be frustrated if the Court insists on an affidavit as a condition of entertaining the letter as petition. The Court has liberalized the technical procedural laws, especially the law relating to pleadings, applicable to public interest litigations. When a matter of grave public importance is for consideration before the Court, every technicality in the procedural law shall not be available as a defense. The Court may also appoint a Commission or other body for the purpose of investigation of facts to reduce expenses of the petitioner to collect evidence.

The Supreme Court of India, in **Sunil Batra (II) v/s Delhi Administration**¹⁰, had accepted a letter written by Sunil Batra (an inmate of Tihar Prisons, near New Delhi) complaining of inhuman torture in the jail.

In **Dr. Upendra Baxi (I) v/s State of U.P**¹¹, the court entertained a letter from two professors at the University of Delhi seeking enforcement of the

¹⁰ 1980 (3) SCC 488 : 1980 SCC (Cri) 777 : AIR 1980 SC 1579 : 1980 CriLJ 1099

constitutional right of inmates at a protective home in Agra who were living in inhuman and degrading conditions. In **Miss Veena Sethi v/s State of Bihar**¹², the court treated a letter addressed to a judge of the court by the Free Legal Aid Committee in Hazaribagh, Bihar as a writ petition. In **Citizens for Democracy v/s State of Assam and Others**¹³, the court entertained a letter from Shri Kuldip Nayar (a journalist, in his capacity as President of Citizens for Democracy) to a judge of the court alleging human-rights violations of detainees booked under Terrorist and Disruptive Activities (Prevention) Act, (TADA); it was treated as a petition under Article 32 of the Constitution of India.¹⁴¹⁵ Before the 1980s, only the aggrieved party could approach the courts for justice. After the emergency era the high court reached out to the people, devising a means for a person or a Non-Governmental Organisation to approach the court seeking legal remedy in cases where the public interest is at stake. Justice P. N. Bhagwati and Justice V/S R. Krishna Iyer were among the first judges of this country to admit PIL's in court¹⁶. Complexities and hardship faced by a common man in usual legal case is eradicated in case of a PIL. There have been instances when letters and telegrams addressed to the court have been taken up as PILs and heard.

In 1981 the case of **Anil Yadav v/s State of Bihar**¹⁷, exposed the brutalities of the Police. Newspaper reports revealed that about 33 accused had lost their eyesight due to pouring of acid into their eyes by the police of Bihar. Through interim orders, Supreme Court directed the State government to bring the blinded men to Delhi for medical treatment. It also ordered speedy

¹¹ AIR 1987 SC 191

¹² 1982 (2) SCC 583 : 1982 SCC (Cri) 511 : AIR 1983 SC 339

¹³ 1995 KHC 486 : 1995 (2) KLT SN 74 : 1995 (3) SCC 743 : 1995 SCC (Cri) 600 : AIR 1996 SC 2193

¹⁴ <http://en.wikipedia.org>.

¹⁵ Indian Emergency (1975-1977)

¹⁶ [http://en.wikipedia.org/wiki/public_interest_litigation_\(india\)](http://en.wikipedia.org/wiki/public_interest_litigation_(india))

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prosecution of the guilty policemen. The court also provided right to free legal aid as a fundamental right to every accused. Anil Yadav signaled the growth of social activism and investigative litigation.

