

*Kusum Sharma, Advocate, President Social Jurist delivered lecture on Public Interest Litigation at Amity University, Noida U.P in Amity Law School on 05.02.2013*

### **GROWTH OF PUBLIC INTEREST LITIGATION IN INDIA**

It is indeed my privilege to be speaking here today, before such a distinguished audience comprised of law Professors and budding lawyers. I would like to thank the Amity Law School for giving me this opportunity to express my views on making Public Interest Litigation a reality for the Indian judicial system. To have any position any status in the society is neither privilege nor power in hand but it confers responsibility. It is very important to keep a holistic approach towards the society in order to make it's both ends meet in all the spheres only then we can have socio, economic and political justice. The concept of Public Interest Litigation seeks to ensure to fill the gap of the weak and disadvantaged with the privileged class and to get their rights enforced through court of law.

Over the last three decades or so, the device of Public Interest Litigation (PIL) has come to be recognized as a characteristic feature of the higher judiciary in India. Even though Indian courts cannot take credit for initiating the concept of 'public law litigation', they have in due course emerged as the site where this device has been repeatedly used to protect the interests of disadvantaged groups as well as address matters of collective concern. The phrase 'public law litigation' was first prominently used by American academic Abram Chayes to describe the practice of lawyers or public spirited individuals who seek to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws and articulate public norms. In India, the criteria for the Courts to review governmental action is threefold – the fundamental rights enshrined in Part III of the Constitution, the reasonableness of administrative actions and the demarcation of legislative competence between the Union and the States.

Now, any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition:

1. In Supreme Court under Art.32 of the Constitution;
2. In High Court under Art.226 of the Constitution; and

### 3. In the Court of Magistrate under Sec.133, Cr. P.C

## **Origin & Development**

However, the evolution of Public Interest Litigation (PIL) in India, or Social Action Litigation – as Prof. Upendra Baxi chooses to describe it, has accommodated several distinctive features. Former Chief Justice of India Justice P.N Bhagwati and Justice Krishna Iyer were the pioneer of Public Interest Litigation. The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamagar Sabha vs. Abdul Thai* (AIR 1976 SC 1455; 1976). The famous case of *Bandhua Mukti Morcha*, where Justice P.N Bhagwati made an order giving various directions for identifying, releasing and rehabilitating bonded labourers, ensuring payment of minimum wages, observance of labor laws, provision of wholesome drinking water and setting up of dust sucking machines in the stone quarries. Justice Bhagwati also set up a monitoring agency which would continuously monitor implementation of these directions. In essence, much of PIL in India focuses on expose of exploitation of the weak and disadvantaged and deprivation of their rights and entitlements under the Constitution. PIL also seeks to ensure that the authorities of the State fulfill their obligations under the Constitution and the laws under which they exist and function should be for the benefit of the public at large. Article 32 of the Constitution of India, which occurs in Part III dealing with fundamental rights, confers the fundamental right to move the Supreme Court to issue any direction, order or writ for the enforcement of such fundamental rights. Though this article of the Constitution is couched in the widest terms and under it, anyone can approach the Supreme Court for enforcement of fundamental rights, the position which was obtained during the first decades of the existence of the Supreme Court, was that this provision meant nothing to the large bulk of the population of India who knew only the majestic of the court without having felt its justice. The Court was for a long time used only by those who were wealthy and affluent and who were repeat players of the litigation game. The poor were priced out of the judicial system and they had become “functional outlaws”. It was impossible for the poor and weak to approach the court for enforcement of the rights conferred on them by the Constitution and the laws and for securing justice, because they lacked awareness, assertiveness and availability of machinery for enforcing their constitutional legal rights. And the main problem for the poor deprived section of the people was that it costs money to appoint lawyers and engage in litigation and that would be beyond their reach. Justice Bhagwati,

therefore decided that there was urgent need to start a legal aid programme which included free legal aid programme which included free legal aid and advice in order to ensure basic human rights to these people and bring the judicial process within their easy reach.

