

Within unenforceable
by the court and has
thus



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Within their original jurisdiction under Articles 226 and 32, the High Courts and the Supreme Court can issue writs against the state to set right the grievance of an aggrieved party by issuing writs/ orders / injunctions, etc.

This, however, is only against public authorities. The Supreme Court has taken the initiative in playing a positive role in espousing the cause of the poor, indigent, undertrials, prisoners, women, bonded and unorganized labour, scheduled castes/ tribes and the downtrodden, etc. In many such cases the court has entertained petitions without court fees and the technical requirement of presenting writs, having petitioners and even without the aid of lawyers. It started hearing applications / complaints even on the strength of a letter by any person, social worker or voluntary organization bringing public injustice before it and gave a new definition to the concept of locus standing.

Public Interest Litigation (PIL) has meant a change in the traditional function of the Supreme Court. PIL has enabled the Supreme Court to exercise affirmative action to vindicate those socio-economic rights traditionally considered unenforceable by the court and has thus enlarged the scope of article 32 of the Constitution. Through this extended jurisdiction, the judiciary has undertaken the responsibility to critique and monitor the government and its various agencies and to give socio-economic justice to the underprivileged masses without actually interfering with the political, administrative field or the legislative sphere. There is a little distinction between Public Interest Litigation (PIL) and Social Action Litigation (SAL).

In Social Action Litigation, petitions are made for the enforcement of the specific rights of a determinate class or group of people who are primarily injured in the impugned action. The injury suffered by members of this class is direct and redress is sought on their behalf because they are unable to approach the court on account of indigence, literacy, social and economic disability. This includes, for example, prisoners under trial or workers in stone quarries or inmates of care centers or home, pavements duelers, etc.

In PIL the collective rights of the public are affected and redress is sought for such injury; there may be no direct specific injury to any member of the public as such. For example, the discharge of effluents in a lake or a river which may harm all who are deprived of clean water, the emission of noxious gas which may cause injury to a large number of people who inhale it in the air they breathe, a petition challenging the government's monopoly of the electronic media, inefficiency of the telephone department, non-performance of mandatory civil duties, etc. In the words of Justice P. N. Bhagwati of the Supreme Court: Public Interest Litigation is the strategic arm of the legal aid movement and aims at bringing justice within the reach of the poor vulnerable masses and helpless victims of justice. Public interest Litigation is meant to bring justice to the unorganized and exploited sections of society who have no access to the courts because of the prohibitive cost of litigation.

PIL is means by which justice can percolate down to the masses and be made more accessible and available to the poor and the victims of injustice.

PIL is brought before the court not for the purpose of enforcing the right of one individual against another but it is intended to promote and vindicate public interest which demands that violation of constitutional or legal rights

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of a large number of people who are poor and ignorant, socially and economically in a disadvantages position, should not go unnoticed or unrepressed. It is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful. The courts have done away with the rule of standing i. e.

' locus' evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress. This does not hold good in the present setting. Justice should become easily available to the lowly and the cost. Law should not remain a closed shop. Even under the old system it was permissible for the next friend to move the court on behalf of a minor or a person under disability or a person under detention or in restraint. Public Interest Litigation has further relaxed the rule of locus standing.

Public interest is a part of participatory justice and standing in civil litigation of that person must have liberal reception at the judicial doorsteps. In order to entertain PIL, the court has liberalized procedural rules. In one case the Supreme Court has observed that in " Litigation undertaken for the purpose or redressing public injury, enforcing public duty, protecting social-collective diffused rights and interests or vindicating public interest, any citizen who is acting bonafide and who has sufficient interest, has to be accorded standing". The question whether a person has sufficient interest, will have to be seen in each case and no definite parameters can be laid down in this respect. In a case where an issue was raised regarding the locus standing of lawyers to file writ petitions by way of public interest litigation on behalf of judges who were being transferred. It was unanimously held that lawyers

had interest and locus standing to file the petitions and they could not be told off at the gates. Justice P.

N. Bhagwati has also observed that: Where the weaker sections of the community are concerned, such as under trial prisoners languishing in jails without a trial, inmates of the Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer district, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil. Who are helpless victims of exploitative society and who do not have easy access to Justice, this Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual action pro bono public. Every citizen has the right to question laws made by the executive usurping of legislative function; this amounts to a colourable exercise of power and a fraud on the Constitution.

