Black clouds on Public Interest Litigation in India & Judicial Check
Black clouds on Public Interest Litigation in India & Judicial Check

Sreenivasa Murthy M R and Syamala K *

Abstract

‘Public Interest Litigation’, a golden result of judicial activism, has changed its shape in 21st century by providing more and more scope for protection of fundamental rights of poor and needy. Through liberalization of requirement of locus standi and by introducing epistolary jurisdiction the judiciary widened the road for social activists for raising issues relating to mass fundamental rights violation. The dark side of the golden face is the exploitation of the liberal interpretation by the self-interested personnel under the mask of social activism working for their own benefit in terms of monetary or personal. The increasing exploitation of the public interest litigation forced the Apex court of India to issue directions of the

* Dr Sreenivasa Murthy M R, PhD Assistant Professor, National University of Study and Research in Law, Ranchi, Jharkhand, India. Dr Syamala K PhD Assistant Professor, National University of Study and Research in Law, Ranchi, Jharkhand, India.
Supreme Court to various High Courts. This article firstly attempts to provide a basic understanding of concept of PIL and its history and growth in India. Secondly, analyzes the judicial pronouncements which uplifted the PIL under epistolary jurisdiction. Thirdly, highlights the Pros and Cons, under the light of several judgments in 21st century. Fourthly, concludes with suggestions for curtailing the abuse of public interest litigation for private benefits.

I. Introduction
II. ‘Public Interest Litigation’ in Literal Sense
III. History of Public Interest Litigation
IV. Growth of Public Interest Litigation in India
   a. Public Interest Litigation in 1970s
   b. Public Interest Litigation in 1980s
   c. Public Interest Litigation in 1990s
   d. Public Interest Litigation after 2000
V. Pros of Public Interest Litigation
   a. An encouragement to promote Social Awareness and Responsibility
   b. Control over content and conduct of Government
   c. Check on Administrative Jurisdiction
   d. Epistolary Jurisdiction
VI. Cons of Public Interest Litigation
   a. Publicity Interest Litigation
   b. Political Interest Litigation
I. Introduction

‘The public interest litigation is the product of realization of the Constitutional obligation of the Court.’

‘Public Interest Litigation’, is a litigation filed by a person/organization for the protection of legal or pecuniary interest of a community/group of persons at large. Public interest litigation is a strong arm extended by judiciary to the poor and needy people through public spirited personnel is the golden cultivation, cultivated by judiciary in the farm house of justice. It is the only hope and scope for the public spirited person to approach judiciary on behalf of the suppressed and distressed person/community for the violation of fundamental rights guaranteed to them. The judiciary in its own judgment in the case of State of Uttarakhal vs Blawant Singh Chaufal and others opined that under the strong head of public interest litigation, the Supreme Court provided space to the social activists to bring the

1 State of Uttarakhal vs Blawant Singh Chaufal and others, JT2010(1)SC329, 2010(1)SCALE492
2 JT2010(1)SC329, 2010(1)SCALE492 (Note 3 above)
case before the Court of justice through liberal interpretation to the words in Art 32(1) of the Indian Constitution. To give life to the democracy in the days of Emergency period in 1976, the Supreme Court opened the way for the petitions by liberalizing the concepts of ‘locus standi’ and ‘aggrieved person’.

The scope given has been utilized by the public spirited personnel not only in safeguarding the fundamental rights of the suppressed but also to protect the environment. In the recent trends, it has been used as an important tool to control the abuse/sub-use of administrative discretion. For curbing the corruption, maladministration, unequal treatment by authorities, check on protection of Part III & implementation of Part IV of the Constitution, in many other circumstances in which critical Constitutional questions has been raised………what not has been brought under the head of public interest litigation and judiciary responded positively by accepting that public interest litigation is the right tool to put checks and balances on the governance. In upholding the public interest litigation the Supreme Court always

