

# Public interest litigation essay sample

[Literature](#), [Russian Literature](#)



**Public Interest Litigation:** The words `Public Interest' mean “ the common well being also public welfare (Oxford English Dictionary 2nd Edn. Vol. XII) 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 litigations conducted for the benefit of public or for removal of some public grievance.” 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.

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamagar Sabha vs. Abdul Thai* (AIR 1976 SC 1455; 1976 (3) SCC 832) and was initiated in *Akhil Bharatiya Mazdoor Samiti vs. Union of India*, wherein an unregistered association of workers was permitted to institute a writ petition under Art. 32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar vs. Union of India* (AIR 1981 SC 149; 1981 (2) SCR 52) and the ideal of ‘ Public Interest Litigation’ was blossomed in *S. F. Gupta and others vs. Union of India*, (AIR 1982 SC 149).

**Judicial Activism:** The expression `Judicial Activism’ signifies the anxiety of courts to find out appropriate remedy to the aggrieved by formulating a new rule to settle the conflicting questions in the event of lawlessness or

uncertain laws. The Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court under Article 32 and I (b) (b) Courts under Article 226 of the Constitution particularly in Public Interest Litigation.

Earlier, in England there were two kinds of courts namely. Equity Courts (Court of Chancery) and Common Law Courts. Equity Courts used to decide cases applying the principles of equity i. e. Justice, equity and good conscience. Whereas the common law courts used to decide cases basing on common law i. e. the principles' rules evolved by the Judge; during judicial pronouncements. Hence, the common law is also known as the ' Judge-made-law:' The courts of Equity / Chancery played significant role in formulating the new piles of law.

The common law originated in England was spread in British Colonies including India. In India, almost all laws are originated from the English Common law. In the absence of existing rules for relief in certain cases and predictive procedure, the court of equity or chancery took the initiative to draw up new rules. ' The new rules to settle the conflicting positions that had arisen in certain cases is called ' Judicial Activism'. The equity court- and common law courts were merged with the passing of the Judicature Act, 1875.

Judicial Activism in India: The significant feature of Indian Constitution is partial separation of powers. -The doctrine of separation of powers was propounded by the French Jurist, Montesquieu. It is partly adopted in India since the executive powers are vested in the president, Legislative powers in

the Parliament and the judicial powers in the Supreme Court and subordinate courts.

The role of separation of powers in India is simple. The three organs of the Government viz. the Executive, Legislature and the Judiciary are not independently independent but inter-dependently independent. (The executive encroaches upon judicial power, while appointing the judges of Supreme Court and High Courts. Similarly the Judiciary, by its review power examines the law passed by the legislature and the legislature also, intervenes in respect of impeachment of the president).

As stated earlier, the Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court under Art. 226 of the Constitution particularly in public interest litigation cases. The Supreme Court played crucial role in formulating several principles in public interest litigation cases. For instance, the principle of “absolute liability” was propounded in Oleum Gas Leak case. Public Trust Doctrine in Kamalnath Case (1998 1 SCC . 388) etc.

Further, the Supreme Court, gave variety of guidelines in various cases of public interest litigation. Eg.: Ratlam Municipality Case, Oleum Gas Leak Case, Ganga Pollution Case etc.

Public Interest Litigation and Judicial Activism: 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 or 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:

1. in Supreme Court under Art. 32 of the Constitution; 2. in High Court under Art. 226 of the Constitution; and 3. in the Court of Magistrate under Sec. 133, Cr. P. C.

Justice Krishna layer fertilizer Corporation Kamgar Union vs. Union of India, (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. " Activism is essential for participative public justice".