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The meanings and the arguments

The Black’s Law Dictionary defines public interest litigation as ‘the process of carrying on a law suit’. Public interest litigation as its name connotes is a litigation usually by ‘unaffected’ person who in the public interest commences an action in court in most cases, on behalf of some victims or potential victims who may not be able to commence the action by themselves, for one reason or the other. The main essence of public interest litigation is curving the state power against some illegalities or ultravires acts which consequently will affect the overall interest of the public. It is sometimes being instituted to compel state authorities do for the benefit of the whole society that which they unlawfully refuse to do. It really doesn’t matter whether the action has been instituted by an individual who eventually will benefit from its outcome, in so far as at the end the remedy granted by the court will benefit the whole society or community or group of people. In some countries like India, the concept has been broadened by courts to cover not only cases where there is or there is likely breach of human rights but in all cases where some harm, injury or detriment can befall on the public generally, ranging from health and safety, public morality to human rights. The action can also be instituted not only against public agencies but against anybody so far as one’s omission or commission can cause injury to public. That is to say in India, courts recognized both public interest litigation as well as social interest litigation which is for the advancement of the welfare of the public.

The arguments:

As with some other concepts encouraging putting things right as well as curving executive power, public interest litigation is not devoid of criticisms, the good ones and the unreasonable ones. It has been argued that one of the fundamental features of rule of law is that courts should be accessible to all citizens so that their grievances and complaints are heard, and their rights determined and enforced. Thus, “[t]he rule of law
in its many guises—represents a challenge to state authority and power."¹ The same rule of law aims at ensuring that, on one hand, decision-makers do not misuse the power granted to them by legislature by exercising it in excess or by applying it without fairness. Citizens are therefore given right to access to court to question the lawfulness or otherwise of public body’s decisions. On the other hand, although public interest litigation seeks to ensure fairness and public confidence and accountability in governance, there is also the need to protect public bodies against unmeritorious and ill-founded challenges, by persons who may use their right to have access to court inappropriately in order to unnecessarily interfere into administrative decisions. This protection seems necessary because, there would not be efficient and effective public administration if decisions of public authorities are open to challenges for whatever reason, at any time and by anybody. Thus, to make a balance between these interests English law provides for the requirements of standing. Locus standi or standing to sue was one of the prominent challenges to public interest litigation and our jurisprudence which was not clearly in favour of public interest litigation had not been of any help.

Generally, there are two approaches to standing: the generous, liberal, broad or open approach and the restricted, narrow or closed approach.² Liberal approach could allow courts to have “enlarged discretion”³ avoiding past technicalities and thereby permitting public-spirited individuals, organisations and pressure groups to challenge the legality or otherwise of a decision made by a public body. By restricted approach the courts could,


³ See R.J.F. Gordon, n. 3 above, p. 51, para. 4-07.
applying stringent criteria, filter frivolous and vexatious application of a “busybody”\(^4\) who interferes unnecessarily into things that do not concern him thereby interrupting efficient administration and over-burdening the court.\(^5\) One thing which has to be acknowledged is that each approach has its own problems, advantages and disadvantages. Restricted approach may, based (sometimes) on statutory technicalities, likely prevent public-spirited individuals and pressure groups from seeing that the law is tested and enforced and may allow only “the most worthy or most directly affected of applicants”\(^6\) to have standing. It may also make the decision-makers less legally cautious in administration. Nevertheless, generous “approach has been questioned as undermining the democratic process of representative government.”\(^7\) It was pointed out that one of the problems of generous approach could be “the danger of applications being refused under a residual, enlarged discretion”.\(^8\)

Generous approach to standing was also objected to because of its possibility likelihood to allow vexatious and frivolous applications trooping into and over-burdening the court, which in effect might negatively affect the administration of justice. It appears that the proponents of this argument did not consider the rise in the cost of litigation that nowadays, it is difficult to find a busybody who ready to unnecessarily spend time and resources in putting forward an unmeritorious application with a view only to interfering into things that do not concern him. It may be pointed that, even if there could be such a person, the administrative court is procedurally empowered to strike out any application which appears to be an abuse of court process. Thus, generous approach to standing may not hinder the court to invoke some of its traditional and

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\(^4\) See R. v Peddington Evaluation Officer and Another, ex p Peachey Property Corporation Ltd. [1966] 1 QB 380, per Lord Denning at 401.

\(^5\) See P. Leyland and T. Woods, n 2 above at p 489.

