# PUBLIC INTEREST LITIGATION: MEANING AND DIMENSIONS

**Dr. Sujit Kumar Biswas**[1]

## I. Introduction

Under the Indian legal system, the concept of Public Interest Litigation has been said to have been borrowed from the American system of Public Interest Law.[2] However, in U.S.A. it has been invoked largely for the purpose of improving the life conditions of the Blacks and ensuring human rights to them. It was initiated for the benefit of a class of people, who had been denied their constitutional and legal rights because they were unable to have access to the Courts on account of their socio-economic disabilities. The main reason for the growth of Public Interest Law in U.S.A. was the failure of administrative agencies to protect public interest. In India, the concept of Public Interest Litigation was invoked to represent genuine cases of downtrodden masses of our society before the court. It is essentially a social action covering a variety of rights and is wider than as used in U.S.A.[3] The passage of time has infused changes in its working, especially in the common law based systems. The moulding of the concept of Public Interest Litigation as a weapon of social dynamics has been used by the judiciary in India after the emergency.

Public Interest Litigation has been called a very useful tool, having great educative value and improving future decision-making.[4] As observed by Justice P.N.Bhagwati-

> The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this

---

[1] Assistant Professor, Department of Law, University of North Bengal, Raja Rammohunpur-734013, District Darjeeling, West Bengal

[2] Opinion expressed by Rajeev Dhavan, *Law as Struggle: Public Interest Law in India*, 36:3 JILI (1994) Page 302: P.M. Bakshi, *Public Interest Litigation*, p. 4 (2nd Edition 2004): S.K. Sarkar, *Public Interest Litigations and Public Nuisances*, p.13 (1st Edition 2002).
There is also a view that the idea came from *actio popularis* of the Roman jurisprudence which allowed court access to every citizen in matters of public wrongs- Dr. I.P.Massey, *Administrative Law*, p. 277 (4th Edition 1995)

[3] It is a socio-economic movement by the judiciary and one of the strategies to impart legal services to the poor. Unlike Public Interest Litigation in U.S.A. and Canada, Public Interest Litigation in India was initiated by the judiciary.

[4] Justice J.S.Verma, *The Constitutional Obligation of the Judiciary*, (1997) 7 SCC (Journal) 1

> purpose it is necessary to make procedural innovations in order to meet the challenges posed by this new role of an active and committed judiciary. The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups...During the last four or five years however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice starved millions of Indians.[5]

The social politics that led to this initiation cannot just be traced to a seeming crisis of conscience amongst judges who had refrained from accepting judicial review of administrative detention during the emergency. It was a part and parcel of a deeper crisis in the untidy discourse of the Indian State. Indian socialism had perjured itself many times over. An alliance of protest and thinking was overdue, both amongst India's extremely "articulate middle class intellectuals" as well as the disadvantaged whose cause some of them espoused.[6]

No sooner was the Constitution promulgated, when landlords, whose property had been taken away by agrarian reform legislation, moved the courts to demand just compensation. This resulted in a tussle between the judiciary and the legislature, resulting in numerous amendments of the Constitution. The judgment in *Golak Nath's* case[7] sent a shock wave in the minds of the legislature and they reacted spontaneously to it.[8] The judiciary was quick to react and lay down that the Parliament has wide powers of amending the Constitution but such was not unlimited and does not include the power to destroy or abrogate the basic structure of the Constitution.[9]

The Emergency[10] witnessed large-scale violations of basic rights of life and liberty. These were facilitated by the enactment of a draconian statute, the Maintenance of Internal Security Act (MISA) and suspension of basic fundamental rights. An overwhelming number of High Courts ensured

---

5 Justice P.N.Bhagwati, *Social Action Litigation: The Indian Experience* quoted in *Janata Dal* v. *H.S.Chowdhary* AIR 1993 SC 892 at 908

6 Rajeev Dhawan, *Law as Struggle: Public Interest Law in India*, 36:3 JILI (1994) Page 302

7 *Golak Nath* v. *State of Punjab* AIR 1967 SC 1643

8 The Constitution (Twenty-fourth Amendment) Act, 1971

9 *Keshavananda Bharati* v. *State of Kerala* AIR 1973 SC 1461

10 National Emergency declared on 26th June 1975

that the State scrupulously followed the terms of the detention law. This obvious approach was however reversed by the Supreme Court in *A.D.M. Jabalpur* v. *Shivakant Shukla*[11] which granted virtual immunity to any action of the executive affecting the life and liberty of the citizen.

