

SPEECH OF HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE, PUNJAB AND HARYANA HIGH COURT IN AECEN REGIONAL FORUM PUBLIC PARTICIPATION IN ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN ASIA, SHANGRI-LA HOTEL, BEIJING ON **"PUBLIC INTEREST LITIGATION AND THE ROLE OF THE COURTS"** ON 15.12.2007.

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The Constitution of India recognises as fundamental rights many of the individual rights that comprises the International Covenant on Civil and Political Right. These include the right to life, to equality, to the freedom of speech and expression and the right to seek judicial redress before the Supreme Court and 21 High Courts of India for enforcement and protection of these rights. Part IV of the Constitution contains the Directive Principles of State Policy many of which correspond to the individual rights enshrined in the International Covenant on Economic Social and Cultural Rights. For instance, minimum living wages, free and compulsory education for all children up to age of fourteen, minimum standards of living, nutrition and public health, protection and

improvement of environment, forest and wild life and the right to free legal aid.

The Indian judiciary has a unique position under the Constitution as an independent organ of the state designed to provide a countervailing check on the functioning of the other two organs in their respective spheres. Armed with the power to strike down executive, quasi-judicial and legislative actions as unconstitutional, the judiciary has as the ultimate interpreter of constitutional provisions, expounded the basic features of the Constitution of which the power of judicial review has been recognised as an integral part. The Supreme Court's declaration of the law is mandatorily binding on all courts within the territory of India and on all authorities, civil and judicial, in the territory of India has to act in aid of the Supreme Court of India.

The role of the Courts have, over the fifty seven years of its working, undergone a transformation that has witnessed its emergence as a dynamic institution playing an active role in expanding the scope and content of individual and collective rights of citizens, in the civil and political spheres as well as in the economic, social and cultural spheres.

The Constitution of India is not intended to be the arena of legal quibbling for men with long purses. It is made for the common people and that is law they can understand and appreciate it. The more they understand it the more they love it and the more they prize it. It is really the poor, starved and mindless millions who need the court's protection for securing to themselves the enjoyment of Human Rights. The Constitution precedents cannot be permitted to be transformed into weapons for defeating the hopes and aspirations of our teeming millions, half-clad, half-starved, half-educated.

Injustice anywhere is a threat to justice everywhere.

-Martin Luther King, Jr.

This line of thinking has been now recognised and adopted by various social reformers, lawyers, judges and social workers. Even, general public now knows that the court has constitutional power of intervention, which can be invoked to ameliorate their miseries arising from repression, lawlessness and administrative deviance. The Socio-justice tool through which these aspirations of the constitution and people of India is achieved is known as "Public Interest Litigation" (PIL).

The expression “public interest” or “probity in governance” cannot be put in a straightjacket. Public interest takes into fold several factors. There cannot be any hard and fast rule to determine whether government action was taken in public interest or was taken to uphold probity in governance. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but also must create an impression that the decision-making was motivated on the consideration of probity. The expression “litigation” means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression PIL means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights and liabilities are affected.

The legal movement, which has resulted in the shaping of PIL in India was born out of the need of a large number of people who individually lacked the economic

resources or operational capacity to vindicate their grievances and their specific interest through court. In India, the courts exercising their power of judicial review found to its dismay that the poorest of the poor, deprived, the illiterate, women, children and other downtrodden have either no access to justice or had been denied justice. A new branch of litigation known as PIL was evolved with a view to render complete justice to the aforesaid classes of persons. It expanded its wings in course of time. The courts granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, gave directions to maintain human dignity and covered several other areas. The court has intervened when there had been callous neglect by the instrumentalities of the State, a lack of probity in public life, abuse of power in control and destruction of environment. The court interferes and gives appropriate directions when there has been an element of violation of Article 21 or of Human Rights or where the litigation has been initiated for the benefit of the poor and the underprivileged that are unable to come to the court due to some disadvantage.

In 1981, a seven Judge bench of the Supreme Court gave a definite opinion regarding the standing and

enlarged the scope of what has been termed as "representative standing". The court held that it may therefore now be taken as a well established that where a legal wrong or legal injury is caused to a person or to determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or legal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability of socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of any fundamental right of such person or determinate class of persons, in the Supreme Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

In the year 1978, the Supreme Court interpreted the expression "procedure established by law" as a procedure which must be just, fair and reasonable. This led to the testing of any "law" on the touchstone of Article 14, 19 and 21

collectively and thus brought justness and fairness in the State's dealing with the general public.