\(^6\) ibid., 489

\(^7\) ibid., 497

\(^8\) R.J.F. Gordon, n. 3 above para. 4-07, p. 51.
statutory mechanisms of dealing with frivolous applications. The issue of standing to sue was a big problem under the old Rules, i.e Fundamental Rights (Enforcement Procedure) Rules 1979. Under the old regime of the rules which undoubtedly favoured the restricted approach to standing, so many applications were dismissed because the applicants were unable to establish any sufficient interest. Under the old regime of rules, the issue of standing was tied down to the issue of jucisability. It focused on the party seeking to enforce his fundamental rights rather than the issues involved in his or any other person’s grievances.

What Public Interest Litigation can do:

1. **A great tool for reform**

Law as a living thing grows and develops with our society. Sophisticated society inevitably needs sophisticated laws. Public interest litigation triggers law reform when the sophistication and development of our laws are at variance with the sophistication and development of our laws. It can also necessitate law reform by challenging laws that violate equality or human rights standards. Not only that it can also be used to seek clarification on an untested point of law.

2. **Can be used to hold government accountable**

Public interest litigation can also be used to challenge government’s bad policies and unreasonable procedures that violate human rights, health and safety or equality standards so as to aggravate government into responding to a problem it has previously ignored. This way government can be checked and compelled to comply with law and statutory and public bodies can also be held accountable for failures to uphold domestic and international health and safety as well as human rights and equality standards.

3. **Provides awareness and facilitates access to justice**

For some personal or economic reasons, certain people may not be able to file action in court to enforce their rights or to correct certain wrong affecting them or the public. PIL
provides opportunity to NGOs, human rights defenders to file action in court on behalf of members of the disadvantaged group and the indigent who couldn’t ordinarily have access to court.

Public Interest Litigation under the Fundamental Rights (Enforcement Procedure) Rules 2009:

Recent judicial developments, in particular the coming into operation of the Fundamental Rights (Enforcement Procedure) Rules 2009 will drastically increase the potentiality of the public interest litigation as peoples’ tool against abuse of powers in governance. The Rules specifically recognizes not only the right to public interest litigation but also gives clear directives to the courts on how to handle and treat public interest litigations before them.

Some good innovations in the Rules

1. The requirement of standing is broadened and a new right to public interest ligation is ‘lightly’ recognised:

Paragraph 3(e) of the Rules provides:

“The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:
(i) Anyone acting in his own interest;

(ii) Anyone acting on behalf of another person;

(iii) Anyone acting as a member of, or in the interest of a group or class of persons;

(iv) Anyone acting in the public interest, and

(v) Association acting in the interest of its members or other individuals or groups

From the generous provisions in the Rules, one can say without any doubt that the Rules has come purposely to enhance and boost public interest litigation. This is because, all its novel and innovative features favour public interest litigation, one way or another. Because the Rules has the force of Constitution of Federal Republic of Nigeria, undoubtedly, one can confidently say that it introduces new specie of right i.e the right to public interest litigation. The wording of Paragraph 3(e) clearly indicates that in addition to the fact that now any non-governmental organisations, may institute human rights application on behalf of any potential applicant, courts must at the same time encourage and welcome all public interest litigations before them. The issue of locus standi which was a recurrent challenge against public interest litigation in Nigeria can be now an issue of history.

2. A highly generous preamble with ‘far reaching innovations’

Paragraph I of the preamble obliged all courts in this country to ‘constantly and conscientiously seek to give effect’ to its provisions at all stages of human rights actions before them, in the interpretation of the rules and in the exercise of their powers under the rules. Parties and their counsel are also duty-bound to assist the court in giving effect to the over-riding objectives.

Although the matter was settled, under Orders I & II and Paragraphs 3(a) the new Rules clearly reaffirms the incorporation of all rights and freedoms under the African Charter into the Nigeria’s bill of rights under Chapter IV. Courts are also enjoined to respect as
persuasive authorities, municipal, regional and international bill of rights cited before them in order to give generous and liberal interpretation to applicants’ rights. The Rules has also made a light attempt in remedying a gap under our constitution in respect of the rights and freedoms of the members of the vulnerable group. Clearly, the Rules enjoined our courts to proactively pursue ‘enhanced access to justice’ for all classes of litigants especially the poor, the illiterate, the uninformed etc.

