

CHAPTER – I

STATEMENT OF THE PROBLEM/THEORETICAL FRAMEWORK

The Constitution of India has not fixed the mind to be the central part of legal equilibrium for the common people. They have a sympathetic perception of it and they can raise the price of it. They love it and more they price it. All the poor people of India who are starved, deprived and backward need the protection of court for the safety of their fundamental right and securing their enjoyment of human rights. The Constitutional precedents cannot be permitted to be transformed into weapons for defeating the hopes and aspirations of the people, the will of the people can only become articulate through the voice of their elected representatives if they fail to save the people and nation from destruction, then neither the court nor the constitution can save the country. Various social workers have recognized it and even now general public knows that the court as constitutional power of interruption which can be invoked to make better the extreme pain arising from repression governmental lawlessness and administrative deviance.

At the time of independence, the bulk of citizens were unaware of their legal right and there was hardly any link between the right granted by the Constitution of Indian Union and laws made by the legislature as well as the vast majority of illiterate citizens on the other. However this scenario has been changed when Supreme Court tackled problems of access to justice. Public interest litigation has now been developed in recent years and the Supreme Court is now seen as not only reaching out to provide relief to the citizens but also attempted to formulate policy which the state must follow.

Indeed, the fact is that in India millions of people are living without having basic requirements for their livelihood. Still now poor people are often exploited and subjugated the rich as they are economically poor, socially backward, illiterate, and politically not conscious and basically they are very unaware about their basic constitutional right.

Though the Constitution of India has guaranteed the fundamental Rights to all the citizens of India, but the poor section of society are not enjoying the constitutional privileges as they are socially, politically, economically poor." For the purpose of protecting fundamental rights and obligation of the poor people, the court adopted the rule of public interest litigation as an instrument of social justice which means to solve the grievances against the violation of human rights of helpless poor people. In broader sense, public interest litigation 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 an interest by which the rights are affected. The public interest litigation any member of the society on behalf of person or group of persons whose rights are affected by state action can move the court for enforcement of fundamental rights. The guidelines to be followed for entertaining letters/petition received in the court as "public interest litigation" are given below:-

- 1) Environmental pollution
- 2) Drugs
- 3) Maintenance of heritage
- 4) Cultural forest and wild life
- 5) Problem of riot-victims
- 6) Family pension
- 7) Bonded labour
- 8) Neglected children
- 9) Non-payment of minimum wages to workers 10) Exploiting casual workers
- 10) Mater of violation of labour laws
- 11) Petition from jail complaining of harassment, death in jail, speedy trial as a right
- 12) PIL against police for refusing to register a case 14) Death in police custody
- 13) Harassment or torture of villagers by co-village or by police
- 14) Petition against harassment of bride, bride burning, rape, murder, kidnapping etc.

In 1981 Justice P.N. Bhagwati in S.P Gupta vs. Union of India case articulated the concept of PIL as follows: "Where a legal wrong or a 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 person by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief any member of public can maintain an application for an appropriate direction, order or writ in the high court under article 226 and in supreme court under article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons."

But it is humbly said that public interest litigation still is in experimental stage. Many deficiencies in handling the kinds of litigation are likely to come on front. For example in the directive principle of state policy in part IV of the constitution we can find that the constitutional goal of socio-economic order was setting out. But we can see that there was one feature of our national life which was ugly and shameful and which sought for urgent attention and that was the existing bonded labour in large part of the country. Without any check or control or improvement in this area the prevalence of bonded labour is still prevalent all over the country in spite of the promises made in the constitution.

Our society is facing another important problem that is related to women problem. Not only in India, in the whole world women are often exploited in various forms. One such kind of form is Muslim divorce. After getting divorce they are facing a lot of problem in maintaining their livelihood. Due to divorce from husband the right of Muslim women is violated in various senses. The problem is that having sufficient means to maintain their live, his wife and his little children are often becoming negligible because husbands often refuse to maintain them after divorce and then the minor children have to live with the divorced wife.