The Courts have relaxed the requirement of "procedures" and "locus standi" by the Supreme Court. The court treated even a simple letter as a PIL. Since the coffers of the State were not burdened by this practice, the "Executive" did not object to the growth of PIL as a measure for emancipation of the poor and the weaker sections. Even the public at large supported the PIL drive. It is interesting to note that the tool of PIL proved to be a grand success in India.

In *People's Union for Democratic Rights v. Union of India*, AIR 1982 S.C. 1473, the Supreme Court held: "We wish to point out with all the emphasis at our command that public interest litigation...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".

The scope of PIL, reflecting its sociology, is very wide which is clear from the following principles:

(1) The Court in exercise of powers under Articles 32 or 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who are in a disadvantaged position and, thus, not in a position to knock the doors of the court. The court is constitutionally bound to protect the Fundamental Rights of such disadvantaged people so as to direct the state to fulfill its constitutional premises.

(2) Issues of public enforcement, enforcement of fundamental rights of large number of public vis-à-vis the constitutional duties and functions of the state, if raised, the court treat a letter or a telegram as a PIL upon relaxing the procedural laws as also the law relating to pleadings.

(3) Whenever injustice is meted to a large number of people, the court will not hesitate to step in. Article 14 and 21 of the Constitution of India as well as the International Convention on Human Rights provide for a reasonable and fair trial.

(4) The common rule of locus standi is relaxed so as to enable the court to look into the grievances complained on behalf of the poor, deprived, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.



(5) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL.

The sociology of PIL makes it clear that through this mechanism the courts sought to protect Human Rights and Fundamental Rights in the following ways:

(1) By creating a new regime of Human Rights by expanding the meaning of Fundamental Rights to equality, life and personal liberty. In this process right to speedy trial, free legal aid, dignity, means of livelihood, education, housing, medical care, clean environment, etc. emerged as Human rights. These new reconceptualised rights provide legal resources to activate the courts for their enforcement.

(2) By fashioning new kinds of reliefs under the court's writ jurisdiction.

(3) By judicial monitoring of State institutions such as jails, women's protective homes, juvenile homes, mental asylum, and the like. Through judicial invigilation, the court seeks gradual improvement in their management and administration. This has been characterized as creeping

jurisdiction in which the court takes over the administration of these institutions for protecting Human Rights.

(4) By devising new techniques of fact finding. In most of the cases the court has appointed its own socio-legal commission of inquiry or has deputed its own official for investigations. Sometimes it has taken the help of National Human Rights Commission or Central Bureau of Investigation or experts to inquire into Human Rights violations. This may be called investigative litigation.

The social justice requirement of India mandates that the concept of locus standi should be treated with a pragmatic approach. The present socio, economic and political conditions of India requires a “liberal locus standi” policy. Thus, PIL should be entertained as much as possible, by diluting the concept of locus standi. It must be noted that the right to move the Supreme Court under Article 32 itself is a Fundamental Right, which alongwith Article 226 which empowers High Courts to issue high prerogative writs has acquired a status of basic feature of the scheme of Indian Constitution. The concept of PIL must be looked in the light of the power of judicial review of the Supreme Court and the High Courts in India, which is

also a basic feature of the Constitution. This means that whenever a violation of any Fundamental Right is sought to be protected either under Article 226 before the High Court or under Article 32 before the Supreme Court, the courts are “duty bound” to take note of the same.

India had been under the colonial rule for about two centuries and even prior to that there were kingdoms which did not pay attention to environmental concerns. After the independence the primary concern of the administrators was to eradicate poverty. Millions of people were below the poverty line and the literacy rate was also very poor. The population growth was at alarmingly high rate. All these factors contributed to serious environmental degradation and the persons who were mostly affected by this environmental degradation were the poor and the disadvantage sections of the society. They were the first victims of the poor sanitation, bad air, contaminated water, scarce food, fuel and fodder. For millions of Indians their only wealth and common property resources were threatened by environmental degradation.