The Supreme Court has always considered the probability of preferential consideration of the poor and the disadvantaged than the rich, the businessmen and the industrialists taking into account the Indian scenario. The weaker sections of Indian society have had no access to justice on account of their poverty, ignorance and illiteracy. The strategy of public interest litigation has been evolved by the Supreme Court with a view to bring justice within the easy reach of the 'have not' sections of the community. The Supreme Court in **Bandhua Mukti Morcha v/s Union of India**¹⁸ considered that the public interest litigation is a challenge and an opportunity to the government and its officers to make basic human rights meaningful for the down-trodden sections of the community. The Supreme Court recently in **Guruvayur Devaswom Managing Committee v/s C.K. Rajan**¹⁹ summarized the principles in regard to the nature and scope of the public interest litigation under Article 32 and Article 226 of the Constitution of India. In this case, Shri C.K. Rajan addressed a letter dated 3.2.1993 to one of the Hon'ble Judges of the High Court of Kerala and thereby brought to his notice purported serious irregularities, corrupt practices, mal-administration and mismanagement prevailing in the temple. He was called by the High Court and the Registrar recorded his statement on 11.2.1993. The said letter was treated as an original petition under Article 226 of the Constitution of India. The High Court in its order dated 12.2.1993 highlighted 23 aspects of the matter which had been brought to its notice and appointed one Shri S. Krishnan Unni, District Judge, Officiating as the Director of Training, High Court of Kerala as the Commissioner

¹⁸ Supra 8.

¹⁹ AIR 2003 SC 312.

to make a general enquiry and in particular make a study on the various aspects highlighted in the said complaint. The court held that pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was thus diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice.

The Supreme Court has expanded the wings of public interest litigation in the due course of time. The instrument of public interest litigation has served to protect the human rights of poor and disadvantaged masses. It has covered several areas of litigations. The Supreme Court has used this jurisdiction for prohibition of exploitation of workmen, enforcing the rights of children employees and release of bonded labourers. It was used for the eradication of the child prostitution, devadasi system, rescue and rehabilitation, through various welfare measures, of prostitutes and their children. The Court has used the instrument of public interest litigation for seeking relief against mala fide acts of the public servant in the discharge of his functions as public servant, protection of the environment and the people's right to natural resources, release of under trials on bail and to direct the lower judiciary promoting speedy trial, seeking release of children below 16 years detained in jails, to direct the CBI to conduct investigation as to corruption, and also for the protection of independence of the judiciary. The public interest litigation was also used by the Court to award monetary compensation in appropriate cases of violations of right to life and personal liberties. The award of compensation in public interest litigation

proceeding is an admirable and pleasant idea of providing justice to the poor and disabled victims of violations of right to life and personal liberties. The public interest litigation has opened a new dimension of providing justice and has given new hope to the justice-starved millions of Indians. The Supreme Court of India has made the significant use of its public interest litigation jurisdiction.

Guidelines of the Supreme Court in relation to Public Interest Litigation:

According to the guidelines of the Supreme Court any member of public having sufficient interest may maintain an action or petition by way of PIL provided: -

- There is a personal injury or injury to a disadvantaged section of the population for whom access to legal justice system is difficult.
- The person bringing the action has sufficient interest to maintain an action of public injury.
- The injury must have arisen because of breach of public duty or violation of the Constitution or of any other law. It must seek enforcement of such public duty and observance of the constitutional law or legal provisions.
- This is a powerful safeguard and has provided immense social benefits, where there is essentially failure on the part of the executive to ameliorate the problems of the oppressed citizens.

Factors responsible for the growth of PIL in India:

Among the numerous factors that have contributed to the growth of PIL in this country, the following deserve special mention:

- The character of the Indian Constitution. Unlike Britain, India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) provides a

framework for regulating relations between the state and its citizens and between citizens inter-se.

- India has some of the most progressive social legislation, not found anywhere in the world whether it be relating to bonded labour, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
- The liberal interpretation of locus standi, where any person can apply to the court on behalf of those who are economically or physically unable to come before it, has helped. Judges themselves have in some cases initiated suo moto action based on newspaper articles or letters received.
- Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the "**right to life**" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bar fetters and hand cuffing in prisons, etc.
- Sensitive judges have constantly innovated on the side of the poor. For instance, in the **Bandhua Mukti Morcha case** in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labour as a case of bonded labour unless proven otherwise by the employer. Similarly in the **Asiad Workers judgment case**, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme

Court directly without going through the labour commissioner and lower courts.