### ***locus standi* or STANDING**

Beginning with the first few instances in the late-1970, the category of Public Interest Litigation (PIL) has come to be associated with its own 'people friendly' procedure. It was realized that the main obstacle which deprived the poor and the disadvantaged of effective access to justice was the traditional rule of *locus standi* or standing which insists that only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal or constitutional right or legally or constitutionally protected interest, can bring an action for judicial redress. It is only the holder of the right who can sue for actual or threatened violation of such right and no other person can file an action to vindicate such right. The foremost change came in the form of the dilution of the requirement of 'locus standi' for initiating proceedings. Since the intent was to ensure redressal to those who were otherwise too poor to move the courts or were unaware of their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers. This broadened the concept of access to justice and opened the courts to a large number of poor and ignorant masses of the country.

In numerous instances, the Court took suo moto cognizance of matters and the Supreme Court became a symbol of hope for the deprived and vulnerable sections of Indian humanity. It acquired a new credibility with the people and began dispensing justice to under trials prisoners, involving the abuse of prisoners, bonded labourers and inmates of mental institutions, women in distress, juveniles in jails, landless peasants and many other disadvantaged groups of people in a manner unprecedented in the annals of judicial history through letters addressed to sitting judges on behalf of the disadvantaged class of persons for redressal of their grievance. This was a major breakthrough achieved by the Supreme Court in bringing justice closer to the large masses of people in the country. This practice of initiating proceedings on the basis of letters or an epistle has now been streamlined and Public interest litigation acquired a new dimension and has

come to be described as 'epistolary jurisdiction'. – This unique 'epistolary jurisdiction' came up with the decision in the case of **Sunil Batra v. Delhi Administration**,

It was initiated by a letter that was written by a prisoner lodged in jail to a Judge of the Supreme Court. The prisoner complained of a brutal assault committed by a Head Warden on another prisoner. The Court treated that letter as a writ petition, and, while issuing various directions, opined that: "...technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found".

The land mark judgments are passed by the Supreme Court on various PILs'. A milestone of Public Interest Litigation in India one of the earliest cases of public interest litigation was that reported as **Hussainara Khatoon v. State of Bihar**.

This case was concerned with a series of articles published in a prominent newspaper - the Indian Express which exposed the plight of under trial prisoners in the state of Bihar. A writ petition was filed by an advocate drawing the Court's attention to the deplorable plight of these prisoners. Many of them had been in jail for longer periods than the maximum permissible sentences for the offences they had been charged with. The Supreme Court accepted the locus standi of the advocate to maintain the writ petition. Thereafter, a series of cases followed in which the Court gave directions through which the 'right to speedy trial' was deemed to be an integral and an essential part of the protection of life and personal liberty.

Soon thereafter, two noted professors of law filed writ petitions in the Supreme Court highlighting various abuses of the law, which, they asserted, were a violation of Article 21 of the Constitution. These included inhuman conditions prevailing in protective homes, long pendency of trials in court, trafficking of women, importation of children for homosexual purposes, and the non-payment of wages to bonded labourers among others. the Supreme Court accepted their locus standi to represent the suffering masses and passed guidelines and orders that greatly ameliorated the conditions of these people.

In another matter, a journalist, Ms. Sheela Barse took up the plight of women prisoners who were confined in the police jails in the city of Bombay. She asserted that they were victims of custodial violence. The Court took cognizance of the matter and

directions were issued to the Director of College of Social Work, Bombay. He was ordered to visit the Bombay Central Jail and conduct inquiry to ensure the human rights to the women inmates and also to interview various women prisoners in order to ascertain whether they had been subjected to torture or ill-treatment. He was asked to submit a report to the Court in this regard. Based on his findings, the Court issued directions such as the detention of female prisoners only in designated female lock-ups guarded by female constables and that accused females could be interrogated only in the presence of a female police official.