Another big problem which our society is facing is about the role of police force. As we know the role of police force is for maintaining law and order, investigating into crimes etc. but problem is that they are playing inactive role. They are taking part in corruption, custodial violence, lock-up death, torture, encounters crimes against women etc. Even they are misusing the rules and regulations in regard of national security. Due to brutal behaviour of police several innocent people are sacrificing their life because of encounter. But in Chaitany Kalbagh vs. state of U.P court had issued suitable directions. Where seven persons were abducted by senior police officers, the court had directed personal enquiry by

director of central bureau of investigation. But all these are not proper solution in the sense that in spite of court direction inaction of police force still continuing.

Public interest litigation has given rise to another set of problem as well. Sometime the opposite party gets an opportunity to ascertain the precise allegation and respond specific issue. The public interest litigation concerning to exhaustion of forest envelop is a case in print. As petition initially drafted and accessible, pertained to the capricious feeling of their trees in Jammu and Kashmir. The PIL has now been bloated by the court to cover all forest throughout India. Therefore individual states will not be able to retort to the original persuasive as such, since it may not apprehension them at all. The report given by court allotted commissioners lift up problem concerning their evidentiary value. No court can initiate its decision on the specifics unless they are proved according to law. This implies the right of a rival to test them by cross-examination or at least counteract affidavits. In such occurrence the exaggerated parties may have scruple about the role of the court.

Even debate over restrictions of judicial activism, predominantly in the field of public interest litigation, has been strong in the political field too. The attempts by the judiciary through PILs to go into the area of policy making and policy implementation have caused apprehension in political circles. A private member bill public interest litigation bill, 1996 was nominated in Rajya Sabha. According to it the public interest litigation was disgustingly distorted. Moreover PIL cases were being given precedence over other cases, which had remained pending in the court for years. It was urged that if a PIL petition filed the petitioner should be put behind bars and pay the compensation.

Although the bill passed, debate in parliament exposed some of the criticism and doubtful that PIL had begun to create a centre of attention. The trustworthiness of PIL process is now unfavourably exaggerated by the condemnation the judiciary is overstepping of its jurisdiction and for that it is unable to supervise the effective implementation of its orders. It has also been more and more felt that PIL is being distorted by the people agitating for confidential accusation in the clutch of public attention and looking for advertising rather than espousing public cause. The judiciary has itself documented and uttered these concerns sporadically. A further apprehension is that as judiciary enters into the policy making field, it will have to manner new remedies and device for ensuring

successful observance with its regulate. A judicial system can undergo no greater lack of integrity than an awareness that its order can be flouted its impunity. This court must desist from passing order that cannot be enforced, whatever the fundamental right may be. It serves no purpose to high outline mandamus or declaration that can stay put on paper. Although the Supreme Court passes interim orders for relief, rarely is a final decision given and in most of the cases, the transcribe is poor.

In a vote based political set up, Public Interest Litigation (PIL) is viewed as an amazing instrument of the legitimate guide development. In India it has created toward the finish of 1970s. However, in all actuality, it got a total force and drew a lot of consideration during the eighties and nineties. Undoubtedly, it implies an Act which is gainful to the overall population. It alludes to the moves which are made mainly for public purposes. Let us make an endeavor to characterize the idea of Public Interest Litigation. Public Interest case, itself says that this is a case for any open intrigue. In the expressions of some educated individuals we can say that public intrigue case in a case which can be documented in any official courtroom by any open energetic individual for the assurance of "public intrigue."

Public intrigue suit isn't characterized in any resolution or any demonstration. It has been deciphered by judge to think about the purpose of public on the loose. This is much the same as a writ appeal which is record in high court or high court under article 226 for high court and article 32 for high court. At the point when public enthusiasm for influencing everywhere then this can be recorded yet love on just a single individual isn't a ground for documenting this request. There are some different regions where a public intrigue prosecution can be recorded.