---

3 Article 32(1) of Indian Constitution provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

4 M C Mehta vs Union of India AIR 1987 SC 1086

5 Part III of Indian Constitution deals with Fundamental Rights of the Constitution of India.

6 Part IV of Indian Constitution deals with Directive Principles of State Policy of India.
referred the theory of Constitutionalism\(^7\) which is imbibed in our Indian Constitution. Constitutionalism in the opinion of renowned author, Prof Jain M P, for the promotion of Constitutionalism in a country, the basic principles and norms required are ‘a written Constitution, independent judiciary with powers of judicial review, the doctrine of rule of law and separation of powers, free elections to legislature, accountable and transparent democratic government, fundamental rights of the people, federalism, decentralization of powers are some of the principles and norms which promote Constitutionalism in a country’\(^8\). Public interest litigation evolved as one of the means, to protect the basic norms of Indian Constitution.

II. ‘Public Interest Litigation’ in literal sense

As per the Black’s Law Dictionary, “Public interest is something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by

\(^7\) ‘Constitutionalism’ recognizes the need for government with powers but at the same time insists that limitations be placed on those powers, Jain M P, Indian Constitutional Law,\(^{5}\text{th}\) Ed, Lexis Nexis Butterworths Wadhwa, 2008), p 5

\(^8\) Jain M P (Note 9 above), p 96
citizens generally in affairs of local, state or national government...........”9.

The Council for Public Interest Law set up by the Ford Foundation in USA defined the public interest litigation" in its report of Public Interest Law, USA, 1976 as, "Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.”10

In UK according to Access to Justice Act, 199911, which gives the Legal Service Commission power to grant funding for cases, public interest litigation is where there is a ‘significant wider public interest’ at stake beyond that of the individual litigant. It is observed in People’s Union for Democratic Rights and Ors vs Union of India and Ors12 that the ‘public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of

10 Dattaraj Nathiji Thaware vs State of Maharashtra (1992)ILLJ922SC
11 Section 8(2)(g) of the Access to Justice Act, 1999
12 (1982) 3 SCC 235
Constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society”.

III. History of Public Interest Litigation

The history of public interest litigation can be traced from the Roman Law *actio populari* which permitted anyone in the society to initiate an action for a public depict in the Court of law or to bring an action of restitution or injunction for the protection of public property or a religious charitable property.

Later the concept of public interest law was developed by the classical United States jurisprudence. Public interest litigations in the modern sense originated in the United States in the 1960s, when amid challenges to many social systems in the wake of drastic social changes such as Civil Rights Movement and the Vietnam War, many public interest groups were formed, which, represented by lawyers and jurisconsults avid for social reforms, worked to protect the environment and safeguard rights of consumers, women, the colored people and minors, as well as many other public interests, and called for new and fairer social systems.

According to Louis Brandeis\(^\text{13}\), a prominent public spirited person, lawyers have a social obligation, as an economic

\(^{13}\) Louis Brandeis was a Supreme Court Justice from 1916 to 1939 and famous as ‘People’s Lawyer’, See
intellectual and managerial gentry, with exclusive license to engage in their profession, to act independent of their clients and they are also obligated to act as more than the subsidiaries of great corporations. In addition, the United States has a so-called ‘private attorney general’ system, under which the United States Congress has passed laws authorizing an individual or group to bring a lawsuit that is in the public interest, and to sue lawbreaking or non-performing officials.

The Roman and US public interest litigation systems share the similarities such as (a) a wide variety of suits, (b) diverse background of litigants, who can be taxpayers, consumers, environment consumers, environmental protection organizations and groups, alongside minister of justice and chief procurator (c) litigation can be filed against an action that has already caused damages or one with potential harm (d) the litigation when proves legal and wins support, can be awarded, (e) the role of public interest litigation is to supplement, rather than replace, law enforcement of state organs.

In United Kingdom, the public interest litigation has been considered as one of the element of public interest law which is most effective when done in tandem with the other key elements. Public Interest Litigation can be used to help secure social reform either by winning cases which lead to changes in the law or by

using Court challenges to highlight anomalies and injustices which then lead to public pressure for change.