- In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

When and how to file a PIL? (Procedural aspect)

- (1). Make an informed decision to file a case.
- (2). Consult all affected interest groups who are possible allies.
- (3). Be careful in filing a case because
 - i. Litigation can be expensive.
 - ii. Litigation can be time consuming.
 - iii. Litigation can take away decision making capability/strength from communities.
 - iv/s An adverse decision can affect the strength of the movement.
 - v/s Litigation involvement can divert the attention of the community away from the real issues.
- (4). If you have taken the decision
 - i. Collect all the relevant information
 - ii. Be meticulous in gathering detail for usage in the case. If you plan to use photographs, you ought to retain the negatives and take an affidavit from the photographer.
 - iii. Write to the relevant authorities and be clear about your demands.
 - iv/s Maintain records in an organized fashion.
 - v/s Consult a lawyer on the choice of forum.

- vi. Engage a competent lawyer. If you are handling the matter yourself make sure you get good legal advice on the drafting.
- vii. A PIL can be filed only by a registered organization. If you are unregistered, please file the PIL in the name of an office bearer/member in his/her personal capacity.
- viii. You may have to issue a legal notice to the concerned parties/authorities before filing a PIL. Filing a suit against the government would require issuing a notice to the concerned officer or department at least two months prior to filing of Public Interest Litigation.

Expanding Old Rights and Creating New Rights

There is an urgent need to expand old rights and create new rights. Indeed, the success of legal advocacy needs to be viewed by the social activist in these terms and not merely in terms of winning or losing cases. For instance, although Haksar and others, as part of their work on promoting human rights in Northeastern India, have been unsuccessful in their decade-long effort to get the Armed Forces Special Power Act repealed, they have succeeded in introducing a provision in the Code of Criminal Procedure which demands that a women can be searched only by a women, which extends to the army.

Similarly, it is important to attempt and create new rights based on a vision of the future. For instance, Article 14 of the Indian Constitution treats both a Multi National Corporation and a citizen equally despite the inherent and yawning inequality between the two. Therefore if a citizen's rights are to be fully protected in the wake of increasing MNC activity in the national economy, one needs to assess critically the concept of equality in liberal theory and develop new ideas on equality. The filing of test cases is one way of developing these newideas.

The same holds true for individual rights versus collective rights. The prevailing legal system recognizes only private property where the owner has the right against the whole world and public property which belongs to the state. But before the imposition of the British legal system there existed a whole tradition of common property which does not find recognition in law now. “As a result all forms of collective or shared realities whether they are in the realm of rights, relations, practices or knowledge have no place in the present legal scheme even though they are vital for human survival. They are not part of the language of legal discourse, either of the judges or lawyers and mention of these rights as ‘collective human rights’ is met with surprise, skepticism and often cynicism”, says Pradeep Prabhu of Khastakari Sanghatana. Prabhu an advocate by training has had some recent success in getting the Supreme Court to accept the validity of oral testimonies of underprivileged tribes as evidence.

Sensitising Lawyers

Given the above scenario, one of the most difficult tasks for a social activist is to find a lawyer with a vision, who is able to see the bigger picture and is prepared to fight for it, is able to render his heart and soul for it. This calls for activists to sensitise lawyers on an ongoing basis and not restrict this activity to the peculiarities of a specific case. Also there is a need to sensitise law students, from turning into law firms pet rather than becoming socially aware citizens, in order to build a body of public interest lawyers in this country.

Partial reason why there are few public interest lawyers in India is due to the fact that it pays poorly. Public interest lawyers in the US (sometimes derisively called 'ambulance chasers') are easier to find. They largely operate on a 'no-win, no-fee' basis, given the huge damages that are awarded by US courts and which are then split between the client and the lawyer. In India, even where free

legal aid is provided - as it is to Scheduled Caste's and Scheduled Tribe's, other vulnerable groups such as industrial workers, women, bonded labourers, etc. - public-spirited lawyers end up paying out of their pocket, as the amounts that are fixed for even photocopying of documents, do not cover the cost of the service, says Ravi Rebba Pragada of the NGO Samata which works among tribes of the Vishakapatnam district of Andhra Pradesh. They have accessed free legal aid services often.