**In Municipal Council, Ratlam v. Vardichand**, the Court recognized the locus standi of a group of citizens who sought directions against the local Municipal Council for removal of open drains that caused stench as well as diseases. The Court, recognizing the right of the group of citizens, asserted that if the: "...centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men."

**In Parmanand Katara v. Union of India**, the Supreme Court accepted an application by an advocate that highlighted a news item titled "Law Helps the Injured to Die" published in a national daily, The Hindustan Times. The petitioner brought to light the difficulties faced by persons injured in road and other accidents in availing urgent and life-saving medical treatment, since many hospitals and doctors refused to treat them unless certain procedural formalities were completed in these medico-legal cases. The Supreme Court directed medical establishments to provide instant medical aid to such injured people, notwithstanding the formalities to be followed under the procedural criminal law. In many other instances, the Supreme Court has risen to the changing needs of society and taken proactive steps to address these needs. It was therefore the extensive liberalization of the rule of locus standi which gave birth to a flexible public interest litigation system.

A powerful thrust to public interest litigation was given by a 7-judge bench in the case of **S.P. Gupta v. Union of India** the judgment recognized the locus standi of bar associations to file writs by way of public interest litigation. In this particular case, it was accepted that they had a legitimate interest in questioning the executive's policy of

arbitrarily transferring High Court judges, which threatened the independence of the judiciary. Explaining the liberalization of the concept of locus standi, the court opined:

*“It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him.”*

### **Adversarial Procedural System**

Right from the commencement of public interest litigation, one difficulty arose on account of the total unsuitability of the **Adversarial Procedural System** to this new kind of litigation. The adversarial procedural system is supposed to be based on the rule of fairness. It has evolved an elaborate code of procedure in order to maintain basic equality between the parties and to ensure that one party does not obtain an unfair advantage over the other. In Public Interest Litigation (PIL), the nature of proceedings itself does not exactly fit into the accepted common-law framework of adversarial litigation. The courtroom dynamics are substantially different from ordinary civil or criminal appeals. While an adversarial environment may prevail in cases where actions are brought to highlight administrative apathy or the government’s condonation of abusive practices, in most public interest-related litigation, the judges take on a far more active role in terms of posing questions to the parties as well as exploring solutions. Especially in actions seeking directions for ensuring governmental accountability or environmental protection, the orientation of the proceedings are usually more akin to collective problem-solving rather than an acrimonious contest between the counsels. Since these matters are filed straightaway at the level of the Supreme Court or the High

Court, the parties do not have a meaningful opportunity to present evidence on record before the start of the court proceeding.

To overcome this problem, our Courts have developed the practice of appointing 'fact-finding commissions'. These commissions usually consist of socio-legal commissions of inquiry and started appointing social activists, teachers, researchers, journalists, government officials and judicial officers as court commissioners to visit particular locations for fact-finding on a case-by-case basis which are deputed to inquire into the subject-matter of the case and report back to the Court by submitting quick and detailed reports setting out their findings as also their suggestions and recommendations. In a report on legal aid published in 1971, Justice P.N. Bhagwati had observed:

**“Even while retaining the adversary system, some changes may be effected whereby the judge is given a greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in administration of justice.”**

In matters involving complex legal considerations, the Courts also seek the services of senior counsels by appointing them as *amicus curiae* on a case-by-case basis.

## **Implementation**

The next question arises as to how the orders made by the court in PIL could be enforced. The orders made by the Court are obviously not self-executing. They have to be enforced through State agencies and if the State agencies are not enthusiastic in enforcing the court orders and do not actively co-operate in that task, the object and purpose of the PIL would remain unfulfilled. The consequence of the failure or inaction of the State machinery in securing enforcement of the Court orders in PIL would not only deny justice to the disadvantaged groups on whose behalf the particular PIL is brought, but it would also have a demoralizing effect and people will lose faith in the capacity of the court to deliver justice to the large masses of people in the country. Thus the success or failure of this new strategy of PIL would necessarily depend on the extent to which it is able to provide actual relief to the vulnerable sections of the community and if the court orders passed in PIL are to remain merely paper documents, this strategy evolved by the Supreme Court would be robbed of all its meaning and efficacy.

