

CHAPTER - 6

PUBLIC INTEREST LITIGATION AND ENVIRONMENTAL JUSTICE

Traditionally the right to approach the court for judicial redress is available only to a person who has suffered a legal injury because of violation of his legal right or legally protected interest or is likely to suffer a legal injury by reason of the threatened violation of his legal right or legally protected interest "The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress."¹ The traditional rule of *locus standi* or standing has been relaxed by the Court in certain circumstances and thus paved the way for the public interest litigation (PIL)². Most of the important environmental decisions of the Supreme Court are result of Public Interest Litigation, therefore, proper study of nature and scope of PIL is essential to ascertain the direction of environmental justice in India.

6.1. Meaning of PIL :

The concept of PIL has in its origin in U.S.A. where it is known as 'public interest law'. The Council for Public Interest law set up by the Ford Foundation in U.S.A. has defined the PIL as follows -

Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that the ordinary market place for legal services fails to provide such service to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalists, consumers, racial and ethnic minorities, and others.³

It is difficult to define with any degree of certainty the true meaning of 'Public

1. *S.P. Gupta v. Union of India*, AIR 1982 SC 149, 185.

2. Some jurists prefer the term 'social action litigation' (SAL).

3. *Balancing the Scales of Justice - Financing Public Interest law in America*, A report by the Council for Public Interest Law, U.S.A., 6-7 (1976) quoted in S.K Agarwal, *Public Interest Litigation in India : A Critique*, P.2.

Interest'. Basically the meaning of the words 'Public Interest' is defined in the Oxford English Dictionary⁴ as "the common well being ... also public welfare". In Black's Law Dictionary,⁵ 'Public Interest' is defined as follows -

Public Interest - Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal right 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...

In different legal systems, public interest is understood differently. In some countries, public interest is common interest accountable to the state as to the unit of social co-existence, or a private interest which become public in its pursuit by a public official. Whereas in some other countries, public interest is viewed as an interest separate from that of the State-moreover, an interest which is often in direct conflict with the interest represented by the Government.⁶ What was considered as public interest at one time may cease to be so at another time and vice-versa, adding more uncertainty to the meaning of public interest.

The Supreme Court of India has defined the Public Interest Litigation in the following words -

...(L)exically 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 have pecuniary interest or some interest by which their legal rights or liabilities are affected.⁷

The public interest litigation differs from the traditional private litigation in many aspects. Some differences are as under⁸-

- (1) In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights.
- (2) While in the ordinary conventional adjudication the party structure is merely

4. Vol. XII, 2nd Edition.

5. Sixth Edition.

6. See, Vera Langer, "Public Interest and the Role of the Public Prosecutor," *American Journal of Comparative Law*, vol. 36, 279.

7. *Janta Dal v. H.S Chaudhary* AIR 1993 SC 892, 906-907.

8. See. *Sheela Barse v. Union of India*, AIR 1988 SC 2211, 2214-2215.

bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcends these traditional forms and inhibitions.

(3) The compulsion for the judicial innovations of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare State.

(4) The grievance in a public interest action, generally speaking, is about the content and conduct of government action in relation to the Constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies.

(5) Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the merging situations. The proceedings do not partake to predetermined private law litigation models but are exogenously determined by variations of the theme.

The seed of the concept of PIL was initially sown in India by *Krishna Iyer, J. in the year 1976. In Mumbai Kamgar Sabha v. Abdulbhai*,⁹ while disposing an industrial dispute in regard to payment of bonus, Iyer, J. observed -

Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigations but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a part. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. Test litigations, representative actions, *pro bono publico* and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common and a necessary disincentive to those who wish to by-pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. Even Art. 226, viewed on wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, backed by precedents has opted for the narrower alternative. Public interest is promoted by a spacious construction of *locus standi* in our socio-

9. AIR 1976 SC 1455.

economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher Court where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law.

Though Iyer, J, did not use the terminology "public interest litigation" but certainly he innovated a concept which later on culminated into PIL. The Public interest litigation is a totally different field of litigation from the ordinary traditional litigation, it is brought before the court to promote and indicate public interest and for the purpose of enforcing the right of one individual against another. The purpose of PIL is to protect Constitutional and legal rights of large number of people who are poor, ignorant or living in a socially or economically disadvantaged position.