In U.K., where courts like those in India don't award massive damages, there has been innovation in legal aid with wealthy benefactors pitching in to underwrite legal costs. One property developer underwrote the legal costs of a large number of arthritis patients who had sued for compensation for the side effects they suffered from the drug, Opren. Similarly Sir James Goldsmith, billionaire financier and father-in-law of Imran Khan, set up the Goldsmith Libel Fund which provided support to a motley assortment of libel defendants. But it is debatable if such private initiative would be forthcoming, or indeed welcoming and supporting public interest cases involving the poor and the marginalised. Activists however need to seriously consider the issue of getting more public-spirited lawyers to enter the fray.

1 (iii) OBJECTIVES OF PUBLIC INTEREST LITIGATION

According to Justice Krishna Iyer, Public Interest Litigation is a process of obtaining justice for the people, of voicing people's grievances through the legal process. The aim of PIL is to give to the common people of this country, access to the courts so as to seek legal redress.

The general objectives of public interest litigation can be summarised as follows:

- Increasing respect for the law
- Restoring confidence in the legal system and the justice delivery system
- Redress and compensation for victims and survivors
- Monitoring human rights violations and trends
- Documentation of human rights violations (the victims, the violation and the offender)
- Fighting lawlessness
- Strengthening the Constitution of India
- Fighting against impunity which is fuelling lawlessness and the breakdown of the rule of law
- Introducing personal accountability to State on behalf of actors like policeman, war veterans, soldiers, intelligence officers and other public officials
- Introducing institutional and collective accountability to police, army, State organs and Ministries
- Pursuing human rights violators or representative state organs to justice
- Creating a basis for international litigation or lobbying or advocacy by exhausting domestic remedies

The expected outcomes of public interest litigation in general can be summarised as follows:-

- Restoration of and respect for the rule of law
- Restoration of public confidence in the justice delivery system
- Restoration of professionalism in and de-politicisation of the police force and other state organs
- Accountability in the public sector
- Improvement of the human rights situation in India

The concept of 'Public Interest Litigation' is one of the most important innovations in the Indian judicial process. It emerged in the late seventies of the twentieth century in response to the need to make judicial process more accessible to poor, downtrodden, socially and economically disadvantaged sections of the society. It is primarily the judges of the higher judiciary who have innovated upon the concept of public interest litigation through judicial activism while exercising the jurisdiction for dispensing justice to the poor and downtrodden.

1 (iv) SIGNIFICANCE OF DOCTRINE OF PUBLIC INTEREST LITIGATION AS WHOLE

A Public interest lawyer is often asked a very difficult question: Why do you think you have a monopoly on deciding what is in the 'Public Interest'?

Intellectual efforts to define the 'Public interest' have universally failed. Being a vague and flexible concept, it includes all the interests of the society; it changes, as society changes, according to time and place.²⁰

However, this question can be answered in two ways:

Firstly, if we agree that the pluralistic political system is a fair one, then the 'Public interest' can only be defined as the outcome of the political process where various private and public groups, who are a part of the process, can with equal justification claim to be working towards the 'Public interest'.

Secondly, it can be argued that the historically produced limitations of the 'subdued pluralise' of modern industrial society undermine any faith so that the decisions made through that process will produce the best results for the whole

²⁰ Friedrich Brain, "The use and abuse of the Public Interest", *The Public Interest*, 24th ed.1962, Atherton Press, New York, p.195 at p.202.

society. It is well known that the political system retains a discrete bias against unorganised interests. Under such circumstances, one may wish to define the 'public interest' distinct from the interest of contending groups. Therefore, the 'public interests, represented in the Public Interest Litigation, are those interests which are currently under-represented in the legal and political areas. And the public interest lawyer represents such unorganized and unrepresented social groups and public interests. Therefore, the public interest lawyers are said to be consciously attempting to remove the bias of the political and legal system.