In Australia, public interest litigation is majorly used to protect environment and in that context diluted the principle of ‘aggrieved person. The High Court of Australia held that ‘the basis for challenge in Public Interest Litigation should be arguable, raising serious and significant issues resulting in important interpretation of new provisions relating to the protection of endangered fauna’.14

IV. Growth of Public Interest Litigation in India

Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, and racial minorities and others.15 The public interest law developed by the judiciary now in India has been used as a tool to protect the interests of the weaker sections of the population with the name “Public Interest Litigation”.

15 Holicow Pictures Pvt Ltd vs Prem Chandra Mishra and Ors, AIR 2008 SC 913 para 19
Public Interest Litigation in 1970s

Public interest litigation appeared on the Indian Judicial scene in mid seventies when the Indian judiciary responded in a sympathetic way to the initiatives of Indian social action groups, journalists and scholars.\(^{16}\) In the case of *Mumbai Kamgar Sabha vs Abdul Bhai*\(^{17}\), Krishna Iyer J, by quoting the words of Prof Upendra Baxi held that ‘the nomenclature of “Social Interest Litigation” suits more to such kinds of litigations which involves society focused problems. This is the case where the term of “Public Interest Litigation” and expression ‘epistolary jurisdiction’\(^{18}\) were used for the first time in India. Krishan Iyer J, also opined in *Mumbai Kamgar Sabha* case that “Test litigations, representative actions, pro bono public and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issue on merits by suspect reliance on peripheral, procedural shortcomings……. Public interest is promoted by a spacious construction of locus standi of our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher Courts where the remedy is shared by a considerable

\(^{16}\) *State of Uttaranchal vs Blawant Singh Chaufal and others*  JT2010(1)SC329, 2010(1)SCALE492  
\(^{17}\) (1976) 3 SCC 832  
number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law.”

**Public Interest Litigation in 1980s**

In 1980s, the wave of public interest litigation has got so much importance both in public and in judiciary. It created as scope for judicial activism. *Municipal Council, Ratlam vs Vardichan* a land mark case has showed the path for people’s involvement in matters of public importance by throwing the importance of *locus standi* to the least important position in Public Interest Litigation. In *Additional Judges* case, a precursor of public interest litigation in India, Bhagawati J., observed that “whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such wrong or public injury. He also observed that “We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or law and seek enforcement of such public duty and observance of such Constitutional or legal provision.” He emphasized the need for public interest litigation in India in his judgment, that “If public duties are to be enforced and

---

19 (1976) 3 SCC 832  
20 (1980) 4 SCC 162
social collective “diffused” rights and interests are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights.”

In Upendra Baxi (Dr) vs State of UP\textsuperscript{22}, the Supreme Court extended the scope by accepting the letter written by two law professionals as public interest litigation and issued remedial guidelines to improve the pathetic condition prevailing in protective homes. Even Judges went to an extent of delimiting the requirement of \textit{locus standi} and sidelining the procedural importance accepted the letter written to the judge as public interest litigation petition\textsuperscript{23} by applying the logical interpretation of Art 32(1)\textsuperscript{24} wherein there is absence of expression ‘who’ shall have the right to move the Supreme Court and absence of explanation to the word ‘appropriate proceedings’. The Supreme Court opined that expenses less procedure may encourage the increase of the \textit{pro bono public} petitions.

\begin{itemize}
\item \textsuperscript{21} \textit{S P Gupta vs Union of India} AIR 1982 SC 149, p 190
\item \textsuperscript{22} (1983) 2 SCC 308
\item \textsuperscript{23} \textit{Nilabati Behra vs State of Orissa} (1993) 2 SCC 746
\item \textsuperscript{24} Article 32(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
\end{itemize}
Public Interest Litigation in 1990s

In 1990s, the judiciary stepped ahead in judicial activism by accepting the news reports, letters, telegrams as petitions and *suo moto* started pursuing the matters which are in the interest of Public. In *Paramjit Kaur (Mrs) vs State of Punjab and Ors*\(^{25}\), a telegram sent to the Court was considered as habeas corpus petition.