There are two different methods which could be adopted for ensuring that the orders made by the Court in PIL are carried out and enforced:-

1. To take the necessary follow-up action and maintain constant pressure on the state authorities or agencies to carry out the court orders and if it is found that the court order is not being implemented effectively, it should immediately bring this fact to the notice of the court to call upon the State Authorities or agencies to render an explanation as to why the court order has not been carried out and if there is willful or contumacious disregard of the Court order, the court can committee concerned officers of the State for contempt.
2. As discussed earlier the Supreme Courts has also started appointing monitoring agencies for the purpose of ensuring the implementation of the orders made by it in PIL. Courts have developed the practice of appointing 'fact-finding commissions' to inquire into the subject-matter of the case and report back to the Court by submitting quick and detailed reports setting out their findings as also their suggestions and recommendations. This is again a innovative use of judicial power.
3. The judges must realize that the justice administered in the courts must reach every one, the poor and rich alike, and that would be possible only by promoting and encouraging PIL and ensure justice to the common man in the country.

For purposes of constitutional competence, these actions are characterized as those coming under the writ jurisdiction of the Supreme Court of India under Article 32 of our Constitution and the various High Courts, under Article 226. The traditional extent of writ jurisdiction was of course a colonial inheritance from the British-era and the remedies that could be invoked were those of habeas corpus, quo warranto, mandamus, prohibition and certiorari. However, the Indian Courts have pushed the boundaries of constitutional remedies by evolving the concept of a 'continuing mandamus' which involves the passing of regular directions and the monitoring of their implementation by Executive agencies. In addition to designing remedies for ensuring that their orders are complied with, the Courts have also resorted to private law remedies such as injunctions and 'stay' orders in Public Interest Litigation (PIL) matters.

The Supreme Court of India has been able to shape appropriate remedies for a variety of situations on account of the wide discretionary powers for granting constitutional remedies that have been conferred on it as per the language of Article 32 of the Constitution. Furthermore, under Article 141 of the Constitution of India, the Supreme Court's rulings are considered to be the 'law of the land' and become binding precedents for all courts and tribunals in the country's legal system. Hence, the Supreme Court's decisions in Public Interest Litigation (PIL) matters have progressively shaped a unique jurisprudence that gives due weightage to the interests of the underprivileged and backward sections in the society. A significant consequence of this is that creative remedies designed for particular fact-situations come to be widely reported and are referred to by Courts all over the country. In this way, the rulings given in PIL cases create an active judicial dialogue within the whole legal system. The advent of Public Interest Litigation (PIL) is one of the key components of the approach of 'judicial activism' that is attributed to the higher judiciary in India.

The Courts' interventions have played a pivotal role in advancing the protection of civil liberties, the rights of workers, gender justice, and accountability of public institutions, environmental conservation and the guarantee of socio-economic entitlements such as housing, health and education among others. This has not only strengthened the position of the judiciary vis-à-vis the other wings of government, but has also raised its prestige among the general populace. However, this activist disposition of the Courts also has its critics.

The principled criticism against Public Interest Litigation (PIL) is that

- (i) it detracts from the constitutional principle of 'separation of powers' by allowing the Courts to arbitrarily interfere with policy-choices made by the legislature and pass orders that may be difficult for the executive agencies to implement. In respect of practical considerations, the criticism revolves around the behaviour of litigants as well as judges.
- (ii) it has been urged that the dilution of the requirement of 'locus standi' has opened up the floodgates for frivolous cases that either involve the litigants' private interests or are vehicles for gaining publicity rather

than seeking justice for disadvantaged groups. It is argued that in light of the increasing case-load before the appellate judges, the PIL cases impose an additional 'gate-keeping' role and impede efficiency. From the Standpoint of the judges, it is reasoned that quite often there are no checks against decisions or orders that amount to 'judicial over reach' or 'judicial populism'.