Most of the respondents²¹ gave a negative response to the question: Whether any reliable criteria can be laid down to identify 'public interest'? They said that no set formula can laid down to identify the 'public interest' involved. And the criteria for identifying 'public interest' would depend on the ideological, social, economic and political composition of parties, issues and the Judges involved.²²

Whereas Justice M.P. Thakkar of Supreme Court, following Gandhiji's formula,²³ advocated that test should be that of '*one who is suffering or has suffered the most*'. Continuing in the same vein, Justice V/SS Deshpande, former Chief Justice of Delhi High Court, advocated that the first test is to see 'Whether it is really the egalitarian economic interest of the under-privileged class or not?'.²⁴

²¹ The present student interviewed Judges, Lawyers, Professors and journalists for the purposes of dissertation. The questionnaires were also mailed to professors, Lawyers Social Organisations and Law Institutes.

²² Mr. Justice Avadh Behari Rohatgi, Delhi High Court; Prof. Paras Diwan, Chairman, Department of Law, Punjab University; Prof. Lan Hunt; Mr. C.S. Vaidyanathan, Advocate; Mr. Gobinda Mukholy, Advocate; Prof. J.K. Mittal; P.K Tripathi, Dean, Faculty of Law, University of Delhi.

²³ Gandhiji stated in the order to know 'what is a correct thing to do? Always ask yourself a question: what these poor and humble people of India would be the answer to the first question.

²⁴ Deshpande, "Public Interest Litigation", *Facts*, Vol.2, 1983, p.11 at p. 12.

1 (v) ASPECT OF PUBLIC INTEREST LITIGATION

- 1. Remedial in Nature:** Remedial nature of Public Interest Litigation departs from traditional locus standi rules. It has indirectly incorporated the principles enshrined in the Part IV of the Constitution of India into Part III of the Constitution. By riding the aspirations of Part IV into Part III of the Constitution what has happened is that the procedural nature of the Indian law transformed into dynamic welfare one. **Bandhua Mukti Morcha v/s Union of India**²⁵ was the obvious example of this change in the judicial system.
- 2. Representative Standing:** Representative standing can be seen as a creative expansion of the well-accepted standing exception which allows a third party to file a habeas corpus petition on the ground that the injured party cannot approach the court himself. And in this regard the Indian concept of Public Interest Litigation is much broader than the American version of PIL. Public Interest Litigation is a modified form of class action.
- 3. Citizen Standing:** The doctrine of citizen standing thus marks a significant expansion of the courts rule, from protector of individual rights to guardian of the rule of law, whenever threatened by official lawlessness.
- 4. Non-Adversarial Litigation:** In the words of Supreme Court in **People's Union for Democratic Rights v/s Union of India**,²⁶ *"We wish to point*

²⁵ AIR 1989 SC 2039.

²⁶ Supra 15.

out with all the emphasis at our command that public interest litigation is a totally different kind of litigation from the ordinary traditional litigation which is essentially of 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.” Non-adversarial litigation has two aspects.

- a) **Collabourative litigation;** and
- b) **Investigative Litigation**

Collabourative Litigation: In Collabourative Litigation, the effort is from all the sides. The claimant, the court and the government or the public official, all are in collabouration here to see that basic human rights become meaningful for the large masses of the people. PIL helps executive to discharge its constitutional obligations. Court assumes three different functions apart from traditional determination and issuance of a decree.

- i. **Ombudsman** - The court receives citizen complaints and brings the most important ones to the attention of responsible government officials.
- ii. **Forum** – The court provides a forum or place to discuss the public issues at length and providing emergency relief through interim orders.
- iii. **Mediator** – The court comes up with possible compromises.