In number of cases, the Supreme Court allowed public interest litigation to safeguard and protect the ecology and environment.\(^{26}\) In this context, the Supreme Court has performed a yeoman service by taking cognizance, in a number of cases, of various environmental problems and giving necessary directions to the Administration.\(^{27}\) In *Vellore Citizens Welfare Forum vs Union of India and Ors*\(^{28}\) and *M C Mehta vs Kamal Nath and Ors*\(^{29}\), the Court ruled that the ‘Precautionary Principle’ and the ‘Polluter pays’ principle are part of the environmental law in India and considered pollution as a civil wrong under tort. In *S Jagannath vs Union of India and Ors*\(^{30}\) gave directions to Central Government for protection to the marine life and directed the Government to

---

\(^{25}\) (1996) 7 SCC 20  
\(^{26}\) *M C Mehta vs Union of India* AIR 1987 SC 1086, *Rural Litigation and Entitlement Kendra, Dehradun and Ors vs State of U P and Ors* AIR 1985 SC 652, *A P Pollution Control Board vs Prof M V Nayadu (Retd) and Ors* (1999) 2 SCC 718  
\(^{27}\) Jain M P, (Note 9 above), p1137  
\(^{28}\) AIR 1996 SC 2715  
\(^{29}\) (2000) 6 SCC 213  
\(^{30}\) (1997) 2 SCC 87
implement the ‘Precautionary Principle’ and the ‘Polluter Pays Principle’.

Through public interest litigation, the Supreme Court established basic norms and guidelines which were followed as law in certain cases.\(^{31}\) Public interest litigation has been used even as a weapon to fight with corruption and abuse of administrative discretion of the authorities.\(^{32}\)

**Public Interest Litigation after 2000**

After 2000, the judiciary drew a clear line distinguishing the public interest litigations and political interest litigations. In *Balco Employees’ Union vs Union of India and Ors*\(^{33}\), while dismissing the public interest litigation filed by Shri B L Wadhera opined that the decision to disinvest and the implementation thereof was purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of busy-body therefore could not have fallen within the parameters of public interest litigation.

One of the recent case of such kind is the *Centre for Public Interest Litigation vs Union of India and Anr*\(^{34}\) wherein the


\(^{33}\) (2002) 2 SCC 333 para 88

\(^{34}\) AIR 2003 SC 3277
decision of the government to sell majority of shares in Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited to private parties without Parliamentary approval or sanction was questioned as being contrary to and violate the provisions of ESSO (Acquisition of Undertaking in India) Act, 1974, the Burma Shell (Acquisition of Undertaking in India) Act, 1976 and Caltex (Acquisition of Shares of Caltex Oil Refining India Limited and all the undertakings in India for Caltex India Limited) Act, 1977. The Supreme Court upheld the petitions directing government to amend the statutes appropriately.

In Kapila Hingorani vs State of Bihar\(^{35}\) while deciding the plight of the employees of public sector undertakings or the statutory authorities in the state of Bihar, the Court pierced the corporate veil and held State of Bihar liable. The Court held that “the government of Bihar has a Constitutional obligation to safeguard the life and liberty clause of the employees of the corporations and companies owned by the government”.

V. Pros of Public Interest Litigation

An Encouragement to promote social awareness and responsibility

Under Art 32 according to doctrine of Locus Standi, the person who complains of the infraction of any of the fundamental

\(^{35}\) (2003) 6 SCC 1
rights guaranteed by the Constitution is only at liberty to move the Supreme Court. In *Mumbai Kamgar Sabha vs Abdul Bhai*\(^{37}\), the Court entertained the public interest litigation by crossing the line of doctrine of *Locus Standi*. Any public spirited individual, or a journalist or a Non-Governmental Organization can file litigation for a social cause or for public good. Even the violation of Constitutional principle can be challenged through public interest litigation.\(^{38}\) The Supreme Court has permitted any person acting *bona fide and* having *sufficient interest* in the proceedings of public interest litigation will alone have a *locus standi* and can approach the Court of law for violation of fundamental rights and genuine infraction of statutory provisions.\(^{39}\) This created a social awareness and responsibility in the citizens to approach the Court with activism. Unlike in United States where there are ‘ambulance chasers’ who work for social causes on ‘*no-win, no-fee*’ policy, in India despite of creating legal aid, the situation moved on to serve the private interest. Due to such impediments the Courts gave a liberal interpretation of ‘no need of lawyer for representation before Court in case of public interest litigation’.