While all of these criticisms have been offered by acclaimed scholars, senior practitioners and sitting judges as well, there is a much more compelling case in defence of the use of Public Interest Litigation (PIL).

I would like to take this opportunity to present that defence. The main rationale for 'judicial activism' in India lies in the highly unequal social profile of our population, where judges must take proactive steps to protect the interests of those who do not have a voice in the political system and do not have the means or information to move in the Courts. This places the Indian Courts in a very different social role as compared to several developed nations where directions given by 'unelected judges' are often viewed as unjustified restraints on the will of the majority. It is precisely this counter majoritarian function that needs to be robustly discharged by an independent and responsible judiciary.

“The majority of the people of our country are subjected to this denial of 'access to justice' and overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings..... The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.”

The Committee on Judicare consisting of Justice V.R. Krishna Iyer and Justice Bhagwati referred to Social Action Litigation as a supplemental tool to grassroots legal services programmes, in their report published in 1977. Soon after, these two judges took the lead in promoting the same by taking suo moto cognizance of matters on the basis of letters addressed to them. However, before describing the use of PIL in some significant instances, it is important to understand the other limb of the Indian judiciary's 'activist'

turn – i.e. a change in the understanding of constitutional rights. The most representative right that can be examined to illustrate this change is **Article 21 of the Constitution of India**. **Article 21 reads as follows: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”** The understanding of Article 21 in the early years of the Supreme Court was that ‘personal liberty’ could be curtailed as long as there was a legal prescription for the same.

In **A.K. Gopalan’s case**, the Supreme Court had ruled that preventive detention by the state was permissible as long as it was provided for under a governmental measure (e.g. legislation or an ordinance) and the Court could not inquire into the fairness of such a measure. It was held that the words ‘procedure established by law’ were different from the substantive ‘due process’ guarantee provided under the Fourteenth amendment of the US Constitution. The framers of the Indian Constitution had consciously chosen the expression ‘procedure established by law’ which requires a much lower threshold for placing restraints on individual liberty. This position prevailed for several years until it was changed in **Maneka Gandhi’s case**. In that case, it was held that restraints on ‘personal liberty’ protected under Article 21 should also be tested against the guarantees of non arbitrariness, reasonableness and fairness that were implicit in the language of Articles 14, 19 and 21 of the Indian Constitution. Article 14 mandates the guarantee of ‘equal protection before the law’, while Article 19 enumerates the basic freedoms available to citizens such as free speech, peaceful assembly, association, movement and pursuit of livelihood. The Court developed a theory of ‘inter-relationship of rights’ to hold that governmental action which curtailed either of these rights should meet the designated threshold for restraints on all of them. In this manner, the Courts incorporated the guarantee of ‘substantive due process’ into the language of Article 21. Many commentators have opined that this change in the interpretation of Article 21 was prompted by the experience of the ‘internal emergency’ imposed between June 1975 and March 1977 – a period that was marked by the use of arbitrary and unjust detention laws against the political opposition as well as thousands of ordinary citizens. The decision in Maneka Gandhi’s case proved to be a precursor to a series of decisions, wherein the conceptions of ‘life’ and ‘personal liberty’ came to be interpreted liberally. Primarily through the vehicle of Public Interest Litigation, the Supreme Court has continued to expand the ambit of Article 21 which now includes some guarantees for socio-economic

entitlements which had not been expressly enumerated as part of the fundamental rights in the Constitution. In the words of Justice Bhagwati:

**“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms.”**

Moreover, through innovative changes to the process for instituting proceedings, ascertaining facts and granting discretionary remedies, the Indian Courts have stepped beyond their traditional domain to render justice to women, children, bonded laborers and other oppressed sections of society. Notably, the Supreme Court has affirmed that both the Fundamental Rights enumerated in Part III of the Constitution and the Directive Principles enumerated in Part IV, must be interpreted harmoniously. It was observed in the **Kesavananda Bharati** decision, that the directive principles and the fundamental rights supplement each other and aim at the same goal of bringing about a social revolution and the establishment of a welfare State.