Investigative Litigation: It is an investigative litigation because it works on the reports of the Registrar, District Magistrate, comments of experts, newspapers etc.

5. Crucial Aspects: The flexibility introduced in adherence to procedural laws forms a crucial aspect. In **Rural Litigation and Entitlement Kendra v/s State of U.P.**,²⁷ court rejected the defence of ‘Res- Judicata’. The Court refused to withdraw the Public Interest Litigation and ordered compensation too. To curtail custodial violence, Supreme Court in **Sheela Barse v/s State of Maharashtra**²⁸ issued certain guidelines. Supreme Court has broadened the meaning of Right to live with human dignity available under the Article 21 of the Constitution of India to the greatest extent possible.

6. Relaxation of Strict Rule of Locus Standi: The strict rule of locus standi has been relaxed by way of (a) Representative standing, and (b) Citizen standing. In **D.C. Wadhwa v/s State of Bihar**,²⁹ the court held that a petitioner, a professor of political science, who had done substantial research and was deeply interested in ensuring proper implementation of the constitutional provisions, challenged the practice followed by the State of Bihar in re-promulgating a number of ordinances without getting the approval of the legislature. The court held that the petitioner as a member of public has ‘sufficient interest’ to maintain a petition under Article 32.

The rule of locus standi has been relaxed and a person acting in bona fide faith and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the court to wipe out any violation of fundamental rights and genuine

²⁷ (1985) 2 SCC 431.

²⁸ AIR 1983 SC 378.

²⁹ AIR 1987 SC 579.

infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration...court has to strike balance between two conflicting interests:

- a) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and
- b) Avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive and the legislature.³⁰

It is depressing to note that on account of trumpety proceedings initiated before the courts, innumerable days are wasted, which otherwise could have been spent for the disposal of cases of genuine litigants. Though the Supreme Court spares no efforts in fostering and developing the laudable concept of Public Interest Litigation and extending its long arm of sympathy to the poor, ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard.³¹ The Supreme Court in **Indian Banks' Association, Bombay and Ors v/s M/s Devkala Consultancy Service and Ors**³² ., held that *“In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus a private interest case can also be treated as public interest case”*.

³⁰ **Ashok Kumar Pandey v. State of West Bengal** (2004) 3 SCC 349.

³¹ Ibid.

³² (2004) 11 S.C.C. 1

In Guruvayur Devaswom Managing Committee and Anr. v/s C.K. Rajan and Ors³³ , Supreme Court held, *“The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, deprived, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persona. It expanded its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained 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 the merits by suspect reliance on peripheral procedural shortcomings... Pro bono publico constituted a significant state in the present day judicial system.*

They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice”.

³³ JT 2003 (7) SC 312

Epistolary Jurisdiction: The judicial activism gets its highest bonus when its orders wipe some tears from some eyes. This jurisdiction is somehow different from collective action. A large number of PIL cells were open all over India for providing the footing or at least platform to the needy class of the society.

1 (vi) FUTURE OF PUBLIC INTEREST LITIGATION:

The nature, style, process of generation and substance of Public Interest Litigation conforms to the social, political, legal and economic development of a particular legal system. In spite of the geographical differences, it is possible to lay down the general characteristics of the public interest litigation present in most of the legal system, the dominating characteristics of Public Interest Litigation are:

- (a) The litigation does not arise out of disputes between private parties about private rights. Instead, the object of Public Interest Litigation is the vindication of constitutional or statutory policies;
- (b) The party structure is not rigidly bilateral but amorphous i.e. the public-spirited plaintiff acts as a spokesman for the public at large or for a segment of it.
- (c) The scope of the lawsuit is shaped primarily by the court and parties;
- (d) It generally seeks to enjoin future or treatment action, or to modify a course of conduct presently existing ;
- (e) The fact that the inquiry is not historical and adjective but predictive, prospective and legislative;
- (f) The judge is not passive. He is a dominating figure in organizing and guiding the case. Most importantly he becomes the creator and manages complex forms of ongoing relief, which have widespread effects on persons related to the litigation and therefore requiring

judge's continuing involvement in administration and implementation;

(g) To oversimplify: the thrust behind the growth of 'public interest actions' is unprecedented diminishing requirement of locus standi; and

(h) It engages in research, negotiation in a variety of setting, citizen's education and media relations and so on.