Every citizen has the locus standing to oppose withdrawal from prosecution of such a case by a person, and, failing to do so, to file a revision before the High Court, from which appeal lies to the Supreme Court. In a case where an organisation formed for protecting democratic rights addressed a letter to one of the judges of the Supreme Court alleging violation of labour laws in respect of workmen engaged in various projects, the court treated the letter as a writ petition and held that the organisation had locus standi and, after hearing the parties, relief was granted. In another case relating to labourers, while examining the issue of the locus standing of workers of a public sector enterprise which was to be closed, the court held that the workers were directly interested and were an affected party and had a right to complain of

infraction of public duties and obligations. The courts have taken a goal-oriented approach in the interest of justice. They do not insist on procedural technicalities and in number of cases even Vakalatnamas and affidavits have not been called for by them. Cases on behalf of under trials have been entertained on the basis of newspaper reports or letters. Where it was brought to the notice of the court that a large number of men, women and children were detained in jails for years and were being made to wait for trials in courts of law for offences which were trials and which, even if proved, would not warrant punishment for more than a few months or a couple of years.

The courts issued directions for speedy trials of the cases and released the under trials who had already suffered incarceration for the maximum period for which they would have been sent to jail. In the case relating to labourers engaged in various Asiad projects, the court also gave relief and further appointed there Ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of finding out whether the provisions of labour laws were being adhered to and the workers were receiving the benefits and amenities provided for them.

Similarly, in cases where certain workmen were living in bondage and under inhuman conditions, the court issued directions to improve the life conditions of these workmen and ensure social justice to them so that they may be able to have access to social and economic freedom.

In a case filed by journalists and a social action group in Bombay seeking judicial redress on behalf of pavement dwellers and hawkers who faced the threat of forcible eviction and demolition of their dwellings by the Bombay

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Municipal Corporation, the court held for the first time that the Right of Life enshrined in article 21 included the right to livelihood: “ Deprive a person of his right to livelihood and you shall have deprived him of his life”. This enlarged the constitutional right to life as including the right to livelihood. When pollution of the waters of the river Ganga was brought to the notice of the court, it observed that: in common law the Municipal Corporation can be restrained by an injunction in an action brought by a repairing owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging insufficiently treated sewage into the river.

The nuisance cause by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large.] One of the statuses of parties in PIL the court held that: It is not an obligation of adversary character undertaken for the purpose of holding the State Government or its officers responsible for making reparation. The mind of litigation involves a collaborative and cooperative effort on the part of the State Government and its Officers, the Lawyers appearing in the case and the Bench for the purpose of making human rights meaningful for the weaker sections of the community. It marks a step forward in the direction of reaching socio-economic justice to the deprived and vulnerable sections of humanity in this country. Affirmative action in the form of some remedial measures, in public interest, in the background of the constitutional aspiration as enshrined in Article 38 read with Article 19 and 21 by means of judicial directions in cases of executive inaction or slow action is permissible within the limits. Advancement of the

public interest and avoidance of the public mischief are the paramount considerations. The court is concerned with the balancing of interest. Although the Court should refuse to act at the instance of pseudo public spirited citizens who indulge in wild reckless allegations besmirching the character of other; simultaneously, the court cannot uphold publicly mischievous executive actions which have been so exposed.

The court under Article 32, 226 are free to devise any procedure appropriate for the particular purpose of the proceedings, namely the enforcement of fundamental rights. The court has implicit power to issue whatever direction, order or writ is necessary in a given case. Article 32 and 226 lay a constitutional obligation on the Supreme Court and High Court to protect the fundamental rights of the people and for that purpose the courts have all incidental and ancillary powers to forge new remedies and fashion new strategies designed to enforce the fundamental rights.