PIL has emerged because of growth of new jurisprudence i.e., jurisprudence of masses' Prof. S.C. Shastri has explained the meaning and historical background of this jurisprudence as follows -

There has emerged a co-operative and collaborative effort to bring to light the common causes and suffering of the Indian masses who are illiterate and unable to seek judicial remedies for their maladies. This approach has outlawed the old procedural technicalities and barriers of justice in bringing the remedies to the aggrieved. This new phenomenon is known as Public Interest litigation.¹⁰

In India the Court seems to have got inspiration from Article 39-A of the Constitution which has been inserted in the Constitution of India by the 42nd Constitutional amendment.¹¹ The Article imparts a duty upon the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The Courts being one of the organs of the State have followed this directive in its true letter and spirit. The Apex Court has added another dimension to the concept of 'equal justice and free legal aid', i.e., speedy justice.¹² These ideas of equal justice,

10. S.C Shastri, *Pollutation and the Environmental law*, 17 (1990).

11. The Constitution (Forty-Second Amendment) Act, 1976.

12. *Hussainara Khatoon v. Home Secretary*, AIR 1979 SC 1360.

free legal aid and speedy justice are the main forces which helped the emergence of PIL.

6.2. PIL and Rule of Standing :

The traditional view that a petition could only be maintained from a person who has himself suffered some legal harm and is a 'person aggrieved', has now been considerably relaxed by the Supreme Court of India. "Person aggrieved has been defined by James L.J. as a man "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something".¹³

In *Re Reed Bowen & Co.*,¹⁴ Lord Esher M.R. approved this definition and made it clear that a 'person aggrieved' must be a man who has been refused something which he had a right to demand. In numerous subsequent decisions of the English Court this definition of 'person aggrieved' has been applied for the purpose of determining whether the person seeking judicial redress has *locus standi* to maintain the petition.

Indian Courts have also followed the similar rule of *locus standi*. However, over the years few exceptions to the narrow and rigid rule have been evolved by the English as well as Indian Courts. In *K.R. Shenoy v. Udipi Municipality*,¹⁵ standing has been accorded to a rate payer of a local authority to challenge an illegal action of the local authority. Similarly, the Madras High Court has recognised the right of a rate payer to challenge misuse of funds by a municipality in *Varadarjan v. Salem Municipality*.¹⁶ The tax payer's interest in the application of the money of the municipality has been considered as direct and immediate and therefore, the dilution in the rule of standing was permitted. In certain cases the relevant statute itself may expressly recognise the *locus standi* of such an applicant who has suffered no legal

13. In *Ex parte Side batham*, (1980) 14 Ch.D. 458. quoted in *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

14. (1987) 19 QBD 174.

15. AIR. 1947 SC 2177.

16. AIR 1973 Mad. 55.

injury due to violation of his legal right or legally protected interest. Section 133 of Criminal Procedure Code is an example where statute expressly gives *locus standi* to persons to complain against a public wrong. In *Ratlam Municipality v. Vardhichand*,¹⁷ the local residents invoked section 133 of criminal procedure code against the Ratlam Municipality which failed to carry out its statutory duty of constructing a drain pipe to carry the filth etc. on a particular road and to keep the city clean. The Magistrate, exercising his power under the statute, passed an order requiring the Municipality to construct drain pipes. The Municipality preferred an appeal before the Supreme Court against the High Court's affirmation of the trial Court's order directing the construction of drainage facilities and the like. The Municipality pleaded lack of funds but this plea was rejected and the Supreme Court directed the Municipality to implement a scheme to improve the situation. The standing of the local residents to move the Magistrate was recognised in this case since section 133 of criminal Procedure Code, expressly conferred such right on them. The Supreme Court has also accepted that now it is well settled that -

A person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke assistance of the Court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him.¹⁸

For instance a minor to whom a legal wrong has been done or a legal injury caused cannot on his own approach the court because of his disability arising from minority. Similarly, a detained person may find it difficult to move the Court for securing his release.