The policy underlying the Public Interest Litigation is to give to the otherwise unrepresented, unorganized and unprotected interests, an access to justice. It favours the effective citizen's participation in guarding the public against illegal or non-exercise of governmental power.

There is some difference of opinion regarding the nature and origin of 'PIL' in India. Justice V/SS. Deshpande opined it as a new trend in constitutional litigation to uphold such egalitarian economic rights of the people even though they may not be enumerated in the constitution. According to him, Public Interest Litigation is a strategy to bring about a silent and peaceful revolution in enlarging the socioeconomic equality without harming the principle of meritocracy.³⁴

Prof. Upendara Baxi advocates that PIL in India is the outcome of 'judicial populism'. He has used the term 'Social Action Litigation ' instead of PIL. For in India it is primarily concerned with combating state repression and governmental lawlessness. Whereas, Public Interest Litigation in United States secures civic participation in government decision making, for which there is no counterpart in India.³⁵

³⁴ Deshpande, "Public Interest Litigation", *Facts*, Vol.II, 1983,p.11, at pp. 11-12

³⁵ Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India", *Delhi Law Review*, Vols. 8and9, 1979-80, pp.91,92,94 and 103.

Justice Bhagwati considers PIL, as a strategic arm of legal aid movement for it intends to bring justice within the reach of poor, who constitute the low visible area of humanity.³⁶

Justice Krishna Iyer has argued that Public Interest Litigation is a part of the process of 'participative' justice. In **Akhil Bhartiya Soshit Karmachari Sangh v/s Union of India**³⁷ as per Justice Krishna Iyer, *“Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad based and people-oriented, and envisions access to justice through 'Class-actions', 'Public interest Litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in Courts through collective proceedings, instead of being driven to an expensive plurality of litigants, is an affirmation of participative justice in our democracy.*

On the other hand, R. Venkataramani has taken an altogether different stand. He argued that Public Interest Litigation has two facets. On one hand it is an elitist attempt to tell the deprived that they are their saviours, that they are throwing open the 'Institutions of Justice' for their consumption. On the other hand, it is the emergence of a trend and awakening, but capsule and constrained by many social factors.³⁸

20th century has witnessed a progressive evolution from laissez-faire model of state to a welfare state. The law is therefore, increasingly used as a device of the organized social action for the purpose of bringing about socio – economic change. This has resulted in the human actions, such human actions which are

³⁶ Per Bhagwati J. in **People's Union for Democratic Rights v. Union of India**, AIR1982 SC 1473 at p. 1476.

³⁷ AIR 1981 SC 298, at p. 317.

³⁸ Symposium: "Public Interest Advocacy: Partnership of Professions for Social Justice", Department of Social Work, Jamia Millia Islamia, New Delhi.

group actions rather than individual actions, relationships among classes of people rather than one or few individual alone and constricts assuring a collective, rather than merely individual character. Thus, there has been forceful emergence of new general, collective, 'public' need and interests in modern societies. Such needs and interests are an interesting outgrowth of the most basic characteristic of our twentieth (20th) century civilization i.e. basification³⁹

³⁹ Nemo Corppellettinted "Modern societies are characterised by mass production, mass commerce and consumption, mass urbanization and mass labour unifiers, all of which require regulation." Cappellettiy indicating the "public interest", in Cappelatti and Garth; *Access to justice – Emerging Issues and Prospective*, vol 3, 1979, SC Milan; Sijthott and Noordhott, pp. 517-519.