A series of cases filed by M C Mehta\(^{40}\) and other Non-Governmental Organizations\(^{41}\) are the examples of growing social

---

37 (1976) 3 SCC 832  
38 *S P Gupta vs Union of India* AIR 1982 SC 149  
39 *Janata Dal vs H.S.Chowdary* (1992) 4 SCC 305  
awareness and responsiveness in the citizens of India. At least hundred public interest litigations are filed each year in the Bombay High Court against the State’s inept measures.\textsuperscript{42} The Supreme Court has an option to reject a petition whatever the genuine cause is there if the petitioner is not with clear heart, clear mind and clean objective.\textsuperscript{43} On May 25, 2010, the Supreme Court rejected the public interest litigation filed by Mr Chetan Upadhyaya, who claims to be a journalist for lack of \textit{locus standi}.\textsuperscript{44}

In exceptional cases, the Court can appoint \textit{amicus curiae} to assist the Court in case of genuine reason but with \textit{mala fide} petitioner. For example in \textit{Nair Service Society vs State of Kerala}\textsuperscript{45}, where exclusion of creamy layer by state government by ignoring the guidelines of the Supreme Court in \textit{Indira Sawhney} case\textsuperscript{46} was questioned, the Supreme Court entertained the petition even though it is not fulfilling the test of \textit{locus standi}.

\begin{footnotesize}
\begin{enumerate}
\item[41] Malini Bhupta, \textit{‘A Bitter PIL’}, (February 8, 2010) \textit{India Today}, p. 29
\item[45] AIR 2007 SC 2891
\item[46] AIR 1993 SC 477
\end{enumerate}
\end{footnotesize}
Control over content and conduct of Government

The decisions taken by the Government if affecting the life and personal liberty guaranteed to the citizen of India in Art 21\(^47\) of the Constitution can be challenged through Public Interest Litigation. In *Shri R R Tripati*\(^48\) Case, the extension of service of the Chief Secretary, State of Maharashtra, Mumbai was questioned and also the maintenance of public interest litigation raising an issue regarding validity of legislation was questioned. The Court held that the post in question since affects the entire administration of the State which leads to larger public interest is maintainable as the cause does not relate to the matters exclusively falling in the domain of a service jurisprudence but to matters of public importance. In the words of Mr V P Patil, advocate who has filed a public interest litigation against the State to act against errant bureaucrats and police officials during Mumbai attacks on 26\(^{th}\) November, 2009 expressed that ‘*if the government was working, citizens wouldn’t be running to Court. Even the opposition in the Assembly and Parliament does not question the Government. Public Interest Litigations have become a tool to police them.*’\(^49\)

\(^{47}\) Article 21 of Indian Constitution, “No person shall be deprived of his life and personal liberty without the procedure established by law”.
\(^{48}\) *Shri R.R.Tripati vs Union of India 2009(111)BomLR3053*
\(^{49}\) Mailini Bhupta, ‘A Bitter Public Interest Litigation’, (8 February 2010), *India Today*, p 29
Check on Administrative Discretion

The modern democracies have developed a tendency of conferring discretionary power on the government or administrative officers in very broad phraseology. The administrative discretion can be questioned under the jurisdiction of *Pro bono Publico* is a question which came before the Court of justice in many cases. Particularly in interpreting the ‘doctrine of reasonable classification’ under Art 14, the challenge was made that the administrative actions exercised under discretion ary power cannot be questioned through Public Interest Litigation. But the Court ruled in *State of Kerala vs. Aravind Ramakant Modawdakar*\(^5^0\) that ‘Courts would not interfere with classification, which is the prerogative of the legislature, so long as it was not arbitrary or unreasonable’. The *nexus* of the classification with the object of taxation in the instant case lay in *public interest*, which is again within the realm of legislative wisdom unless tainted by perversity or absurdity.\(^5^1\)