In *Sunil Batra v. Delhi Administration*,¹⁹ the Supreme Court accepted the *habeas corpus* petition of a prisoner complaining of brutal assault by a head warden on another prisoner. In this case the Court broadened the scope of *habeas corpus* by making this

17. AIR 1980 SC 1622.

18. *Supra* note 1 at 187.

19. AIR 1980 SC 15 79.

writ available to a prisoner, not only for seeking his liberty, but also for the enforcement of a Constitutional right to which he was lawfully entitled.

In *Dr. Upendra Baxi v. State of U.P.*,²⁰ two law professors of the Delhi University addressed a letter to the Supreme Court seeking enforcement of the Constitutional right of the inmates of a Protective Home at Agra who were living in inhuman and degrading conditions. By reason of their socially and economically disadvantaged position, they were not in a position to move the court for judicial redress. The Court treated the letter as a writ petition and permitted the professors to maintain an action for an appropriate writ for the Protective Home under Article 21 and providing judicial redress to them, so that the inmates could live with human dignity in the Protective Home.

In *S.P. Gupta v. Union of India*²¹ the Supreme Court, after discussing the important case and laws relating to *locus standi*, observed -

Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in contravention of any Constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.²²

The Supreme Court further diluted the procedural niceties regarding a writ petition by the following observation -

... 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 acting *pro bono publico*. It is true that there are rules made by this Court prescribing

20. (1981) 3 Scale 1137.

21. *Supra* note 1.

22. *Id.* at 188-189.

the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it.²³

In this case the Court has emphasised the need to liberalise the rule of *locus standi* by citing following reasons.²⁴ -

Firstly, the risk of legal action against the State or a public authority by any citizen will induce the state or such public authority to act with greater responsibility and care, thereby improving the administration of justice.

Secondly, it is only by liberalising the rule of *locus standi* that it is possible to effectively police the corridors of powers and prevent violation of law.

Thirdly, the new social and economic rights which are sought to be created in pursuance of the Directive Principle of State Policy essentially require active intervention of the State and other public authorities... [M]ore and more frequently the conferment of these socio-economic rights and imposition of public duties on the State and other authorities for taking positive action generates situations in which single human action can be beneficial or prejudicial to a large number of people, thus making entirely inadequate the traditional scheme of litigation.

Fourthly, in case of public injury the duty which is breached giving rise to the injury is owned by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. If breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who is entitled to participate in the proceedings pertaining to the decisions relating to such public duty. The failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise

23. *Id.* at 189.

24. *Id.* at 190 - 192.

of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst might become a participant in misuse or abuse of power. It would also make the new social collective rights and interest created for the benefit of the deprived sections of the community meaningless and ineffectual.

Fifthly, unlike the United Kingdom, where the Attorney General represents the public to see that the law is obeyed, in India we don't have similar machinery to provide judicial redress for public injury and protection of 'diffused' rights and interests. Therefore, we have to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from any other violation of the Constitution or the law.

Lastly, if public duties are to be enforced and social, collective 'diffused' rights and interest are to be protected we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though they may not be directly injured in their own rights.

Thus, for the aforesaid reasons, in a public interest litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, 'defused' rights and interest, any citizen who is acting *bona fide* and who has sufficient interest has to be accorded standing.

What is 'sufficient interest' to give standing to a member of the public is a tricky question as it is not possible for the court to lay down any hard and fast rule or any strait jacket formula for the purpose of identification of 'sufficient interest'. Bhagwati, J. insists that it has necessarily to be left to the discretion of the Court because "... [I]nfinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wave-length as the Constitution will be able to decide, without any difficulty and in consonance with the Constitutional objectives, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action".²⁵

25. *Id.* at 192.

Though it is essential to lay down clear guidelines and parameters for entertaining a Public Interest Litigation, specially on the issue of 'standing', yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved by the Apex Court.