The aftermath of the emergency left behind seemingly contradictory traditions. Apart from the cacophony of electoral politics, people were weary of the theory of law and social change where the State and the regulatory agencies had more power and less judicial control without any productive value. It was top-heavy and cheated the people by making promises, which were fulfilled to the extent that they filled the pockets of administrative and political intermediaries, who pocketed the dividends of welfare.[12] If the judiciary was to gain any ground, it would have to rethink its position in the constitutional apparatus of governance as well as its basic juristic approach. The vigorous growth of Public Interest Litigation was in some measure a reaction to the criticism of the judiciary's role of lending support to the atrocities of the government during the emergency.

## II. Evolution of PIL in India

The seed of the concept of Public Interest Litigation were initially sown in India by Justice V.R.Krishna Iyer (without assigning the terminology) in *Mumbai Kamgar Sabha* v. *Abdulbhai* [13] when he observed as follows-

> Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants 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 flouted, latitude is a grace of processual justice. Test litigations, representative actions, *pro bono public* and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings.

---

[11] AIR 1976 SC 1207

[12] This situation is presently mitigated by the fairness clause of *Maneka Gandhi's* case and the legislative efforts made by enacting the Right to Information Act, 2005

[13] AIR 1976 SC 1455

The terminology Public Interest Litigation was coined by Justice P.N.Bhagwati in *Fertilizer Kamgar Union* v. *Union of India*[14] where the question was whether the workers in a factory owned by the Government could question the legality and/or validity of the sale of certain plants and equipments of the factory by the management. He used the expression of epistolary jurisdiction and observed-

> Public Interest Litigation is a part of the process or participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door-steps.

This innovative approach of the judiciary started gaining momentum day by day, expanding its branches in the cosmos of Public Interest litigation and strengthening its roots firmly in the Indian judiciary and fully blossomed with fragrant smell in *S.P.Gupta* v. *Union of India*[15] wherein it was observed-

> .....whenever there is a public wrong or public injury caused by an act or omission of the State or public authority which is contrary to the Constitution or the law, any member of the public acting *bonafide* and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding.

The meaning of public interest as given in *Stroud's Judicial Dictionary*[16] is-

> Public Interest-A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.

In *Black's Law Dictionary*,[17] the meaning of public interest is as under-

---

[14] AIR 1981 SC 344

[15] AIR 1982 SC 149

[16] Volume IV, 4th Edition quoted in *Janata Dal* v. *H.S.Chowdhary* AIR 1993 SC 892 and *State* v. *Union of India* AIR 1996 Cal 181

[17] 6th Edition quoted in *Janata Dal* v. *H.S.Chowdhary* AIR 1993 SC 892 and *State* v. *Union of India* AIR 1996 Cal 181

> Public Interest-Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does 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.

The expression "litigation" means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "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 pecuniary interest or some interest by which their legal rights or liabilities were affected.[18] Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.[19]

In *Bandhua Mukti Morcha* v. *Union of India*[20] the ambit and nature of Public Interest Litigation was explained as-

> Public Interest Litigation 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 to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution.

The object of Public Interest Litigation has been explained in *People's Union for Democratic Rights* v. *Union of India*[21] as follows-

> We wish to point out with all emphasis at our command that public interest litigation which is a strategic arm of the legal aid and movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public

---

18 *Janata Dal* v. *H.S.Chowdhury* AIR 1993 SC 892
19 *Subhash Kumar* v. *State of Bihar* AIR 1991 SC 420
20 AIR 1984 SC 802
21 AIR 1982 SC 1473 at 1476

> interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. This would be destructive of the Rule of Law which forms one of the essentials elements of public interest in any democratic form of Government.