1. Infringement of essential common freedoms of poor people.
2. Substance or lead of government strategy.

Propel metropolitan specialists to play out a public obligation. There is Infringement of strict rights or other essential thing rights. These are the fundamental zone where any open intrigue prosecution can be recorded against State/Central Govt., Municipal Authorities, and no private gathering. Anyway private gathering can be remembered for this as a respondent subsequent to making concern state authority. This request is recorded in high

court or high court simply an equivalent way as other writ appeal documented. There is some expense for this reason and its hearing continues is additionally similar to different cases. In mid 90's an appointed authority had treated a griping post card as open intrigue case so we can say that a last additionally might be treated as writ of public intrigue prosecution some other case are likewise there which we will talk about in this undertaking. There are different sort of cures likewise there to make sure about the public enthusiasm as INTERIM MEASURES, APPOINTING A COMMITTEE, FINAL ORDERS.

In India the primary instance of PIL was recorded in 1976 named *Majdur kaamgar sabha v Abdul bhai Faizulla bhai*. Where Krishna Iyar permitted a gathering of individuals to document appeal in the interest of others. The privileges of the part were disregarded Krishna Iyar held possibly one individual or gathering of people together can go to the court. Be that as it may, some time abuse of this appeal additionally comes into picture. This is the issue in PIL that many time this abused by certain individuals. There are different cases in which PIL is abused as *S.P. Gupta v association of India*. In this can abuse of PIL was stick into picture. also, the besides on account of *Shushes Kumar v Union of India*. For this situation there was a chief in an organization and his supervisor faired him and he gave a PIL notwithstanding not being any ground of PIL.

In Stroud's Judicial Dictionary, ' Public Interest' has been characterized as "An issue of Public or General Interest doesn't imply what is fascinating as satisfying interest or an adoration for data or delight however that in which a class of the network have a financial intrigue, or some enthusiasm by which their legitimate rights or liabilities are influenced ". (Vol. IV fourth Edn. Cited in AIR 1996 Cal 181) Then again, the term 'case ' implies a lawful activity including all procedures in that started in a Court of Law to authorize a privilege or looking for a cure. It has been characterized as the demonstration, cycle, or practice of settling a question in a courtroom: the demonstration or cycle of prosecuting (Merriam Webster Dictionary). From the Lexical perspective, the articulation PIL just methods a legitimate activity started in a Court of Law for the authorization of public intrigue or general enthusiasm for which people in general or a class of network have financial intrigue or some enthusiasm by which their lawful rights or liabilities are affected(*Janata Dal Vs. H.S. Choudhury*, AIR 1993 S.C. 892) In exact terms, the term Public Interest Litigation centers around the lawful activity which is started in the patio of

a Court of Law for the requirement of Public Interest or general intrigue. In PIL the general population or a class of the network must have money related premium or some other enthusiasm because of which their privileges or liabilities are influenced. From an alternate point, it might be said that the term PIL is fundamentally worried to endeavors so as to give Legal portrayal to the gatherings and interests who have remained unrepresented or under spoke to in the Legal space. It ought to be alluded that here not just poor people and burdened segments of the general public are incorporated yet in addition it endeavors to augment its umbrella to the bigger society. It truth, its measurements attempt to likewise incorporate the normal residents additionally especially the individuals who are in reality unable because of money related limitation and are not in a situation to manage the cost of the expenses of an attorney for making sure about equity in a Court of law. The PIL likewise covers under its ambit to cover the individuals who are not competent to gain admittance to the Courts, Administrative Agencies and other legitimate discussions. It might be referenced here that the term Public Interest Litigation started in the US during the time of the mid-1960s. With respect to the advancement of the idea, a huge achievement was the foundation of the main legitimate guide office that was set up in the city of New York in 1876. It ought to be referenced that directly from the year 1960, the PIL development started to get monetary help from the workplace of Economic chance. After the award of this monetary help, an unmistakable force was detectable from the finish of the legal advisors and people who had public compassion to take up the instances of the under advantaged areas of the general public and to battle for the more vulnerable segments. It used to portray the exercises of the legal counselors who spoke to the customers and their inclinations who were so far unrepresented or underrepresented in the legitimate and legal space. Truth be told, it rose as an aspect of the legitimate guide development coordinated towards the insurance of the privileges of minorities, monetarily incapacitated and absence of information on the lawful issues. In this association, it might be referenced that in England additionally the part of PIL applied a noteworthy impact during the long periods of Lord Denning during the 1970s. The choice delivered in the land mark "Black Bum Cases" filled in as a motivating component for the Judges in the Supreme Court of India to act in this line.