The Supreme Court has emphasised upon the mandatory requirement of *locus standi* for a party to a litigation, "because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold".²⁶ But so far no precise and inflexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of Public Interest Litigation. It seems that some reservation and diversity in approach to the philosophy of public interest litigation among judges of the Supreme Court is one of the reasons why we could not evolve a consistent jurisprudence in the field of public interest litigation.

S.R Pandian, J., has accepted the limitation of the Court in this regard and has cited the reason in following words:

...[I]n defining the rule of *locus standi* no 'rigid litmus test' can be applied since the broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process.²⁷

6.3. Procedure for PIL :

Public interest litigation is different form private litigation, therefore, the technical rules of procedure applicable to the private litigation cannot be applied with the same rigidity in case of PIL. Hence the courts have developed procedural norms and ethos to suit the philosophy of PIL.

PIL can be initiated by any public spirited person or group having sufficient interest and acting bona fide, on behalf of any person, or determinate class of persons who because of any socio-economic handicap or disability cannot approach the Court for relief or where the right which is violated is a 'diffused' right. However, no busy

26. *Supra* note 7 at 909.

27. *Id.* at 910.

body or meddlesome interloper is allowed to abuse the process of law; "since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged group and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration..., to put the judicial machinery in motion".²⁸ Thus, only a genuine public spirited person or group has been allowed standing in PIL.

The Supreme Court and the High Courts have by rules prescribed procedure for moving the Court under Article 32 and Article 226 of the Constitution of India in PIL the Court does not insist on a regular writ petition. In a number of cases courts have entertained 'letters' in lieu of regular petition. In certain cases, the news item published in news paper has initiated the judicial process. Therefore, the cause of justice has not been allowed to be thwarted by procedural technicalities. In a public interest litigation the person who initiated the litigation cannot claim, as of a right, to withdraw the proceedings from the court. The Court has held that the petitioner can withdraw himself from the PIL but the petition would stay and the court will ask any other person to represent the case. Making this point very clear the Supreme Court in *S.P Anand v. H.D. Deve Gowda*²⁹ has made following observation -

...[I]n PIL cases, the petitioner is not entitled to withdraw his petition at his sweet-will unless the Court sees reasons to permit withdrawal. In granting the permission the Court would be guided by consideration of Public interest and would also ensure that it does not result in abuse of the process of law.

There may be a situation where the number of persons affected by the PIL is extremely large and it is difficult to serve individual notices. In such a situation indeterminate public notice issued in large number of news papers about the pendency of the PIL and the date of next hearing has been considered as sufficient notice to all those would be affected by the decision of the court. In *Gopi Aqua Farms v. Union of India*,³⁰ the Supreme Court has held that in such type of cases, there is no question of invoking the principle of Order 1, Rule 8 of the code of Civil Procedure.

28. *Id.*

29. (1996) 6 SCC 734, 744.

30. AIR 1977 SC 3519.

In the area of PIL justice is done mostly through Court's directives and the court is free to supplement the prescribed procedure by evolving its own rule in this area, nevertheless, the supplement procedure must confirm at all stages the accepted procedural norms characteristic of a judicial proceeding i.e., "the fundamental principles which form the essential constituents of judicial procedure employed in every judicial proceeding, and constitute the basic infrastructure along whose channels flows the power of the court in the process of adjudication".³¹ As said by justice Bhagwati, "Public interest litigation ... is a strategic arm of the legal aid movement and ... is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity".³² In order to achieve this noble goal of PIL the Court devised various procedural innovations such as appointing commissions to enquire into the facts which form the basis of the petition, allowing interventions and wider participation of the affected parties by inviting objections and suggestion from them taking expert opinion on technical issues and giving directions in respect of matters involving public interest.

The Court has taken care to lay down some norms regarding the eligibility of the social action groups to participate in the PIL proceedings. According to Prof. S.P. Sathe³³ following conditions are required to be satisfied -

(1) Persons on whose behalf the petition is made must be the sufferers of injustice who are unable to invoke the court process on their own due to poverty or ignorance or some such inhibition. Unorganised labour,³⁴ migrant workers,³⁵ bonded labour,³⁶ prison inmates,³⁷ women in protective homes,³⁸ children³⁹ have been the categories on whose behalf such petition have been made. All cases of alleged violation of human rights fall in this category;

31. C.K Thakker, *Administrative Law*, 600 (1995).

32. *Peoples Union for Democratic Rights v. Union of India*, AIR 1982 561 473, 1476.