The scope of Public Interest Litigation has been further explained by the Supreme Court in the following words:

> This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economic entitlements. It is a highly effective weapon in the armoury of the law for reaching social justice to the common man.[22]

In the traditional adversarial system, the lawyers of each party are expected to present contending points of view to enable the judge to decide the issue for or against a party. In Public Interest Litigation, there are no winners or losers and the mindset of both the lawyers can be different from that in ordinary litigation. The Court, the parties and their lawyers are expected to participate in resolution of a given public problem. This was explained by the Supreme Court in *Dr. Upendra Baxi* v. *State of U.P.*[23] as-

> It must be remembered that this is not a litigation of an adversary character undertaken for the purpose of holding the State Government or its officers responsible for making reparation but it is a public interest litigation which 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.

---

[22] *State of H.P.* v. *A Parent of a Student of Medical College, Shimla* (1985) 3 SCC 169

[23] (1986) 4 SCC 106 at 117

In *Sheela Barse* v. *Union of India*[24], the Supreme Court while distinguishing Public Interest Litigation with that of a traditional dispute-resolution mechanism held-

> The proceedings in a Public Interest Litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation and the rights, constitutional or statutory, or sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert and quite often not even aware of those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group rights and interests.

In *P.V.Kapoor* v. *Union of India*[25] it was observed as follows-

> Public Interest Litigation is a new brand of litigation which is not meant to be adversarial in nature. It is intended to vindicate public interest where fundamental and other rights of people who are poor, ignorant or are in a socially or economically disadvantageous position, go undressed. Public Interest Litigation is meant to be a co-operative and collaborative effort of the parties and the Court to secure justice for the poor and the weaker sections of the community.

**II. Procedure of Entertaining Public Interest Litigation**

Public Interest Litigation is a socio-economic movement generated by the judiciary to reach justice especially to the weaker sections of the society for whom even after two and a half decades of independence justice is merely a teasing illusion. In other words it is a long-arm strategy of the judiciary to reach justice to those who due to socio-economic handicap cannot reach the doors of the courts. Therefore, it is a judge-led and judge-induced strategy and represents high bench-mark of judicial creativity and sensitivity to the weak and vulnerable. In India, inspiration to the court for the development of this strategy came from the oath which a judge takes to defend the Constitution wherein socio-economic justice and equal access to court are the prime principles. It is also an instrument to give effect to the lofty ideals enshrined in the Preamble of the Indian Constitution and mete out justice, liberty, equality and fraternity to the citizens of India. Thus, this innovative strategy while providing easy access to justice to the weaker sections of Indian society also provides a powerful tool in the hands of public spirited individuals and social action groups for combating

[24] AIR 1988 SC 2211
[25] 1992 Cri LJ 128

exploitation and injustice and securing for the underprivileged segment of society their social and economic entitlements.[26]

Public Interest Litigation envisages the following:

(a) a court action by an individual or a group of individuals belonging to a community or an indeterminate class against an administrative wrong, remotely or equally affecting the members of that community or class; and

(b) a court action by a public spirited citizen, or a body devoted to the public cause, to vindicate the rights of individuals, groups, or even the public at large, against administrative wrongs, though the person or body undertaking the court action may not have suffered any injury.[27]

It is a collaborative effort between the petitioner, court and the government and its instrumentalities to make socio-economic rescue programmes for the disadvantaged and deprived; making it meaningful and worthy for them, and is one of the most effective and important device used by the judiciary for social dynamics in India.

The judiciary has adopted some procedural innovations while entertaining Public Interest Litigation. They are:

**(i) relaxing the doctrine of *locus standi*-** The principle of *locus standi* presupposes the presence of a person or body of persons who suffered a legal injury. It may also be taken to mean a legal capacity to challenge an act, an order or a decision. Further, the issue raised must be a justiciable issue. An issue is justiciable when it can be resolved through judicial process. This rule of private law adjudication was also applicable to public law adjudication. The only exception was in the case of *habeas corpus*. This writ is issued to liberate a person from illegal detention. The person held in such illegal detention may not be in a position to move the court and therefore a stranger or friend is given *locus standi* to move the court for such a writ.

The rule of *locus standi* was based on sound policy. The concept of *locus standi* is being liberalised and the scope of the concept is being expanded day to day. The liberalization of the rule of *locus standi* came out of the following considerations:

(a) to enable the court to reach the poor and the disadvantaged sections who are denied their rights and entitlements,

---

[26] Dr. I.P. Massey, *Administrative Law*, p. 277 (4th Edition 1995)

[27] M.P. Jain and S.N. Jain, *Principles of Administrative Law*, p. 497 (4th Edition 1986)

(b) to enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance, and

(c) to increase public participation in the process of constitutional adjudication.[28]

In *Fertilizer Kamgar Union* v. *Union of India*,[29] where the terminology of public interest litigation was used for the first time, the Supreme Court held-

> We have no doubt that in competition between Courts and streets and dispenser of justice, the rule of law must win the aggrieved person for the law Court and wean him from the lawless streets. In simple terms, *locus standi* must be liberalised to meet the challenges of the times. *Ubi jus ibi remedium* must be enlarged to embrace all interests of public minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets.

Justice V.S. Deshpande has tried to bring out the distinction between standing and justiciability as thus-

> Standing is needed to get an entry for hearing by a court, justiciability is required if the petition if the petition is not to be thrown out as not suitable for adjudication.[30]

While talking about the relaxation of the rule of *locus standi*, Justice P.N.Bhagwati has remarked in *S.P.Gupta* v. *Union of India*[31] as-

> Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities.

**(ii) treating letters as writ petitions and letters being addressed to individual judges, developing the idea of epistolary jurisdiction-**The letters addressed to the Judges of the Supreme Court highlighting any suffering or grievances have been converted into writ petitions on the logic that Article 32(1) of the Constitution does not say as to 'who' shall have the right to move the Supreme Court, nor does it say by 'what' proceedings. The

---

[28] S.P. Sathe, *Judicial Activism in India*, p. 202 (1st Edition 2002). See also *Supreme Court Advocates-on-Record Association* v. *Union of India* 2015 AIR SCW 5457

[29] AIR 1981 SC 344

[30] Justice V.S. Despande, *Standing and Justiciability*, 13 JILI (1971) Page 153

[31] AIR 1982 SC 189

expression 'appropriate proceedings' is too wide, and so moving the Court through a letter can be appropriate proceedings because it would not be right to expect a person acting *pro bono publico* to incur expenses for having a regular writ petition prepared by a lawyer. It has to be appropriate not in terms of any particular form, but appropriate with reference to the purpose of the proceedings.

However, there has been a change of such method and regular writ petitions are filled. As observed by Justice Pathak-

> It is only comparatively recently that the Court has begun to call for the filing of a regular petition on the letter.[32]

This form and procedure of entertaining letters as writ petitions has been supported by Justice P.N.Bhagwati when he observed-

> If the Court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.[33]

**(iii) *suo motu* intervention by the Judges-** *Suo motu* intervention by the Judges are directed to check a continuing abuse of power by the executive especially in allegation of atrocity or torture in police custody or jail.

**(iv) adoption of non-adversarial procedure of justice and appointment of commissioners for fact-finding-** The reason for the disapproval of the adversarial procedure for public interest litigation matters are that it sometimes leads to injustice where the parties are not evenly balanced in social or economic strength due to the difficulty in getting competent legal representation and due to the inability to produce relevant evidence before the court.[34] The Supreme Court has sometimes appointed a District Judge[35], a professor of law[36], a journalist, an officer of the Court, an advocate[37], and sometimes a social scientist[38] as a commissioner, for the

---

[32] *Bandhua Mukti Morcha* v. *Union of India* AIR 1984 SC 802: Such was also done in *Neeraja Chaudhary* v. *State of M.P*. AIR 1984 SC 1099

[33] *M.C.Mehta* v. *Union of India* AIR 1987 SC 1086

[34] Justice P.N.Bhagwati in *Bandhua Mukti Morcha* v. *Union of India* AIR 1984 SC 802

[35] *Kamla Devi Chattopadhyay* v. *State of Punjab* AIR 1984 SC 1895: *Sheela Barse* v. *Union of India* AIR 1986 SC 1773

[36] Common *Cause* v. *Union of India* (2014) 6 SCC 552

[37] *Sunil Batra* v. *Delhi Administration* AIR 1980 SC 1579: *Bandhua Mukti Morcha* v. *Union of India* AIR 1984 SC 802

purpose of carrying out an enquiry or investigation and making a report to the Court.

## III. Misuse and Safeguards While Entertaining Public Interest Litigation

Where a group of people is small and is not likely to have any organized strength to make itself felt politically, judicial process is preferred through Public Interest Litigation, which has by now come to be accepted as a new method by which, to some extent, public injuries can be redressed or the Government, its agents or instrumentalities compelled to do their own duty in the interest of the citizen. This exercise by the courts is aimed to serve the cause of justice and wean the people away from the lawless street and bring them to the court of law-to maintain rule of law.[39]

However, the judiciary has sounded a note of caution while entertaining Public Interest Litigation as a weapon. More often than not, the Courts are confronted with frivolous petitions by the litigants wearing the mantle of Public Interest Litigation. It is only a grab for them. Many rumour-mongers and mischief-makers are making their way into the portals of justice in the name of Public Interest Litigation. The prophecy that Public Interest Litigation is Publicity Interest Litigation has to be proved wrong. The streams of justice have to be kept pure and unpolluted. The Court has a duty to insist that the public interest litigation is free from political motivation, lest the Court itself may be caught up in the political vortex.

In *S.P.Gupta* v. *Union of India*,[40] Justice P.N.Bhagwati has observed as follows-

> But 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 *bonafide* 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 activised 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 regular writ petition filed in Court.

In *State of H.P.* v. *A Parent of a Student of Medical College, Shimla* [41] the Supreme Court observed-

---

[38] *People's Union for Democratic Republic* v. *Union of India* AIR 1982 SC 1473

[39] Dr. Justice A.S.Anand, *Public Interest Litigation as Aid to Protection of Human Rights*, (2001) 7 SCC (Journal) 1

[40] AIR 1982 SC 149

[41] (1985) 3 SCC 169

> Public interest litigation is a weapon which has to used with great care and circumspection and judiciary has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.

In *Sachidanand Pandey* v. *State of West Bengal*[42] the Supreme Court indicated in clear terms as to when the Court should leave aside procedural shackles and hear public interest petitions as-

> It is only when Courts are appraised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded 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.

The same view has been reiterated in *Subhash Kumar* v. *State of Bihar* [43] wherein the Supreme Court observed-

> Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons 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 the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking

---

[42] AIR 1987 SC 1109; Also see *Ramsharan Autyanuprasi* v. *Union of India* AIR 1989 SC 549

[43] AIR 1991 SC 424

> the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.

The case of *Janata Dal* v. *H.S.Chowdhury* [44] is an example of misuse of Public Interest Litigation by an advocate for which the Supreme Court strongly observed-

> It is depressing to note that on account of such trumpery proceedings initiated before the Courts innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders, etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, way farers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result to which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in administration of our judicial system.

---

[44] AIR 1993 SC 892 at 918

In *S.P.Anand* v. *H.D.Devegowda*[45] the Supreme Court observed as follows-

> No person has a right to waiver of the *locus standi* rule and court should permit it only when it is satisfied that the carriage of proceedings in the competent hands of a person, who is genuinely concerned in public interest and is not moved by other extraneous considerations, so also the court must be careful to ensure that the process of the court is not sought to be abused.

The majority opinion in *Narmada Bachao Andolan* v. *Union of India* [46] is noteworthy, wherein the Supreme Court observed-

> With the passage of time the Public Interest Litigation jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largess in the form of licenses, protecting environment and the like. But the balloon should not be inflated so much that it bursts...It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the Court has steeped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the Fundamental Rights or other legal provisions.

The judge's task is particularly difficult in the field of Public Interest Litigation. That is because in a large number of such cases, the material is wanting, and whatever little material is placed, is unfiltered. The entire proceeding tends to become inquisitorial in character with the judge, or judges, playing a more active, participatory role. The role of the judiciary is extremely delicate in such cases because it must not appear to be playing to the gallery or playing a role which may be described as being partisan. Great care must be taken to ensure that while the judge or judges play a participatory role, they do not appear to be entering the arena or give the impression of bias to the opposite party. It must also be realised that the position of the opposite party in such cases is precarious, in that, it has to meet with allegations which are incomplete and often half-truths. In the absence of properly drawn up pleadings, it is always difficult to counter the charge levelled against the opposite party. Therefore, while in Public Interest Litigations the opposite party is always at the receiving end, a fair chance to

---

[45] AIR 1997 SC 272
[46] AIR 2000 SC 3751

put forth his defence must be ensured to such a party, and the judge or judges hearing such cases, must not give the impression that they have pre-judged the issue. This is the caution which the judge or judges must exercise; otherwise the proceedings will lose direction and will move in a circular or wayward manner.[47]

Public interest petition, when filed bona fide, not seeking publicity, not seeking political vendetta, not for personal gains is always welcome. PIL should only stand for Public Interest Litigation. It should not be publicity interest litigation, or private interest litigation, or politics interest litigation, or paisa income litigation.[48]

Justice Markandey Katju while holding that much of Public Interest Litigation is really blackmail, has observed in *Common Cause* v. *Union of India*[49] as-

> Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to the courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together.

The same view has been taken in *Jaipur Shahar Hindu Vikas Samity* v. *State of Rajasthan*[50] wherein the Supreme Court opined-

> The concept of Public Interest Litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the Public Interest Litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of Public

---

[47] Justice A.M. Ahmadi, *Judicial Process: Social Legitimacy and Institutional Viability*, (1996) 4 SCC (Journal) 1. This is also the manner in which the process of judicial activism has evolved. The inquisitorial characteristic of the procedure offers an opportunity for the judge to participate in the process and also be more pro-active. At the same time the judge is cautious and restrained so that the judgment is not vitiated by arbitrariness or unfairness. This process is not confined to Public interest Litigation alone and now extends to all judicial reviews.

[48] Justice Arijit Pasayat, *Public Interest Litigation vis-à-vis Human Rights*,(2001) 7 SCC (Journal) 11

[49] AIR 2008 SC 2116; (2008) 5 SCC 511. See also *Pravasi Bhalai Sangathan* v. *Union of India* (2014) 11 SCC 477

[50] (2014) 5 SCC 530

> Interest Litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The Courts have to be very cautious and careful while entertaining Public Interest Litigation. The Judiciary should deal with the misuse of Public Interest Litigation with iron hand. If the Public Interest Litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and down trodden will be defeated. The Courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of Public Interest Litigation, the Courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people, whose rights are adversely affected or at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum, instead of entertaining the writ petition filed as Public Interest Litigation.

The misuse of Public Interest Litigation can be curtailed if the judiciary takes note of the following safeguards and act within these parameters:

1) Whether Public Interest Litigation is diluting the procedural norms?
2) What is the subject matter of Public Interest Litigation?
3) Whether the decisions in Public Interest Litigation will promote the public interest? [51]

The need is to prevent misuse of Public Interest Litigation and not to criticise the process. And this is what the courts will have to do so that misuse of Public Interest Litigation is prevented and proper use of it has not been blunted. Every innovation takes time to get into proper shape. Any attempt to curb it would be to throw the baby with the bathwater. It is primarily for the courts who devised this procedure to practise self-restraint and to also devise proper checks and balances to ensure that even persons who want to misuse it are not able to do so.[52] Public Interest litigation can only provide pro tem, often knee-jerk responses and no long term solutions

---

[51] Dr. Paramjit S. Jaswal and Dr. Nishtha Jaswal, *Judicial Activism: The Genesis and Progress*, Vol. 28 (2 & 3) 2001, Page 221

[52] Justice J.S. Verma, *The Constitutional Obligation of the Judiciary*, (1997) 7 SCC (Journal) 1

they seek to solve. The society should also realise that public Interest Litigation is only a quick fix pill.[53]

The legislatures derive their strength from their popularity amongst their electors and the judiciary derives its strength from the faith of the people. This faith of the people has made the task of the judiciary to be onerous, nationalist, creative and crusading. It has infused into the judiciary to be social architects rather than being simple masons. In the centre of a social order changing with dynamic speed, the court needs to balance the authority of the past with the urges of the future. The impact of globalization has made the judiciary to be always on the watch out for new and innovative methods to protect the society.

In a federal constitutional system, any attempt to cut off the courts from the power to reflect major evolutions in public policy, would possibly be more fatal even than in unitary systems, where legislative change is easier. Ultimately, the proper balance between the conflicting values of stability and change can only be struck by judicial tact rather than abstract principle.[54]

Dr. N.R. Madhava Menon has appositely remarked that "concepts such as 'Rule of Law', 'Judicial Restraint', 'Separation of Powers', 'Supremacy of Fundamental Rights over Directive Principles', 'Independence of Judiciary', 'Contempt of Court' and 'Certainty of Law' were used conveniently to avoid change wherever possible, delay it whenever inevitable and dilute it as far as practicable."[55]

The judiciary applies the law to resolve the controversies and creates an important by-product beyond the peaceful settlement of disputes, which helps in the development of rules for future cases virtually supporting the legislative enactments. History bears testimony to the fact that tradition dictated by necessity has helped the judiciary in solving the social problems. Judges are considered lawmakers, law reformers and even social reformers whose job is to apply the law and make it fit for the prevailing situation. The judiciary cannot be a mere positive spectator to the host of new ideas galloping around the outskirts of a society's thought. The judiciary has acted like a valve to the engine by abrogating the old rules, which are no longer beneficial or necessary for the society.

As a result of such development and relaxation of the adversarial form of litigation the judiciary has contributed to the society by interpreting

---

[53] Madhavi Divan, *The Viability of Public Interest Litigation*, (2008) 2 SCC (Journal) 7

[54] W. Friedmann, *Law in a Changing Society*, p.67 (2nd Edition 1972)

[55] Dr. N.R. Madhava Menon, *The Dawn of Human Rights Jurisprudence*, (1987) 1 SCC (Journal) 1

the laws in a manner to best serve the interest of the society, identifying the areas where there is a need for enacting laws and their proper implementation, providing valuable inputs to the other wings of governance and trying to fill in the gaps, if any, left by the legislatures.

In interpreting the existing law, that is to say, what the law is, the courts are required to keep the particular situation in view and interpret the law so as to provide a solution to the particular problem to the extent possible. This is a legitimate exercise by the judiciary and its constitutional obligation by virtue of the role assigned to it in the constitutional scheme. The gaps in the existing law which are filled by updating the law result in the evolution of juristic principles, which in due course of time get incorporated in the law of the land and thereby promote the growth of law.[56]

If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.[57] A Court while entertaining public interest litigation can even exercise a jurisdiction to set aside a decision of a constitutional authority.[58]

## IV. Summing Up

A glaring example of the byproduct of judicial dynamism and activism of the judiciary is the restructured Article 21. The emergence of the Supreme Court as a custodian of people's right in a democratic way is the most significant and important development in the judicial history of independent India. The judiciary is being envisaged not as a redressal forum of elite class in the society, but it is perceived as a forum for raising, redressing and articulating the problems of have nots, deprived, oppressed, downtrodden, women and children, environmental groups, against exploitation and abuse of powers and position by persons holding high public offices.

---

[56] Dr.Justice A.S.Anand, *Protection of Human Rights-Judicial Obligation or Judicial Activism*, (1997) 7 SCC (Journal) 11

[57] Justice Bhagwati in *National Textile Workers' Union* v. *P.R. Ramakrishnan* AIR 1983 SC 75 at 87

[58] *M.C. Mehta* v. *Union of India* (2008) 1 SCC 407 at 413