Epistolary Jurisdiction

The adjective Epistolary has its genus in the word Epistle meaning thereby any of the letters in the new testament of the Bible and as such, the adjective Epistolary generally manifest an expression made in the form of letter. The Indian Constitution at

\(^{50}\) (1999) 7 SCC 400

\(^{51}\) Jain M P, (Note 9 above), p 871
its Art 39A\textsuperscript{52} provides the Courts to exercise Epistolary Jurisdiction. In India, in \textit{Fertilizer Corporation Kamgar Union (Regd), Sindri and Ors vs Union of India}\textsuperscript{53}, J., expressed that “Law as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all 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”. In People’s Union for Democratic Rights and Ors vs Union of India\textsuperscript{54} and also in \textit{Bandhua Mukti Morcha vs Union of India}\textsuperscript{55}, the Supreme Court held that procedure being merely a hand-made justice, it should not stand in the way of access to justice to the weaker sections of Indian humanity and therefore where the poor and the disadvantaged are concerned who are barely on a miserable existence with their sweat and toil and who are victims of an exploited society without any access to justice, the Court will not insist upon a regular writ

\textsuperscript{52} Article 39A, Equal Justice and free Legal Aid: The State shall secure that the operation of the legal system promotes Justice, on a basis of equal opportunity and shall, in particular, provide free Legal Aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities

\textsuperscript{53} AIR1981SC844

\textsuperscript{54} (1982)IILLJ454SC

\textsuperscript{55} AIR 1984 SC 802
petition. Even a letter addressed by a public spirited individual or a social action group acting *pro bono public* would suffice to ignite the jurisdiction of the Court which is known as epistolary jurisdiction. In *M C Mehta vs Union of India*\(^{56}\) case also the Court opined that “if the Court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.

**VI. Cons of Public Interest Litigation**

**Publicity Interest Litigation**

The origin and growth of Public Interest Litigation is the evidence behind the implementation of rule of law and Constitutionalism in the Indian System. The Supreme Court of India while discussing the importance of the public interest litigation deliberated that “*it aims in fostering and developing the laudable concept of public interest litigation and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard*”\(^{57}\). Justice Pasayat in *Ashok Kumar Pandey* case described as

---

\(^{56}\) AIR1987SC1086  
\(^{57}\) *Ashok Kumar Pandey vs State of West Bengal*, (2004) 3 SCC 349
“busybodies, meddlesome interlopers, wayfarers or officious interveners who approach the Court with extraneous motivation or for glare of publicity should be avoided which may be described as Publicity Interest Litigation”. In a recent public interest litigation filed for challenging IIT-Joint Entrance Exam results and to withhold the result, has been rejected by Supreme Court by mentioning that the petitioner is more interested in publicity interest rather than public interest.58 Supreme Court described the act of the petitioner as stunt and a publicity venture. The bench observed that there are three types of public interest litigations as public interest litigation, private interest litigation and publicity interest litigation.59

**Political Interest Litigation**

In *S P Gupta* case, a golden master key which provided access to the Courts for the poor and down trodden by describing the broad definition of the expression ‘public interest litigation’, clearly laid down a careful guidelines to the judiciary in entertaining the same. The *ratio decidendi* is as follows

“The judiciary must be careful to see that the member of the public, who approaches the Court in cases of this kind, is

---


acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective”.

In S P Gupta case, Bhagawati J, emphatically pointed out that, the relaxation of the rule of locus standi in the field of public interest litigation does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective………. 

The Supreme Court observed in Sachidanand Pandey vs State of West Bengal, “Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. Some cases are filed without any rhyme or reason. It is now required to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions”.

Rajiv Ranjan Singh ‘Lalan’ (VIII) vs Union of India, a Public Interest Litigation filed by petitioners by mentioning that the respondents in the instant case were involved in large-scale

---

60 S P Gupta vs Union of India AIR 1987 SC 2257
61 See note 67 above
62 [1987] SCC 295
63 (2006) 6 SCC 613
defalcation of public funds and falsification of accounts involving hundreds of crores of rupees in the Department of Animal Husbandry in the State of Bihar. The petitioner alleged that consequent upon change of the Government in the centre, attempts have been made to delay and interfere with the judicial process. They also alleged that in the appointment of new public prosecutor the influence of respondents was there behind the appointment of new public prosecutor. AR Lakshmanan J, observed that public interest litigation meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the Court. We also say that public interest litigations are not meant to advance the political gain and also settle their scores under the guise of public interest litigation and to fight a legal battle. While dismissing the petition, the Court observed that nobody has right to interfere by way of public interest litigation as it would hamper course of justice and cause prejudice to accused denying them a fair trial.