33. S.P. Sathe, *Administrative Law*, 410 (1999).

34. *Peoples' Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

35. *Labourers Working on Salal Hydro Project v. State of J. & K.*, AIR 1984 SC 177.

36. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

37. *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

38. *Upendra Baxi v. State of U.P.*, (1983) 2 SCC 308.

39. *Sheela Barse v. Union of India*, AIR 1986 SC 1773.

(2) the interest likely to be adversely affected by government's action or inaction may be of the public in general and not of any individual in particular. Cases involving environment or governance belong to such a category; and

(3) the person or the social action group which is the petitioner must not have any axe to grind. It should have no personal interest in the matter. Recourse to proceedings by way of public interest litigation could be made only by persons who were genuinely interested in protecting a social interest. It cannot be invited by a person or a group of persons for vindication of their grudge or enmity or for enforcing a personal interest.

Regarding technicalities of procedural laws in public interest litigation the Supreme Court observed in *Rural Litigation & Entertainment Kendra v. State of U.P.*,⁴⁰ as follows -

We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court.

6.4. Complexities :

During the earlier days of PIL, a restrictive approach was adopted by the judiciary. Only the rights of person unable to approach the Court because of their disability were protected by the Courts by relaxing the requirement of *locus standi*. Later on, however, standing was also accorded to special interest groups and public spirited citizens for bringing PIL challenging governmental decisions, policies and actions. Now a day the PIL covers protection of fundamental rights, implementation of the directive principles of State policy and also the entire area of the Rule of law concept. "It is ... argued that by extending its jurisdiction through SAL/PIL the court is trying to bite more than what it can chew. Lawyers have started complaining that much of the courts time is being consumed by SAL/PIL and hence for the court a postcard is more important than a fifty-page affidavit".⁴¹

The expectation of the common man is very high from the judiciary and this has

40. AIR 1988 SC 2187.

41. I.P. Massey, *Administrative Law*, 347 (5th ed. 2001).

resulted into the risk of judiciary being subjected to criticism that it is assuming the role of the legislature and the executive in order to fulfil the expectations of the people. Today economic, social and political issues and various policy matters are, in a great measure, subject to judicial scrutiny. This appears to transgress the Constitutional principle of separation of powers "[O]ne of the justification for the present role assumed by the judiciary is that judiciary being a part of the State, it becomes its duty to render Constitutional adjudication in tune with the directive principle and the objective contained in the preamble".⁴²

Another apprehension against the PIL movement is that in a situation where the figures of pending cases before the High Courts and the Supreme Court are astronomical and have ever growing tendency, the PIL with the advantage of relaxed 'standing' would open the floodgates of litigation and may overburden our already burdened judiciary. According to I.P. Massey this apprehension is baseless as the current trend shows a decline in number of fresh PIL being filed. He has given following reasons for this -

The tribe of conscientious citizens who regularly moved social action cases is feeling discouraged because of frequent adjournments and long delays in the grant of final relief and whatever relief is granted, in many cases, stops at the gates of the court because of the indifferent attitude of the administration. Furthermore, well intentioned persons feel insulted and discouraged when administration imputes motives to them. Lawyers who readily offered their services for a laudable cause are retracing their feet because of the realisation that it is not all publicity and glamour but time and money also. Furthermore, those who have been sending letters as petitions in the past to a particular judge have found that it may not be heard by him. A new practice developed by the court is to refer such letters to Legal Aid Committees which would convert them into writ. It is also now being recognised that leading evidence is more difficult than sending newspaper clippings to the court. Added to this is the time consumed in waiting upon lawyers, for some of whom social action litigation is only a cosmetic touch to their public image. Division among judges on the desirability of SAL/PIL, some of whom even do not hesitate in making a sardonic remark in the open court, is also responsible for this backlash effect.⁴³

42. M.N. Rao, J., "Strength and Weakness of Public Interest Law", *AIR Jour.* 120 (1995).

43. *Supra* note 41 at 348.

