



PUBLIC INTEREST LITIGATION

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- The concept of "public interest litigation" was said to have first been mooted by the Indian Supreme Court in ***Fertilizer Corporation Kamgar Union v Union of India*** AIR 1981 SC 344.
- In his judgment, Krishna Iyer J. said:

"Law, as I conceive it, is social auditor and this audit function can be put into action when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and the time of the court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi".

- It appears that the concept of public interest litigation gained a firm foothold in 1982 in the Indian Supreme Court case of **People's Union for Democratic Rights v. Central Government of India & Ors, AIR 1982 SC 1473.**
- The case concerns a writ petition brought by way of public interest litigation in order to ensure observance of the provisions various labour laws in India in relation to workmen employed in the construction works of various project connected with the Asian Games. The matter was brought to the attention of the Court by the First Petitioner which was an organisation formed for the purpose of protecting democratic rights by means of a letter addressed to one of the judges of the Supreme Court [Bhagwati J].

- Bhagwati J in his judgment said:

“2. ... 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 number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unrepressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government.

- Article 32 of the Indian Constitution provides:

"Art. 32 (1): The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2): The Supreme Court shall have power to issue directions or orders or writs including writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part".

- In the context of environmental law, in **M. C. Mehta v. Union of India, AIR, 1987, 1088 SC**, the Supreme Court reiterated the stand of the Court that the applications for compensation in that case are for enforcement of the fundamental right to life enshrined in Art. 21 of the Constitution and while dealing with such applications, the Court cannot adopt a hyper-technical approach which would defeat the ends of justice.

Where there is a violation of a fundamental or other legal right of a person or class of persons, who by reason of poverty or disability or socially or economically disadvantaged position, cannot approach a Court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class or individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court . If the Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the Court of . Justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Art. 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form.

- On the scope of Article 32 particularly the power of the Court in relation to public interest litigation the Supreme Court in **M. C. Mehta (supra)** said:

“It may now be, taken as well settled that Art. 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning”.

- In exercise of its powers pursuant to a petition under Article 32, the Court may order “continuing mandamus”. The extent of such a mandamus can be seen in **Vineet Narain & Others v. Union of India & Another, 1 AIR (1998) 889**.
- In that case, on 25th March, 1991, one Ashfak Hussain Lone, alleged to be an official of the terrorist organisation Hizbul Mujahideen, was arrested in Delhi. Consequent upon his interrogation, raids were conducted by the Central Bureau of Investigation (CBI) on the premises of Surrender Kumar Jain, his brothers, relations and businesses. Along with Indian and foreign currency, the CBI seized two diaries and two note books from the premises.
- They contained detailed accounts of vast payments made to persons identified only by initials. The initials corresponded to the initials of various high ranking politicians, in power and out of power, and of high ranking bureaucrats.

- Nothing having been done in the matter of investigating the Jains or the contents of their diaries, the present writ petitions were filed on 4th October, 1993, in the public interest under Article 32 of the Constitution of the India.
- The gist of the allegations in the writ petitions was that Government agencies like the CBI and the revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jan diaries"; that the apprehension of terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through `havala' transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who were recipients of money from unlawful sources, given for unlawful consideration; that the CBI and other Government agencies had failed to investigate the matter, take it to its logical conclusion and prosecute all persons who were found to have committed an offence;

8. The sum and substance of these orders is that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of "continuing mandamus".

9. Even after this matter was brought to the court complaining of the inertia of CBI and the other agencies to investigate into the offices because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to precede with the investigation was apparent. The accusation, if true, revealed a nexus between high ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. In view of the funding also through foreign currency, some undesirable foreign elements appeared to be connected. This revealed a grave situation posing a serious threat even to the unity and integrity of the nation. The serious threat posed to the Indian polity could not be underscored. The obvious need for an expeditious and thorough probe which had already been delayed for several years could not but be countenanced. The continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation, it becomes necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation.

Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously, keeping the court informed from time to time of the progress of the investigation so that the court retained siesin of the matter till the investigation was completed and the charge sheets were filed in the competent court for being dealt with, thereafter, in accordance with law.”

- The nature extent of the order of mandamus issued pursuant to a petition under Article 32 is also demonstrated in **M.C Mehta v. Union of India & Ors (1987) 4 SCC 463**, public interest litigation filed by an active social worker inter alia for the issue a writ/order/direction in the nature of mandamus to the respondents restraining them from letting out trade effluents into the river Ganga until such time they put necessary treatment plants for treating effluents in order to arrest the pollution of water in the said river.

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- In Malaysia the jurisprudence on the public interest litigation generally and in environmental cases particularly, especially with regard to the issue of locus standi and the orders which may be made by the Court, has not developed at the speed and to the extent as in India.
- No case with the complaint of gross violation of fundamental rights by a group or a class action, or complaint of such acts which shock judicial conscience of the Court and crying for the Court to remedy the hardships and miseries of the needy the underdog and the neglected, has come before the Court [See **Malik Brothers v. Narendra Dadhich & Ors [1999] SC 3211**].

- No case has come to the Court with the complaint for example of pollution of a river so grave and serious that any further pollution of the river is likely to lead to a catastrophe and that the Government is not doing enough in their powers (as provided by various laws) to address the problems, and that people are not giving adequate attention to stop the pollution [as demonstrated in the case of the pollution of the Ganga River in India in **M. C. Mehta v. Union of India, 1988 AIR 115**].

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- In this case, the issue in this appeal centres on whether the test of *locus standi* as propounded in ***Government of Malaysia v. Lim Kit Siang ('Lim Kit Siang')***, that an applicant must establish infringement of a private right or the suffering of special damage, still applies to an application for judicial review and to what extent, in light of [O. 53 r. 2\(4\) of the Rules of the High Court 1980 \('RHC'\)](#).
- The facts of the case were that pursuant to privatisation of the services for the distribution and treatment of water for the State of Selangor, the Government of the State of Selangor, the Federal Government and Syarikat Bekalan Air Selangor ('SYABAS') entered into a tripartite agreement ('the concession agreement') whereby SYABAS was granted a 30 year concession to supply treated water to the State of Selangor and Federal Territory, according to the water tariffs provided therein.

- It is also important to note that the framework for judicial review was changed by the amendments to [O. 53 of the RHC](#) in 2000. [Order 53 r. 1 and 2](#) provide:

1. (1) This Order shall govern all applications seeking the relief specified in paragraph 1 of the Schedule to the [Courts of Judicature Act 1964](#) and for the purposes therein specified.

(2) This Order is subject to the provisions of [Chapter VIII of Part 2 of the Specific Relief Act 1950](#).

2. (1) An application for any of the reliefs specified in [paragraph 1 of the Schedule to the Courts of Judicature Act 1964](#) (other than an application for an order of habeas corpus) shall be in Form IIIA.

(4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application.

- The Federal Court held that the view expressed by the Court of Appeal in QSR Brands Bhd that the “adversely affected” test was a single test for all the remedies provided for under O 53 of the Rules of High Court was to be preferred. Hence the Federal answered in the negative the question posed in the appeal.

- However, the Federal Court said:

“... we are not prepared to accept the appellants' argument that the "sufficient interest" test under O. 53 r. 3(7) of the English Supreme Court Rules 1977 is no different from the "adversely affected" test under [O. 53 r. 2\(4\) of the RHC](#) as the two tests do not have the same meaning. Therefore, in determining the locus standi to sue, the court has to exercise caution in applying the English cases. In our view for an applicant to pass the "adversely affected" test, the applicant has to at least show he has a real and genuine interest in the subject matter. It is not necessary for the applicant to establish infringement of a private right or the suffering of special damage.”

THANK YOU