Similarly, in **Parmanand Katara v. Union of India**, the Court articulated a ‘right to health’ when it ruled that no medical authority could refuse to provide immediate medical attention in emergency cases.

In numerous instances where the Court’s intervention has been sought in environment-related matters, it has also referred to a ‘right to a clean environment’ emanating from Article 21. The Courts have also pointed to Directive principles in interpreting the constitutional prohibitions against forced labour and child labour.

The unique model of public interest litigation that has evolved in India not only looks at issues like consumer protection, gender justice, prevention of environmental pollution and ecological destruction, it is also directed towards finding social and political space for the disadvantaged and other vulnerable groups in society. The Courts have given decisions in cases pertaining to different kinds of entitlements and protections such as the availability of food, access to clean air, safe working conditions, political representation, affirmative action, anti-discrimination measures and the regulation of prison conditions among others. For instance, in **People’s Union for Democratic Rights v. Union of India**, a petition was brought against governmental agencies which

questioned the employment of underage labourers and the payment of wages below the prescribed statutory minimum wage-levels to those involved in the construction of facilities for the then upcoming Asian Games in New Delhi. The Court took serious exception to these practices and ruled that they violated constitutional guarantees. The employment of children in construction-related jobs clearly fell foul of the constitutional prohibition on child labour and the non-payment of minimum wages was equated with the extraction of forced labour. Similarly, in **Bandhua Mukti Morcha v. Union of India**, the Supreme Court's attention was drawn to the widespread incidence of the age-old practice of bonded labour which persists despite the constitutional prohibition. Among other interventions, we can refer to the **Shriram Food & Fertilizer case** where the Court issued directions to employers to check the production of hazardous chemicals and gases that endangered the life and health of workmen. It is also through the vehicle of PIL, that the Indian Courts have come to adopt the strategy of awarding monetary compensation for constitutional wrongs such as unlawful detention, custodial torture and extra-judicial killings by state agencies.

In the realm of environmental protection, many of the leading decisions have been given in actions brought by renowned environmentalist **M.C. Mehta**. He has been a tireless campaigner in this area and his petitions have resulted in orders placing strict liability for the leak of Oleum gas from a factory in New Delhi, directions to check pollution in and around the Ganges river, the relocation of hazardous industries from the municipal limits of Delhi, directions to state agencies to check pollution in the vicinity of the Taj Mahal and several afforestation measures. A prominent decision was made in a petition that raised the problem of extensive vehicular air pollution in Delhi. The Court was faced with considerable statistical evidence of increasing levels of hazardous emissions on account of the use of diesel as a fuel by commercial vehicles. The Supreme Court decided to make a decisive intervention in this matter and ordered government-run buses to shift to the use of Compressed Natural Gas (CNG), an environment-friendly fuel. This was followed some time later by another order that required privately-run 'autorickshaws' (three-wheeler vehicles which meet local transportation needs) to shift to the use of CNG. At the time, this decision was criticized as an unwarranted intrusion into the functions of the pollution control authorities, but it has now come to be widely acknowledged that it is only because of this judicial intervention that air pollution in

Delhi has been checked to a substantial extent. Another crucial intervention was made in *Council for Environment Legal Action v. Union of India*

Various registered NGO had sought directions from the Supreme Court in order to tackle ecological obligations towards victims of human rights violations: Implementation in domestic law and practice'. In recent years, the Supreme Court has taken on the mantle of monitoring forest conservation measures all over India, and a special 'Green bench' has been constituted to give directions to the concerned governmental agencies to maintain judicial supervision in order to protect our forests against rampant encroachments and administrative apathy.