Indeed, the PIL development infused and bonded fresh blood in the way of expert obligation with respect to the legal counselors, who were similarly more youthful in age

and had the energy of making new trials stacked with new techniques and strategies. The significant target in such manner was identified with set the legal framework so it moves the correct way. It was their significant point so the arrangement of equity in the general public moves toward the path so as to create an ideal uniformity. It was their further expect to eliminate the separation obstruction between those who are well off and the poor. It would consequently prompt a circumstance where the oppressed segments of society would get equivalent occasion to look for equity which ought to be ideal for any general public.

In the event that we look to the United States of America it would be obvious that with the money related help got from the Office of Economic Opportunity (OEO) of the Federal Government in the United States, these legal counselors with new ideas and thoughts utilized their best undertaking to prepare the law understudies and furthermore the social activity bunches in this space. The fundamental persuading power behind this thought was with the goal that they can broaden their assistance for the few million disorderly, oppressed and individuals having a place with the lower financial layers of the general public and are denied from 'equity' in the general public. It might be referenced that normally, there are two kinds of Public Interest Law. The first is identified with the issues which overwhelm and influence the enormous portion of society. The subsequent one is more noteworthy and significant from the cultural perspective. It predominantly influences the people who have a place with the monetarily more fragile and oppressed segments of the general public.

In this association it is important to make reference to that Public Interest Law has principally three constituent parts: viz., 'Public ', 'Intrigue', and 'Law'. It would in this manner be relevant to make a clarification of the apparent multitude of three terms. So far as the Dictionary importance of the term 'intrigue' is worried, as given in Black's Law Dictionary may be "Intrigue is the most broad term that can be utilized to indicate - a right, case, title, or legitimate offer in something. "The subsequent word, viz. 'intrigue' is commonly used to mean the object of any human longing. It entirety it is combination of Rights, Privileges , Powers lastly Immunities, It is in this way certain that 'Public Interest' connotes intrigue which is shared by the residents by and large in all the undertakings of neighborhood, State or National Government. In basic and exact terms, the implication 'Public Interest' implies that it is essentially a demonstration which is advantageous to

General Public. It further methods the activity which is essentially embraced to serve the general population or so to state for public reason. It might be said that there is something regular in the terms ' Public Interest' and ' Public Purpose'. Despite the fact that, the term ' Public Purpose' can't be characterized exactly, and has no reasonable importance which is acknowledged by all. It alludes to various importances in various circumstances. Notwithstanding, it very well may be characterized simply by a cycle of Judicial consideration and avoidance. An expansive test has planned for characterizing 'Public Purpose' viz.,: " whatever facilitates the overall enthusiasm of the network, rather than the specific enthusiasm of the people, must be viewed as a 'Public Purpose'(State of Bihar Vs. Kameswar Singh, AIR 1952 SC 252) .The articulation " enthusiasm of the overall population" grasps in it - " public security, public request and public profound quality"(Emperor Vs. Jeshing Bhai Iswarlal Dhobi, AIR 1950 Bombay 363)