Moreover, a PIL may provide relief to hundreds and thousands of people and thereby, it may cause decline in numerous ordinary litigation.

The greatest challenge before the judiciary today is how to control the misuse of PIL, as for any small or big issue which can bring some publicity to the litigant or highlight the issue we are witnessing a fresh PIL. In *Jasbhai Desai v. Roshan Kumar*,⁴⁴ Sarkaria, J., has suggested that the application of the busy body should be rejected at the threshold. He observed -

...[A]n applicant may ordinarily fall in any of these categories -

- (i) Person aggrieved;
- (ii) 'Stranger';
- (iii) busy body or meddlesome interloper.

Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of *pro bono publico*, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

Though this case was related to *locus standi* to apply for a writ of *certiorari* but the views expressed by the Judge is equally relevant for PIL cases as well.

The apex court is very much conscious about the chances of abuse and misuse of PIL since its inception. In *Fertilizer Corporation v. Union of India*,⁴⁵ Krishna Iyer J. has held, "If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be a jar for him". While explaining nature and scope of PIL in *S.P. Gupta's*⁴⁶ case, Bhagwati, J. emphatically made clear that the relaxed rule of 'Standing' in the field of PIL does not allow a busybody or meddlesome interloper to misuse the judicial process in the name of public interest. He issued caution in the

44. AIR 1976 SC 578.

45. AIR 1981SC 344, para 48.

46. *Supra* note 1 at 189.

following words -

... we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting *bona fide* with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court.

In *Bondhua Mukti Morcha v. Union of India*,⁴⁷ the Supreme Court has underlined the importance of satisfactory verification of allegations. Pathak, J., in his separate judgement has held -

...[D]anger inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. There is good reason for the insistence on a document being set out in a form, accompanied by evidence, indicating that the allegation made in it are made with a sense of responsibility by a person who has taken due care and caution to verify those allegations before making them ... There is good reason, ... for maintaining the rule that, except in special circumstances, the document petitioning the Court for relief should be supported by satisfactory verification. This requirement is all the greater where petitions are received by the Court through the post.

Khalid, J. in his separate supplementing judgement in *Sachidanand Pandey v. State of West Bengal*⁴⁸ has asked for self imposed restraint on public interest litigants. He has made his observation regarding PIL in the following terms -

Public interest litigation has now come to stay. But one is led to think that it poses a threat to Court and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay 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 litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

47. AIR 1984 SC 802, 840.

48. AIR 1987 SC 1109, 1136.

The Supreme Court expressed full agreement with this view expressed by Khalid, J. In *Ramsharan Autyanuprasi v. Union of India*,⁴⁹ Sabyasachi Mukharji, J. speaking for the Bench added to this view that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases.

In *Chhetriya Pradushan Mukti Sangharsh Samity v. State of U.P.*,⁵⁰ when the reason for filling the PIL was the long history of entity and animosity between the parties rather than public interest, the court held that people are entitled to take recourse of Article 32 of the Constitution where there is violation of fundamental rights and opined -

But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact (sic) ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottle neck in the superior court preventing other genuine violation of fundamental rights being considered by the Court.

K.N. Singh, J., in *Subhash Kumar v. State of Bihar*⁵¹ has expressed his opinion about the problem of abuse of PIL in the following words -

Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this court. Personal interest cannot be enforced through the process of the court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group or person or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this court to

49. AIR 1989 SC 549.

50. AIR 1990 SC 2060.

51. (1991) 1 SCC 598, 604.

discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.

Here it must be noted that while genuine litigants with legitimate grievances relating to civil and criminal matters, service matters and tax cases etc. are all standing in a long queue for years to be given a chance to be heard before the High Court and Supreme Court, the courts are busy with the false complaint lodged through PILs. ... "[T]he busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation..."⁵² These people get the chance before the Courts in the name of PIL. Their claim in most of the cases are likely to be rejected by the Courts but not without wasting the precious time and energy of the judicial machinery. This unnecessary time consuming exercise creates a frustration in the minds of genuine litigants who are gradually losing faith in the system for administration of justice.

The Supreme Court after discussing all important cases on the issue of misuse of PIL has pronounced its judgment in *Janta Dal v. H.S. Chowdhary*,⁵³ as follows -

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.

There is danger of transgressing its jurisdiction by the courts while protecting the public interest, our judiciary seems to have realized this danger and has held in *Narmada Bachao Andolan case*⁵⁴ in majority that -

52. *Janta Dal v. H.S. Chowdhary*, AIR 1993 SC 892, 918.

53. *Id.*

54. *Narmada Bachao Andolan v. Union of India*, AIR 2000 SC 3751, 3827.

...[I]n exercise of its enormous power the court should not be called upon or undertake governmental duties or functions. The court cannot run the Government nor the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a Constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and rights of Indians. The Court must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the Court itself is not above the law.

In *Balco Employees' Union v. Union of India*,⁵⁵ the disinvestment by the Government in M/s Bharat Aluminium Company Ltd. (BALCO) was in question. Kripal, J., representing the bench made it very clear that the decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State, Challenge to such policy at the instance of a busybody cannot fall within the parameter of PIL and concluded that -

Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reforms the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties.

From the aforesaid cases and discussion it emerges that in order to check the abuse of PIL the courts should follow following precaution while admitting a PIL for hearing.

Firstly, the person who moves the court for judicial redress through PIL must be having sufficient interest and acting bona fide with a view to vindicating the cause of justice. Mere wayfarer, officious intervener, busybodies or meddlesome interlopers

55. (2002) 2 SCC 333, 381 - 382.

having absolutely no public interest should be discouraged to file PIL. Penalty may be imposed by the courts in appropriate case for unnecessary consuming the precious time of the court.

Secondly, no one should be allowed to use PIL for personal gain or private profit or political motive or any oblique consideration. The court must reject a vexatious petition under the colour of PIL for vindicating any personal grievance.

Thirdly, the courts should not allow, except in very special circumstances, a PIL without any supporting document and verification. Insistence on requirement of documents and evidence by the court will make the complainant more responsible.

Lastly, the courts should refrain from undertaking governmental duties or functions and therefore, in the matters of policy the courts are not expected to interfere in governmental decision. The intervention of court should be limited to only those cases where there is a clear violation of constitutional or statutory provisions or non-compliance by the State of its Constitutional or statutory duties.

6.5. Role of PIL in Environmental Protection :

The Public Interest Litigation has proved itself as an important tool in the hands of environmentalists and the judiciary for protection of environment from pollution and degradation. In certain cases it has paved ways for the improvement of existing natural environment. the importance of PIL can easily be understood by the leading cases in the area of environment discussed below.

In *Rural Litigation & Entitlement Kendra v. State of U.P.*⁵⁶ (Dehradun Quarries cases) a letter received from the Rural litigation and Entitlement Kendra, Dehradun was directede to be registered as a writ petition under Article 32 of the Constitution. the allegations of unauthorised and illegal mining in the Mussoorie - Dehradun belt which adversely affected the ecology of the area and led to environmental disorder were made. The member of parties, involved in this public interest litigation, inflated both under the orders of the court and on application to be added. Apart from the

56. AIR 1985 SC 652; AIR 1985 SC 1259; AIR 1987 SC 2426; AIR 1987 SC 359; AIR 1988 SC 2187.

Governments of the Union and of Uttar Pradesh, several governmental agencies and mining lessees appeared in the proceedings. What initially appeared to be simple application, in the form of a letter, for limited relief got expanded into a comprehensive litigation requiring appointment of committees, inspection and reports in them from time to time, serious exercises on the part of the mine owners before the committees, filing of affidavits and lengthy arguments before the Court. These also necessitated several comprehensive interlocutory directions and orders. Various mines were closed by the order of the Court in order to save environment. The court also poised the efforts of the petitioner and encouraged the people to take up such issues in the following words -