An important step in the area of gender justice was the decision in **Vishaka v. State of Rajasthan**. The petition in that case originated from the gang-rape of a grassroots social worker. In that opinion, the Court invoked the text of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and framed guidelines for establishing redressal mechanisms to tackle sexual harassment of women at workplaces. Though the decision has come under considerable criticism for encroaching into the domain of the legislature, the fact remains that till date the legislature has not enacted any law on the point. It must be remembered that meaningful social change, like any sustained transformation, demands a long-term engagement. Even though a particular petition may fail to secure relief in a wholesome manner or be slow in its implementation, litigation is nevertheless an important step towards systemic reforms.

A recent example of this approach was the decision in *People's Union for Civil Liberties v. Union of India*, where the Court sought to ensure compliance with the policy of supplying mid-day meals in government-run primary schools. The mid-day meal scheme had been launched with much fanfare a few years ago with the multiple objectives of encouraging the enrolment of children from low-income backgrounds in schools and also ensuring that they received adequate nutrition. However, there had been widespread reports of problems in the implementation of this scheme such as the pilferage of grains. As a response to the same, the Supreme Court issued orders to the concerned governmental authorities in all States and Union Territories, while giving elaborate directions about the proper publicity and implementation of the said scheme.

## **Check and Balance**

Balancing a double-edged Sword The power of the Court to entertain any circumstance that may hinder societal growth, or may cause hardship to a class of individuals is not uninhibited. It is carefully regulated with tight reins, and cases of public interest are taken up only after rigorous scrutiny. For instance, in a case wherein a challenge was made to the Government of India's telecommunication policy, the Supreme Court refused to entertain the matter on the ground that it purely concerned a question of policy. Similarly, public interest litigations that have sought to prohibit the sale of liquor or the recognition of a particular language as a national language, or the introduction of a uniform civil code, have been rejected on the ground that these were matters of policy and were beyond the ambit of judicial scrutiny. The need for deference to the other wings of government in respect of questions of policy was clearly expressed by **Justice R.S. Pathak** in the following words:

“Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the legislature or to the executive government... In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one.”

The Court has refused to entertain cases that are ‘private interest’ litigations disguised as ‘public interest’ litigations. It has also refused to interfere with convictions in criminal cases. In a case where directions were sought from the Supreme Court to the Central Government to preserve and protect certain temples, the said request was rejected. The Court stated: “The matter is eminently one for appropriate evaluation and action by the executive, and may not have an adjudicative disposition or judicially manageable standards as the pleadings now stand.”

At the time of admitting matters in the form of Public Interest Litigation (PIL), the Courts have to carefully consider whether or not they are overstepping their domain. Upon considering the issues at hand, they must then consider whether the orders they intend to pass can be realistically implemented. Judges must also be attuned to the fact that inconsistencies in the observations made by different Courts with respect to the same

set of issues, can add to administrative difficulties. There is also a need to keep a watch on the abuse of process by litigants so as to avoid a situation where such cases occupy a disproportionate extent of the Courts' working time. **Justice S.P. Barucha** has expressed the need for caution in the following words:

“This court must refrain from passing orders that cannot be enforced, whatever the fundamental right may be and however good the cause. It serves no purpose to issue some high profile mandamus or declaration that can remain only on paper. It is counter productive to have people say ‘The Supreme Court has not been able to do anything’ or worse. It is of cardinal importance to the confidence that people have in the Court that its orders are implicitly and promptly obeyed and is, therefore, of cardinal importance that orders that are incapable of obedience and enforcement are not made.”

In **Raunaq International Ltd. v. I.V.R. Construction Ltd.** the observations were made with the objective of streamlining the institution of PILs:

“When a petition is filed as a public litigation ... the Court must satisfy itself that the party which has brought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition ... Even when a public interest litigation is entertained, the Court must be careful to weigh conflicting public interest before intervening.”