In PIL the power of the court is not only conferred to prevent the infringement of fundamental rights, but also to remedy and provide relief against a breach of the fundamental right already committed. The court has also granted remedial relief which includes awarding compensation in appropriate cases. The petition under PIL cannot be used as substitutes for the enforcement of the right to claim compensation for infringement of fundamental rights through the ordinary processed of civil courts. It is only exceptional cases of breach of a fundamental right that compensation may be awarded. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and glaring and either such infringement should be on a large scale of affecting the fundamental rights of a large

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number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantages them to imitate and pursuer action in the Civil Court. In PIL cases when statutory bodies are called upon by a court, in particular the apex court, for their participation and assistance in the proceeding before it which involve matters of vital public importance, such statutory bodies are duty bound to respond and join the proceeding before the court.

These bodies are litigants and do not have the choice of keeping away from the court like private in ordinary litigations who opt to go exporter. When the court, sou motu, extends the opportunity of being heard and invites the named statutory or other authorities to come forward and place their viewpoint on relevant aspect, an attitude of callous in difference cannot be appreciated. The public interest Litigation is not normal litigation with adversaries pitted against one another. In some cases the High-Court have the jurisdiction to deal with matters more effectively as courts of first instance than the Supreme Court? Hence it is desirable that in such cases, the High Court having jurisdictional over the matter should be approached with a request to take necessary action which can give adequate relief to the concerned parties as the scope of the powers of the High Court under Article 226 is wider than that of the Supreme Court under Article 32. My purpose in adding these few lines of my own to highlight the need for restrain on the part of the public interest litigation when they move courts. Public interest Litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason.

It is, therefore, necessary to play down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigation, traditional litigation will suffer and the court of law, instead of dispensing justice, will have to take upon them selves administrative and executive function. It is only when courts are appraised of gross violation of fundamental rights by group or class action or when basic human rights are violated or when there are complaints of such acts as shock the judicial conscience. That the courts, especially this court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected.

I will be second to none in extending help when such help is required. But this does not mean that the doors of this court are always open for anyone to walk in. it is necessary to have some self imposed restraint on public interest litigants. Lawyers: Apart from judges, lawyers are the most important officers of the court.

In almost every case before the courts, tribunals, etc., parties engage lawyers to conduct a case. Lawyers are a must and indeed the entire structure of impartiality, fairness and justice according to law depends on how a case is conducted by lawyers. Lawyers/ advocates / barristers / solicitors have been in existence since time immemorial. There were advocates in Greece and Rome, and also in ancient India right from the time matters started getting settled by argument, and arbitration rather than by

trials of strength. In India, the legal profession and system as it exists today is not result of historical growth as in the West.

It was transplanted into India by the British. Yet it took deep root, and grew in the India social-politic soil as a logical extension of the empire. India, a land of diversity in cast, culture and religion, had various sets of laws and its people were governed by different systems. With the consolidation of British rule in India, the uniformity of law and procedure were established and common civil and criminal codes were introduced. To administer their laws, the rules introduced their own system of laws, lawyers and courts. The British left in 1947, but we still cling to the trapping of their system, torn, grown, feudal expression like my lord and your worship and so on.

Legal redress has become such a fine art, that without the help of a professional lawyer, it is impossible to reach the function of justice, let alone get it. Judges themselves do not hesitate to suggest that justice; will be better dispensed if the litigant approaches the court through its priest, that is, a lawyer. If he or she cannot afford one, a curiae (a friend of the court) that may render assistance on invitation from the court is appointed, who is responsible to none except, in theory, to the court. A person who can practice as advocates in the courts of law is governed by the provision of advocate's act 1961. Only those who are enrolled as advocates by the Central Bar Council or State Bar Council and have obtained a degree in law recognized by the State Bar Council or Central Bar Council are entitled to practice. The Bar is integrated into a single class of legal practitioners known as advocates who need to have uniform educational qualifications in order to

be enrolled. There are two classes of advocates, namely senior and other advocates.

An advocate can be, if he so desires, be designated as senior advocate by the Supreme Court or a High Court, if the Court is of the opinion that the advocate has the ability, standing at the Bar and / or special knowledge or expertise in law. After he or she has been designated as senior advocate, an advocate is not accepted to act, that is, file Vakalatnamas draft pleadings but is accepted to appear in the court along with and assisted by other advocates. They are not expected to deal directly with clients, and have precedence over other advocates in the court. The restrictions upon the senior advocates as imposed by the Bar Council of India Rule 1 (a) and Rule 2 (b) or Order IV of Supreme Court Rules, 1966 as follows: