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PUBLIC INTEREST LITIGATION:A SILENT REVOLUTION

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by

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There was once a vision and a promise. The Father of the Nation said: 'every tear should be wiped off every eye'. He was not the Ruler, so one can forgive him and forget about his promise.

But Jawaharlal Nehru, who became the first Prime Minister and thus the Ruler, said on July 22, 1947, less than a month before Independence:

> There will be no full freedom in this country or in the world as long as a single human being is unfree. There will be no complete freedom as long as there is starvation, hunger, lack of clothing, lack of necessaries of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We aim at that.

The Preamble to the Constitution, which is key to the Constitution, declared:

We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:

> Justice, social, economic and political, etc.
>
> Equality of status and of opportunity....
>
> give to ourselves this Constitution.

As if the noble sentiments expressed above were not enough, in 1976 through 42nd Amendment, ambit of the Preamble was further extended: and India was constituted into a Sovereign Socialist Secular Democratic Republic.

unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only Judge.

According to Justice Bhagwati : (SCC p.213, paras 18,19)

This broadening of the rule of locus standi has been largely responsible for the development of public law, because is it only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of power and prevent violations of law.

There is also another reason why the rule of locus standi needs to be liberalised. Today we find that law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common

man. Individual rights and duties are giving place to meta-individual collecti , social rights and duties of classes or groups of, persons.

In People's Union for Democratic Rights v. Union of India[15], the Supreme Court of India observed:

> We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid 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 from the ordinary traditional 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 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. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic

15. (1982) 3 SCC 235.

form of Government. The rule of law does not mean that that protection of [illegible] must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil? Civil and political rights, priceless and invaluable asthey are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce?

Unfortunately the sentiment expressed by two Judges of the Supreme Court, is not shared by all Judges. As a matter of fact, in Sudip Mazumdar v. State of Madhya Pradesh[16] where

16. (1983) 2 SCC 258

the petitioner referred to maiming and killing of hundreds of Adivasis, men and children, at the firing range in M.P. and asked the Court to do justice to this neglected and forgotten section of society, the Court without giving a hearing to the petitioner or his lawyer present in the Court, chose to refer the same to a Constitution Bench with the following questions: (SCC pp.258-59, para 1)

1. Should this Court take notice of such letters addressed by individuals by post enclosing some paper cuttings and take action on them suo motu except where the complaint refers to deprivation of liberty of any individual?

2. Should such letters be sent to the Supreme Court Legal Aid Society by the Registrar with a request to examine whether there is any prima facie case which requires to be considered by this Court and if it is felt that there is such a case to file a formal petition against appropriate parties after collecting necessary material?

3. Can a stranger to a cause, be he a journalist, social worker, advocate or an association of such persons initiate action before this Court in matters alleged to be involving public interest or should a petitioner have some interest in common with others whose rights are infringed by some governmental action or inaction in order to establish his locus standi to make such a complaint?

4. (a) Can this Court take action on such letters though there is no prima facie case of infringement of any fundamental right.

(b) Even in cases where a fundamental right is stated to have been infringed, can this Court take action on such letters where there is no allegation that the person concerned is kept in illegal custody?

5. Can this Court take action on such letters in matters for which remedy can be had in ordinary civil, criminal or revenue courts or other offices on the ground that a number of people are affected? To be precise, is the complaint contains an allegation of encroachment of lands of one group or tribe by another group or tribe, can this Court direct the District Magistrate or the District Judge to enquire into the matter and to make a report to this Court? Or should the parties be given necessary legal aid and referred to a local court having jurisdiction over the matter?

6. Can this Court take action on letters addressed to it where the facts disclosed are not sufficient to take action? Should these letters be treated differently from other regular petitions filed into this Court in this regard and should the District Magistrate or the District Judge be asked to enquire and make a report to this Court to ascertain whether there is any case for further action?

7. If after investigation, it is found that by such a letter a baseless complaint had been made, should

not costs be imposed on the person who had written it? Can he be treated differently from others?

8. Should a petitioner who has an interest in common with others whose rights are alleged to have been infringed be exempted from paying court fees and from all other relevant rules of the Supreme Court when he writes a letter to this Court complaining about such infringement? Should all the relevant rules be suspended when a complaint is made through a letter?

9. If this Court can take action on such letters in such informal, way, why should not the High Courts and other courts, authorities and officers in India also act in the same way in all matters?

10. Would such informality not lead to great identification of the Court with the cause than it would be when a case involving the same type of cause is filed in the normal way?

Since these and other important questions arise for consideration in the above case, we feel that this case should be placed at this stage itself before the Constitution Bench to give proper guidelines on the various issues involved in it?

Thus, public interest litigation is faced with a crisis. Because of this reference, letters are rarely converted into writ petitions and the Registrar, instead of a Judge, decides as to whether such letters will be placed before the Court or not.

According to the legal reporter of a national daily, a silent revolution commenced after the historic judgment was delivered in People's Union for Democratic Rights v. Union of India[15], because this judgment laid down, among others, the following fundamental principles: (SCC p.249, para 9)

> This Court has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to the poor and deprived sections of the community if the traditional rule of standing evolved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may become easily available to the lowly and the lost .... Where judicial redress is sought of legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this purpose by a member of the public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it. (emphasis supplied)

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Court of the land, put a brake to this silent revolution?

(ii) If the answer to the above is in the affirmative, then will the citizens have to take to the streets for their rights?

It seems in retrospect that the above apprehension is not justified.

Even after the reference, the Supreme Court in Sudip Majumdar v. State of Madhya Pradesh[16], has directed the State Government to take notice of the maiming of the children and give them medical relief, as an interim measure.

Similarly, in Pradip Prabhu v. State of Maharashtra[17], when complaint was made by a social worker that Adivasis were systematically harassed by anti-social elements with the connivance of the administration, the Supreme Court directed the District Judge and a senior advocate to go through a comprehensive inquiry about the allegations and report back to the Supreme Court so that further action can be taken by it.

In Writ Petition 1366 of 1982, Kameshwar Prasad Sharma v. State of Bihar, the Supreme Court directed the State Government to give police protection to the 445 poor families of Banda, District Samastipur in Bihar till the Supreme Court delivers judgment. 445 hutments have been built for the deprived and agricultural land has been given to them for cultivation. In Bandhua Mukti Morcha case[12], the Government's responsibility has been clearly laid down.

17. W.P. (Cri) 1106 of 1982.

There are innumerable such heartening instances. But still public interest litigations are facing enormous problems, some of which are:

(1) Apathy of the lawyer class, by and large.

(2) Apathy of the Judiciary to a great extent. Apart from the highest Court of the land, very few High Courts and lower courts are keen on tackling this burning issue and as long as these courts are not activated benefit will not reach the 48% of the citizens, poor, deprived and some millions bonded, with the effort of the Supreme Court alone.

(3) Inadequate legal aid.

(4) The Supreme Court is now flooded with letters of anguish and it is impossible for this Court to try to do even a semblance of justice in all cases.

(5) Public interest litigations brook no delay, because if the benefits do not reach today, tomorrow may be too late for a maimed boy suffering from gangrene in M.P. firing range or T.B. patients vomitting blood in stone quarries of Haryana.

Unfortunately, the Supreme Court, with a heavy backlog of cases, is incapable of giving quick relief. Interim directions which are being given, are in the form of 'hope and trust' and consequently these are being violated with impunity.

(6) Though the public interest litigation is not of adversary character, the State counsel appearing do not think it to be so and every such matter is hotly contested leading to inordinate delay.

Directive Principles of the State Policy opened up the possibility of 'right to work, education for all, public assistance to the indigent persons, equal pay for equal work' etc., etc. "Fortunately", these noble principles were not justiciable before a Court of Law.

For the benefit of the citizens innumerable social welfare legislations were passed such as:

1. Contract Labour (Regulation and Abolition) Act, 1970.
2. Employment of Children Act, 1938.
3. Maternity Benefit Act, 1961.
4. Mines Act, 1952.
5. Minimum Wages Act, 1948.
6. Industrial Disputes Act, 1947.
7. Bonded Labour System (Abolition) Act, 1976.
8. Equal Remuneration Act, 1976.
9. Workmen's Compensation Act, 1976.
10. Inter-State Migrant Workmen's Act, 1979.

In addition, right from the day of Independence every political party - of the right, of the extreme right, of the left, of the extreme left, of the centre and off the centre - has promised food, clothing, shelter and security for all the citizens.

The Fulfilment:

What is the extent of fulfilment of the promises made in the Constitution, in social welfare legislation and in political party manifestoes. A glance at the state of the Nation, after over three decades of Independence is alarming:

(7) As the Court is 'hoping and trusting' in its interim directions the administrators are violating Court Orders without batting an eyelid.

If the Court does not gather courage in both hands and come down heavily on the contemners, the Court's directions will be 'paper directions', without any teeth, fit for discussion only in exclusive seminars.

(8) If the Government does not take active interest in follow-up actions, Court, howsoever well meaning it may be, can do precious little for the deprived.

(9) Ordinary people are not aware of their rights and massive education programme is necessary through radio, television and other mass communication agencies.

In addition, social workers, political parties and human rights organisation ought to get involved in this gigantic task.

(10) Lastly, actual benefit can come only through the Tehsildars and other small courts at the behest of the social workers and barefoot lawyers.

Man has set foot on moon, which was a far cry only 50 years ago. Similarly, public interest litigation will overcome status quo obstructions to change the face of law.

Otherwise, in the language of James Baldwin, there will be FIRE next time.[18]

18. FIRE NEXT TIME - James Baldwin and many more

(a) Report in the Guardian, U.K.: 1979: India having per capita income of Rs.120 per month was almost at the bottom of the list (in comparison Kuwait had Rs 12,500 per capita income per month).

(b) A news item on April 28, 1981 : Kamla, part of humanity's flotsam, rejected by her brothers and in-laws was sold at last for Rs 2300 in flesh market of Madhya Pradesh, situated opposite the Circuit House.

(c) November 23, 1981 : Not even the sidewalks for them; hapless labourers huddled around their meagre belongings on the roadside after their jhuggis were demolished by DDA.

(d) November 28, 1981 : Nagpur. Extravaganza beyond belief: the splendour and extravaganza in which a prominent steel magnate here recently celebrated wedding of his daughter could be the envy of a Maharajah of bygone days, estimated expense being Rs one crore.

(e) November 3, 1982: India has 7 million bonded labourers, a Report of the anti-slavery society submitted to U.N. Working Group.

(f) December 18, 1981 : How big is India's black economy?

Year	Size of Black economy Rs in crores	Percentage of official GNP
1967	3034.372	9.5
1978/79	46866.858	49.78

(g) March 7, 1982: There are some villages in India even today, where 77.7 per cent of the population, Harijans and Tribals are disabled due to malnutrition and intake of poisonous weeds. Most of them continue to work as bonded labourers subsisting at times on grain picked out of cow-dung (A Gandhi Peace Foundation Report).

(h) According to the recent Planning Commission Report, nearly 246 million people live below poverty line.

Do we or can we expect these people to go to the Court of Law seeking their Constitutional and legal rights after paying four or five figure fees to the lawyers? Indeed, do they even know that they have such valuable rights, as are enunciated in the Constitution?

If the answer to the above is negative, must they remain deprived, starved, naked and in bondage till eternity, because of restricted meaning given to the principle of locus standi whereby only a person, whose legal right has been violated, can come before the Court of Law to seek justice? Fortunately, this restrictive meaning given by Lord Justice James in 1880 in Re Sidebotham, Ex parte Sidebotham[1] and followed by Lord Esher, M.R. in 1887 in Re Reed, Bowen & Co., Ex parte Official Receiver[2] was exploded by Professors Schwartz and Wade in Legal Control of Government where they said "Restrictive rules about standi are inimical to a healthy system of administrative law". Black in his The Right to be heard said:

1. (1880) 14 ChD 458:42 LT 783 (CA)
2. (1887) 19 QBD 175:56 LT 876 (CA)

"a citizen is interested in results, not procedural niceties". The Australian Law Commission strongly felt: "class actions will activise legal process where individuals cannot approach the court for many reasons." At the same time prophets of doom and priests of status quo claimed that public interest litigations will flood the law courts and as such the courts will not be able to cater justice to other litigants.

The floodgates argument has been nailed by the Australian Law Reforms Commission:

> The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a specter which haunts the legal literature, not the court-room.
>
> When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissenters feared.

One cannot but agree with the Commission, when it concludes:

> The moral, perhaps, applies; if the courts cannot, or will not, give relief to people who are in fact concerned about a matter then they will resort to self-help, with grave results for other persons and the rule of law. Some may reply that if there is no evidence of a great increase in number there is no evidence of need for enlarged standing rights. The reply would overlook two considerations. One case may have a dramatic effect on behaviour in hundreds of others; this is the whole notion of the legal 'test case'. Secondly, the mere exposure to possible action is likely to affect the

behaviour of persons who presently feel themselves immune from legal control.

It is not that at least some of our Judges are not aware of the problem that our poor citizens face in this country. Krishna Iyer, J. as he then was, in Municipal Council, Ratlam v. Vardichan[3] and in Fertilizer Corporation Kamgar Union v. Union of India[4] has this to say about our Judicial system: (SCCp.174, para 24)

> Admirable though it may be, (it) is at once slow and costly. It is a finished product of great beauty, but entails an immense sacrifice of time, money and talent.
>
> This "beautiful" system is frequently a luxury, it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to most people and to many types of claims.

The Supreme Court in Fertilizer Corporation Kamgar Union v. Union of India[4] quoted with approval the following passage of the Article captioned Easier Access to Courts of Law in Australian Report of November 16, 1977:

> Perhaps - and it is only a perhaps - there was once some justification for restricting access to the courts to prevent their being bogged down in a morass of ineffectuality. But today's better informed, better educated, more literate and more politically aware

3. (1980) 4 SCC 162
4. (1981) 1 SCC 568

citizens should certainly not be barred from the courts by tradition. The Law can no longer be a closed shop.

Keeping in view the massive exploitation of the masses by powers that be and the total helplessness of the citizens, our Supreme Court observed: (SCC p. 584, para 37).

> We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street. 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.

Similarly Lord Scarman warned in his Hamlyn Lectures:

> I shall endeavour to show that there are in the contemporary world challenges, social, political and economic, which, if the system cannot meet them, will destroy it. These challenges are not created by lawyers; they certainly cannot be suppressed by lawyers: they have to be met either by discarding or by adjusting the legal system. Which is to be?[5]

Our courts though late, have started recognising the locus of the citizens vis-avis public authorities. Witness

5. ENGLISH LAW - THE NEW DIMENSION - The Hamlyn Lectures by Sir Leslie Scarman, (1974, Stevens), p.1.

in this connection decisions in K. Ramadas Shenoy v. Chief Officers, Town Municipal Council[6]; R. Varadarajan v.Salem Municipal Council[7]; Jasbhai Motibhai Desai v. Roshan Kumar[8]; Ratlam Municipality v. Vardichan[3]; Sunil Batra (II) v. Delhi Admn.[9]; Dr. Upendra Baxi (I) v. State of Uttar Pradesh[10]; People's Union for Democratic Rights v. Union of India[11] and latest but not the least Bandhua Mukti Morcha v. Union of India[12].

Though initially, the Court allowed only a tax-payer to challenge the work of a public authority like a municipality, now the Court is allowing an organization like PUDR or even an individual locus standi when a class or section of the people's interest is affected. Not only that, the Supreme Court has allowed and is allowing even a letter to be treated as a writ petition, when that letter refers to intolerable suffering of the poor and mute sections of the society because of non-implementation of welfare legislations by callous and indifferent administration.

Specifically on the formalities that are required to be followed in the institution of any court proceeding, the Supreme Court had this to say in S.P.Gupta v. Union of India[13].

6. (1974) 2 SCC 506
7. AIR 1973 Mad 55
8. (1976) 1 SCC 671
9. (1980) 3 SCC 488
10. (1983) 2 SCC 308
11. (1982) 2 SCC 494
12. (1984) 3 SCC 161
13. 1981 Supp SCC 87

It is true that there are rules made by this Court prescribing 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. (SCC p.210, para 17)

As far as locus standi is concerned, the Hon'ble Judges quoted with approval the pronouncement of Lord Diplock in Reg. v. Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Business Ltd.[14]

It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped .... It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is

14. (1981) 2 WLR 722, 740: (1981) 2 All ER 93 (HL)