It is also noted that many environmental problems were continuing to cause serious concern, for example the loss

of topsoil and vegetative cover, the degradation of forests, continuing pollution by toxic substances, careless industrial and agricultural practices, and unplanned urban growth. Environmental degradation is seriously threatening the economic and social progress of the country and in order to protect for our future generations life support systems from environmental degradation beyond repair, PIL has played an important role in India.

The shortcomings in coping with the pressures on the environment had thrust the responsibility of environmental protection upon the judiciary. This has meant that in India, the Judiciary in some instances had not only to exercise its role as an interpreter of the law but has also had to take upon itself the role of constant monitoring and implementation necessitated through a series of public interest litigations that have been initiated in various courts.

In its efforts to protect the environment, the Supreme Court and the High Courts have relied on the public trust doctrine, precautionary principle, polluter pays principle the doctrine of strict and absolute liability, the exemplary

damages principle, the pollution fine principle and inter-generational equity principle apart from the existing law of the land. Another guiding principle has been that of adopting a model of sustainable development. The consistent position adopted by the courts as enunciated in its judgments has been that there can neither be development at the cost of the environment or environment at the cost of development.

The courts in India have, thus, played a dynamic role in preserving the environment and eco-system. In a series of cases, the superior courts of India issued various directions and orders to prevent the environmental degradation. To understand the role of the courts in this regard, the structure of the judicial system and also the constitutional and statutory provisions are to be taken note of.

It may also be noticed that there are certain important constitutional provisions which give the citizens the right to approach the High Courts as well as the Supreme Court of India to protect their fundamental rights. Article 226 of the Constitution gives the right to citizens to approach the High

Court to enforce their fundamental rights and give appropriate directions in other matters also and the High Courts are given the power to issue various writs in the nature of certiorari, mandamus, quo-warranto and prohibition etc. and orders or appropriate directions. Article 32 of the Indian Constitution could be invoked by the citizens for enforcement of rights conferred by Part III of the Constitution, namely, the Fundamental Rights directly by approaching the Supreme Court. It is also to be noted that Article 21 of the Constitution guarantees one of the important fundamental right to the citizens and says that no person shall be deprived of his life and personal liberty, except according to procedure established by law. This "right to life" contained in Article 21 has been given a very wide interpretation by the Supreme Court of India. Right to life in its fold envisages life to live with dignity. It is not merely existence. It includes in its fold right to clean air, healthy environment, clean water and so on.

Article 48-A which is one of the Directive Principles of State Policy states that the State shall endeavour to protect and improve the environment and to safeguard the forests and

wild life of the country. Part IV-A was added to the Constitution by the Constitution (42<sup>nd</sup> Amendment) Act, 1976 and Article 51-A(g) thereof specifically says that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes rivers and wild life, and to have compassion for living creatures.

A recent newspaper report source to the AFP news agency quotes an article from the Science Journal brings into sharp focus some mind boggling facts. The report states that as of 1995 only 17% of the worlds land area remains truly wild - with no human populations, crops road access or nighttime light detectable by satellite. Half of the world's surface area is used for crops or grazing; more than half of all forests have been lost to land conversion; the largest land mammals on several continents have been eliminated; shipping lanes crisscross the oceans. Due to extensive damming, nearly six times as much water is held in artificial storage world wide as is free-flowing. Subtle and not so subtle changes brought about by man upon the environment are evident everywhere. The report states the natural selection has been supplanted by human selection,

meaning that certain species - such as companion pets- thrive, while others - such as river trout - have been altered specifically for human consumption often to their detriment. And, thus, altering ecosystems has left many species vulnerable to disturbances and less resilient. Such shrilling fact ought to serve as a constant reminder to us to maintain our commitment to the protection of our environment.

The contribution of the Supreme Court of India and High Courts in protecting the environment and ecology, forest wild life, etc. has been phenomenal. Despite the limitations of jurisdiction, the Court played a vital role in this regard. More importantly what is needed from an environmental angle is a vision for the future. We have got enough laws to protect the environment, but its implementation is in the hands of administrative authorities. Good governance free from corruption is the basic need to protect the environment. The words of **Justice Frankfurter** are apt, quoting " An onerous obligation..... We owe to posterity ..... clean air, clean water, greenery and open space. They ought to be elevated to the status of birth right of every citizen ."



PIL 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.

Justice without force is impotent;

force without justice is tyranny.

-Pascal in Pensees.