It is evident that some instances require courts to draw a balance between the competing interests of different sections, each of whom may articulate their claims as those grounded in public interest. It is in this regard that the Courts engage in a process that seeks to build a consensus among these sections. It is very much essential to curb the misuse and abuse of PIL, any move by the government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights. Under these circumstances the Supreme Court of India is required to step in by incorporating safe guards provided by the civil procedure code in matters of stay orders /injunctions in the arena of PIL. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to then opposite parties. It is actually a welcome move because

no one in the country can deny that even PIL activists should be responsible and accountable. In any way, PIL now does require a complete rethink and restructuring. Anyway, overuse and abuse of PIL can only make it stale and ineffective.

### **Social Jurist PILs,**

The device of Public Interest Litigation may have its detractors, but it has played an invaluable role in advancing our constitutional philosophy of social transformation and improving access to justice. As **Social Jurist President**, I do take the opportunity to share my experience in this socio-legal field that Social Jurist, a Civil Rights Group had filed several PILs, raising eminent issues related to Education and Health in the Hon'ble Delhi High Court and the Hon'ble Supreme court for enforcement of the rights of the underprivileged and weaker section of society. Several Provisions of laws which were not implemented by the State and remained only on paper were implemented by the orders of the court through these PILs.

Some of the landmark case of the social jurist in this regard are when the Hon'ble Delhi High court pursuant to the PIL filed by the Social Jurist highlighting the issue of arbitrary fee hike charged by the Public school passed land mark judgment thereby issuing directions to the State Government to take measures to check arbitrary fixation of school fee by the Public School and same led to formation of Ganguly Committee to lay down the guidelines for determining of school fee, Justice Anil Dev Singh committee to audit the accounts of public schools etc.

The Delhi High Court in another PIL filed by the Social Jurist directed the State Government to give effect to the provisions stipulating granting of admission to poor children against 25 % seats, in condition to the land allotment letter whereby the Public schools were allotted land at the throwaway price that they will provide free education to the poor, disadvantaged, under-privileged children.

The Hon'ble Delhi High court and the Hon'ble Supreme Court in the various cases filed by the Social Jurist directed the state to provide proper infrastructure and basic amenities in the government schools and to ensure that no child is denied admission, striking down the rules and administrative instructions like producing age certificate, SDM certificate etc. causing hindrance to child's right to get admission in the school, providing structure for the imparting education to the disabled children and appointing special educators for them, formation of board to assesses and provide disability

certificates to the disabled children, admission of the orphans children in EWS category by treating the said children as belonging to the EWS quota.

The children also on pursuance of the Social Jurist, group also encouraged govt. school children to write postcards to the Chief Justice of the Delhi High Court highlighting the problems faced by them in the government schools. The High court treated the post card as PIL on its own motion and passed directions to the authorities to improve the infrastructure of the schools and make the environment conducive for the children to study. In the matter of Health also, the Delhi High court in the various PILs filed by the Social Jurist had passed directions to implement the conditions mentioned in the allotment letter of land whereby the land was allotted to private hospitals by the authorities, stipulating treatment of poor patients free of cost against the quota mentioned in the allotment letter, by providing treatment to the patients free of cost against the EWS quota.

It is matter of pride for me that the various judgments of the Delhi High Court passed on PILs filed by the Social Jurist has formed the basis of passing of Right to Education Act, 2009 and inclusion of the Right to Education as fundamental right under Art, 21-A of the Constitution of India, 1950.

Similarly, the Delhi High Court in a PIL dealing with the death of several persons died during construction of building passed directions to implement the provisions of the Building and other Constructions Workers Act leading to formation of Delhi Labour construction welfare board and the beneficial provisions of the said Act were implemented on ground and many more in which the Delhi High Court has taken sou motto cognizance of various issues raised by the Social Jurist and treating the same as PIL and passed various directions from time to time against the authorities.

In the end, I sincerely hope that these deliberations must have arisen and rekindled interest amongst the audience in regard to Public Interest Litigation.

Thank You!

Kusum Sharma, Advocate  
M-09818026552