We must place on record our appreciation of the steps taken by the Rural litigation and Entitlement Kendra. But for this move, all that has happened perhaps may not have come. Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51 A (g) of the Constitution.⁵⁷

In *M.C. Mehta v. Union of India*⁵⁸ (*Oleum Gas Leak Case*), on a public interest petition by a lawyer of the Supreme Court, the Court grabbed the opportunity to deliberate upon certain very sensitive issues like scope of Article 32 and principles of liability etc. The court held that the power of the Court under Article 32 to grant remedial relief may include the power to award compensation in appropriate cases. The Court rejected the old rule of strict liability and held that where an enterprise was engaged in a hazardous or inherently dangerous activity, it was strictly and absolutely liable to compensate, in case of any harm which may result by accident, all those who were affected by the accident. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability.

In *M.C. Mehta v. Union of India*⁵⁹ (*Kanpur tanneries case*), on a public interest litigation was filled by an active social worker and Supreme Court advocate for restraining tanneries near Kanpur, from polluting the river Ganga by discharging

57. *Rural Litigation & Entitlement Kendra v. State of U.P.*, AIR 1987 SC 359.

58. AIR 1987 SC 1086.

59. AIR 1988 SC 1115.

trade effluents into it. The Court issued various directions to the tanneries and the Kanpur Nagar Nagarpalika to ensure that the trade effluents of the tanneries be properly treated before their discharge. The important aspect of this case was the court's pronouncement that what stated in the present case for Kanpur Mahapalika shall apply *mutatis mutandis* to all other Mahapalikas and Municipalities which have jurisdiction over the areas through which the river Ganga flows.

In order to rouse amongst the people the consciousness of cleanliness of environment the Government of India and the Government of the States and of the Union Territories were advised by the Court to consider the desirability of organising "keep the city clean' week, 'keep the town clean' week and 'keep the village clean' week in every city, town and village throughout India at least once a year. The Court also expressed its view that "it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lesson relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes".⁶⁰ Thus, by an writ petition which was concerned with the problem of tanneries situated near Kanpur the Court passed orders which are applicable for all the areas situated at the bank of 'Ganga'. The suggestion of the Court to start environmental courses through out India is specially praise worthy as the children are the future and if they are aware about the problems and solutions relating to the environmental matters, the problem may be solved easily.

In *Taj Case*⁶¹ the court issued directions to industries located and operating in Agra to change-over to natural gas as industrial fuel or stop functioning with coal/ coke and get relocated in order to save Taj Mahal, an historical monument amongst the world-wonders, in a public interest litigation.

In the case of *Indian Council for Enviro-legal Action v. union of India*,⁶² by a public interest litigation the residents of Bichhri village in Udaipur could be saved from the dangerous effects of hazardous chemical substances being released by certain

60. *Id.* at 1127.

61. *M.C.Mehta v. Union of India*, AIR 1997 SC 734.

62. AIR 1996 SC 1446.

greedy industrial houses. In this case the Court relied on expert reports and no objection was made immediately regarding absence of cross-examination of the experts by the respondents, the court held that no such objection can be raised at belated stage.

M.C. Mehta v. Kamal Nath,⁶³ is one of such cases where the court initiated the legal action *suo-moto*. The Supreme Court took notice of the news item appearing in the Indian Express dated 25/2/1996 where it was stated that a private company in which family of a former union Minister has direct link, had built a club at the bank of River Beas by encroaching land which was later regularised and leased out to the company when the said minister was in power. The main allegation in the news item was that the course of the river was being diverted to save the Motel future floods. The Court asked the Motel to pay compensation by way of cost for the restitution of the environment and ecology of the area and declared that the 'Public Trust Doctrine' is a part of the law of the land.

It is therefore, evident that PIL has played an important role in protection of natural environment. It has been proved to be the most potent weapon in the hands of the environmentalists who want to protect and save the environment. The judiciary has also used PIL as a tool for protection of the natural environment and has evolved various principles and doctrines in the field of environmental jurisprudence in order to save the environment.

63. (1997) 1 SCC 388