3. **The requirement of leave is abolished:**

Undoubtedly, the procedure for enforcement of fundamental rights under the old rules was complex and cumbersome, starting from the requirement of leave by motion exparte. The new rules abolished this mandatory requirement under Order II Rule 2. Previously, the court must place the applicant’s motion for hearing within 14 days from the date the leave was granted. Although any applicant whose 14 days period has run out has not altogether lost the right to enforce, this requirement frustrated and discouraged so many applicants who attempted to enforce their rights and caught by effluxion of time. See *Ezechukwu v Maduka* (1997) 8 NWLR (Pt. 518) 635 @ 671

4. **Statute of limitation is inapplicable**

Order III expressly provides that an application for enforcement of fundamental rights shall not be affected by any limitation statute whatsoever. This was not the position under the old rules, as provided under Order I Rule 3(1) of the 1979 Rules. This innovation is welcome development and will usher in a new era of human right activism most especially that our courts use the generosity in the rules to proactively interpret our bill of rights.

5. **All human rights cases must be expeditiously disposed of**

Without any doubt, the provisions of the new rules are specifically designed to do away with all the technicalities under the old rules – which technicalities caused unreasonable delays in our courts. The new rules unequivocally stated that in deserving cases human rights suits shall be given priority over other conventional suits pending before the
courts. In any case involving liberty of the applicant, such case shall be treated as an emergency. The Rules is also specific on the number of days an application must be fixed for hearing from the day it is filed, i.e within 7 days and adjournments can only be granted in extremely expedient circumstances.

6. **Action can be commenced by any mode accepted by court**

Order II Rule 2 reflects a raging but buried debate as to whether, in view of its urgent nature, an action for enforcement of fundamental rights must be commenced by one special mode only. The liberal approach advocated *obiter* by Eso JSC in *Saude v Abdullahi* is now clearly stated under the new rules. Nevertheless, a careful and critical reading of order II Rule 2 and the appendix to the Rules reveals that although an applicant can commence his action by any mode, he is expected to use a mode acceptable and obviously procedurally recognized by our courts. That is to say the use of any other mode than the conventional modes (of writ of summons, originating summons, petition and originating application) is not allowed even under the new rules. It is hoped that our courts would give liberal interpretation of this order and borrow the ‘epistolary jurisdiction’ of Indian and American courts by which applicant simply approaches to the Court for the enforcement of fundamental rights by writing a letter or post card to any Judge. This will enhance public interest litigation to be undertaken not only by professional lawyers but also by non-lawyers who can basically read and write in their own ways.

7. **Non-compliance is an irregularity**

Except non-compliance to the new rules related to mode of commencing the action or the subject matter is not under Chapter IV or the African Charter on Human and Peoples’ Rights it is to be treated as irregularity for which an opportunity can be given to the erring party to correct the defect. See Order IX of the new rules.

8. **Preliminary Objection to be heard with the main application**
Under the new rules, even if the respondent is raising preliminary objection he must go on to answer the action by filing his counter affidavit to the main action - all of which the court will hear and determine at the same time. See Order VIII of the new rules. It is to be noted that this clear provision will promote quick dispensation of justice as respondents cannot use frivolous preliminary objections to unnecessarily delay fundamental rights applications.

We can learn from India:

Over the years, Indian courts expansively interpreted the rich provisions of the Indian Constitution in favour of public interest litigation. Their courts have been quite active giving liberal interpretation to legislations affecting public interest and welfare. Filing public interest litigation is not as cumbersome as a usual legal case, as treated reflected under our rules. Under Indian courts ‘epistolary jurisdiction’, an applicant can simply approach the Court for the enforcement of fundamental rights by writing a letter or post card to any Judge. The letters based on true facts stated therein will be converted to writ petition upon which the court acts.

Cases from India

M.C Mehta V. Union of India (1988) 1 SCC 471 - is a public interest litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. The Supreme Court held that although the petitioner was not a riparian owner is entitled to move the court for the enforcement of statutory provisions because he has interest in protecting the lives of the people who make use of Ganga water.

Parmanand Katara v Union of India - AIR 1989, SC 2039 :- The Supreme Court held that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.
In a report entitled "Treat Prisoners Equally HC" published in THE TRIBUNE (India), Punjab & Haryana High Court quashed the provisions of jail manual dividing prisoners into A, B & C classes after holding that there cannot be any classification of convicts on the basis of their social status, education or habit of living.

**Conclusion:**

It is hoped that our courts will make best use of the elaborate, generous and non-technical provisions under the new rules to interpret and give effect not only to Chapter IV of the Constitution and the ACHPR but also all our legislations affecting not only human rights of our citizens but also their welfare, health and safety, public morality.