The researchers and analysts have called attention to that Public Interest Law eludes to the particular space where social heart meets the law and finds redressal. The Public Interest Law has the essential mean to take forward the privilege of the people who are survivors of superfluous and hurtful maltreatments in the general public and finds no redressed for them. We may allude to the most acknowledged meaning of "Public Interest Law " which says that " Public Interest Law is the name of the idea which give legitimate portrayal to the part of the individuals in the general public whose interests have been unrepresented and under-spoke to in the lawful cycle of the general public. More significant piece of Public Interest Law lie in the way that it incorporates not just poor people and burdened segments of the network, yet in addition the conventional residents, who have neither any admittance to the Court nor they can bear the cost of legal advisors to speak to them or regulatory offices, or other lawful discussions in which essential arrangement choices influencing their inclinations are made." (AIR 1959 SC 781 6 Council for adjusting the Scales of Justice 1976 at page 3)

We may likewise allude that an a lot more extensive meaning of Public Interest Law has given by the American Bar Association which include the attorneys in the free cycle for the most part. As per this definition, Public Interest Law implies: " Legal assistance gave without charge or at a generously diminished expense which falls in to at least one of the accompanying regions:

- (1) Poverty law ;
- (2) Civil Rights Law ;
- (3) Public Rights Law;
- (4) Beneficent Organization Representation; (5) Administration of Justice;"

Another meaning of looks to the idea from various point. It says " Public Interest Law is important for the battle by, and for the benefit of the burdened to utilize 'law' to tackle social and financial issues emerging out of differential and inconsistent dispersion of chances and privileges in the public arena. With an end goal to obtain ' equity between ages' it is likewise worried about forestalling the present and future unnecessary abuse of human characteristic and innovative assets." (Rajeeb Dhawan : " Whose law, whose intrigue " in Jeremy Cooper and Rajeeb Dhawan, ed, Public Interest Law (Basic Blackwel, 1986). Be that as it may, the significance of the Public Interest Law has been broadly perceived in light of the fact that issues falling under the domain of Public Interest Law identifies with the various sections of the general public. Simultaneously it additionally goes past the enthusiasm of quick gatherings to a contest influencing the overall population. The most significant part lie in the way that it additionally top off the lacunas and vacuum which are made in the general set of laws. On the off chance that we look to the United States of America, we can find that in United States, the Public Interest Lawyers speak to an enormous segment of the general public and especially the individuals who are frail minorities and find a way to propel their case under the watchful eye of the Courts, managerial offices, and furthermore to the councils.

It ought to likewise be referenced that the Public Interest Lawyers additionally speak to different gatherings in the general public who incorporate the buyers, common laborers and laborers in the space of security of climate and so forth Because of these causes, the commitment of Public Interest Lawyers in the field of social assistance to ensure the enthusiasm of the general public and the denied classes has been much broadly acclaimed . Considering the intercession of the Public Interest Lawyers,the public intrigue laws have influenced the lives of practically all the residents in the general public. In all actuality, it has assisted with producing another idea of law which has been a lot of fruitful in the matter of securing the rights and interests of the individuals in the general public. The most

significant perspective lies in the way that they additionally take driving part to outline laws on the considerable and procedural law of the American Society by and large.

Another significant part of Public Interest Law lies in the way that it manages singular issues which reflects different ills of the general public. As, lawful guide society attorneys speak to not just the individuals who are poor and have no capacity to bear the cost of a legal advisor, yet in addition the individuals who, without the help of a legal counselor would be denied 'compelling admittance to the general set of laws'. As the general public is getting mind boggling to complex step by step, we experience genuine dangers to the customary adjudicative apparatus of the overall set of laws which is intended to give equity to the individuals. Equity to individuals is a sine qua non. On the off chance that the framework neglects to give equity, the primary reason stands vanquished. We are going through a stage where we experience a few emergencies. The Institutional emergency can be ascribed for the most part to three reasons.

(1) Due to enormous remaining task at hand of legal executive to discard cases as expected. It is n set up certainty that equity deferred is equity denied.

(2) There has been making of huge pack of legitimately vested rights cherished in the rule outlined by the Legislatures. Again, there has been various cases with respect to the privileges of adolescents , occupants in broad daylight lodging, people denounced on violations, government assistance beneficiaries , minority bunch individuals and

(3) The third component of the current emergencies of legal framework is covered up in the 'rule of law'.