Private Interest Litigation

In *Janata Dal vs H S Chowdary and Ors*[^64], upheld the arguments of Mr.Jethmalani who expostulated the objectives of public interest litigation by explaining that the true public interest litigation is one in which a selfless citizen having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury

[^64]: AIR1993SC892
approaching the Court for either enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporating the directive principles of state policy for amelioration of their condition and preventing or annulling executive acts and omissions are in violation of Constitution or law resulting in substantial injury to public interest. In the instant case, the Supreme Court upheld the judgment of lower Court which dismissed the public interest litigation by mentioning that respondent is very much concerned with personal and private interest of the accused in the criminal case and there is absolutely no involvement of public interest. The Court opined that there is not even a single ray of the characteristic of public interest litigation visible in the instant case.

**Paise Income Litigation**

In *Dattaraj Nathiji Thauvare vs State of Maharashtra*[^65], Arjit Pasayat J, reflected that “public interest litigation has occupied an important field in the administrative law. It should not be ‘publicity interest litigation’ or ‘private interest litigation’ or ‘politics interest litigation’ or the latest trend ‘paise income litigation’. If such cases are not properly regulated and abuse averted, it may become a tool in unscrupulous hands to release vendetta and wreck vengeance. There must be real and genuine public interest involved in the litigation and not merely an

[^65]: AIR2005SC540
adventure of knight errant borne out of wishful thinking. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bonafide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration”. The Court also observed that “it has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect”.

The Court while declaring the petition in the above case as ‘paise income litigation’ held that “although petition filed by petitioner carried attractive brand name of ‘Public Interest Litigation’ is in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet, unmindful of the real intentions and objectives, the Courts are entertaining such petitions and wasting
valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases”.

The Court observed that the judges should act proactively by looking into the means through which the petitioner obtained the documents. In the words of Arjit Pasayat J, “A judge need not be a rocket scientist to see through bogus matters”. The Court gave directions to Bar Councils and Bar Association to see that process of law is not abused and polluted by any of its members and ordered to ensure that no member of bar become party as petitioner in aiding and/ or abetting by filing frivolous petitions carrying attractive brand name of public interest litigation. The Supreme Court upheld the exemplary damages of Rs.25,000/- imposed by High Court while dismissing the petition.66

Arjit Pasayat J, in Holicow Pictures Pvt Ltd v Prem Chandra Mishra and Ors laid down certain tests which the Court has to be satisfied before entertaining the public interest litigation on the given terms that is a. The credentials of the applicant, b. the prima facie correctness or nature of information given by him, c. The information being not vague and indefinite, d. The information should show gravity and seriousness involved, e. Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others, f. Avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives,

66 Arjit Pasayat J, in Dattaraj Nathiji Thauvare vs State of Maharashtra (Note 72 above)
justifiable executive actions\textsuperscript{67}. The Court also observed in \textit{Kazi Lhendup Dorji vs Central Bureau of Investigation}\textsuperscript{68} that ‘a writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective’.

**VII. Recommendations of Apex Court**

To check the abuse of the Environment related public interest litigation, Supreme Court came up with Central Empowered Committee (CEC) a high powered committee/expert body to assist the Court in dealing with the public interest litigation\textsuperscript{69}. It was assigned various duties and responsibilities including pointing out facts relevant to determining the \textit{bona fides} of any applicant. In \textit{T N Godavarman Thirumulpad vs Union of India}\textsuperscript{70}, the Court strongly deprecated the approach of the applicant in questioning the authority of the Central Empowered Committee.

By thoroughly analyzing the previous judgments in various public interest litigations, the Supreme Court observed in recent case, \textit{State of Utranchal vs Balwant Singh Chaufal and Ors}\textsuperscript{71} that it is now imperative to streamline the public interest litigation which has a glorious record for more than four decades in India.

\textsuperscript{67} AIR 2008 SC 913
\textsuperscript{68} (1992)ILLJ922SC, see also \textit{Ramjas Foundation vs Union of India} AIR1993SC852 and \textit{K R Srinivas vs R M Premchand} (1994)6SCC620
\textsuperscript{69} Durga Das Basu, \textit{Shorter Constitution of India}, (1\textsuperscript{st} Vol, 14\textsuperscript{th} Ed, Lexis Nexis Butterworths Wadhwa 2011), p 574
\textsuperscript{70} (2006) 5 SCC 28
\textsuperscript{71} 2010(1)SCALE492
The Court has issued the following directions to preserve the purity and sanctity of the public interest litigation:

✓ The Courts must encourage genuine and bona fide public interest litigation and effectively discourage and curb the public interest litigation for extraneous considerations.

✓ Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging a genuine public interest litigation and discouraging the public interest litigation filed with oblique motives.

✓ The Courts should prima facie verify the credentials of the petitioner before entertaining a public interest litigation.

✓ The Courts should prima facie satisfied regarding the correctness of the contents of the petition before entertaining a public interest litigation.

✓ The Court should be fully satisfied that substantial public interest is involved before entertaining the petition.

✓ The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

✓ The Courts before entertaining the public interest litigation should ensure that the public interest litigation is aimed at redressal of genuine public harm or public injury.

The Court should also ensure that there is no personal
gain, private motive or oblique motive behind filing the public interest litigation.

✓ The Court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

The Court also requested the High Court who have not yet framed the rules, to frame the rules within three months and should be sent to the Secretary General of the Supreme Court immediately thereafter. The Apex Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest
endeavour to take up those cases, where the subjective purpose justifies the need for it\textsuperscript{72}.

\textbf{VIII. Conclusion}

It is evident from the origin and growth of the concept of public interest litigation in India, that it is meant for the poor and needy people who are in no position to approach the Court. It provides scope for the third party to fight for justice on behalf of those fundamental rights have been violated. The genuine reason, nexus with the problems of the aggrieved personnel, clean hands and fair motive are the tests laid down by the apex Court to control the abuse of the public interest litigation.

In \textit{Dattaraj Nathiji Thauvare vs State of Maharashtra}\textsuperscript{73}, the Court held that \textit{public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. The

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{72} Ayaaubkhan Noorkhan Pathan Vs The State of Maharashtra and Ors
\item \textsuperscript{73} AIR2005SC540
\end{itemize}
\end{footnotesize}
Courts must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique consideration by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

Despite of the efforts of the Apex Court, here and there instances are cooking up to abuse the public interest litigation for the personal benefit, publicity mania or with the intention of paise income etc., Supreme Court by analyzing all the previous judgments in public interest litigation came up with certain basic directions which are binding on all High Courts and requested the High Courts to come up with their own guidelines. The ray of hope arises after the judgement of Balwant Singh Chaufal and Ors\textsuperscript{74} that the due steps have been taken up by the Apex Court by taking the matter seriously. Appointing a high powered committee named Central Empowered Committee to scrutinize and advice the

\textsuperscript{74} 2010(1)SCALE492
apex Court in environment related public interest litigation is evidence towards the concerns of the Supreme Court in controlling abuse. The role of Judges is more crucial in analyzing the genuine public interest litigations is high and judicial activism has a major role to play to establish a standard precedent to control the misuse. The exemplary damages should be awarded high in case of frivolous petitions which are in nature of publicity or private or political or paise interest to set a message for the personnel who file public interest litigations of such nature to create a bitter taste in the sweetest advantage offered by Supreme Court to the poor. The solution may be creation of a pre-judicial committee which has to pursue the public interest litigation and advice the Judges upon the fairness of the petitioner and petition. It is the duty of every citizen to protect and safeguard the misuse or abuse of the greatest legendary developed and encouraged by our highly proactive judicial system.