CHAPTER - VIII

CONCLUSION AND SUGGESTIONS
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Majority of Indian population is living below poverty line. They are subjected to exploitation at the hands of powerful in all walks of life. For them, fundamental rights enshrined in the Constitution have no meaning. Infact, at times they donot even know that they too have certain guaranteed rights which can be enforced not only against the state but also against private individuals. Despite various Welfare Programmes and Schemes to uplift them, they stay where they are. Women and children are the worst sufferers and are exploited to the maximum degree in all manners - economically, physically and sexually - by the rich and powerful. Despite the existence of Equal Remuneration Act, 1976, women get less wages than men. They suffer silently. Children in Dhaba service, domestic service, engaged in scouring garbage for their livelihood, working as labourers at Sivakasi, Brass factories at Moradabad, lock factories at Aligarh, scissor industry at Merrut, tell a very sad story of their exploitation and flagrant violation of their rights guaranteed in Part III, and promises in Part IV of Indian Constitution.

Judicial system, in it's turn also discriminates against the poor who usually loose in a case merely for lack of services of good lawyer or at times no legal services at all. They cannot be released on bail as their poverty conditions disable them to
furnish pecuniary guarantees. They are discriminated in 'sentencing' because they have to undergo imprisonment for non-payment of fine, while rich accused person can purchase his liberty. In the ultimate analysis, poor suffers due to his poverty conditions.

There are inumerable economic programmes and welfare laws conferring all possible social and economic rights on women, labourers and other poor and weaker sections of the society. But of what use these laws are unless they are enforceable effectively in practice in favour of the poor? For effective implementation of these welfare legislations, an active participation and cooperation of all the three wings of government, i.e., judiciary, legislature and executive, is necessarily required.

During the period from 1975 to 1977, i.e., during Emergency, the Court had increasingly became subordinate to the executive and legislature. Any time there was pro-property decision given by the Court, it was neutralized by Constitutional amendment. During the Emergency, the Constitution had already been amended forty one times. There were political appointments, transfers of 'uncommitted judges' to undesirable posts and places, and the practice of 'supersession'—i.e., promotion of junior judges over their senior colleagues—served to erode further the autonomy of judges. The government transferred a large number of anti-government High Court judges to hardship posts. Both of these moves were attacks on independence of the
judiciary. During this period, the Courts failed to assert fundamental rights. This process culminated in the 42nd Amendment to the Constitution in 1977 which sought to eliminate the power of 'judicial review'. The 42nd Amendment, sought to over-ride the 'basic structure' doctrine, has since been tempered by the 43rd and 44th Amendments, enacted by the Post-Emergency Janata Government.

The experience of Emergency, and the increasing centralization of governmental power under the domination of a single party, threatened to engender a crisis of confidence in democratic institutions.

Accordingly, in response to these factors, that in the last two decades, 'social action groups', and social activist have begun mobilizing outside the mainstream of Indian politics, and have sought other arenas of social struggle. And it is in this context that courts have also risked asserting for themselves a more high profile role in Indian socio-political life.

Thus, as a natural consequence of the liberalization of 'locus standi' rule and the increasing willingness of the judiciary in India to render remedial justice to the weaker sections, there is flood of Public Interest Litigation cases in the Supreme Court and High Courts. These cases provide rare insights into the working and the thinking of the Court and the judges who preside over it. Moreover, these cases also provide useful insight into our social and political system. These cases raise the issues of
- demolition of hutments and dwellings of pavement and basti-dwellers in Bombay and Delhi; the illegal confinement of under-trials; corruption and drug-traffic in Tihar Jail; the bonded labour; child labour in Sivakasi; inhuman conditions in Agra Home; trafficking in women; killing of peasants in the police encounters in Tamil Nadu and Andhra Pradesh; people dying starvation deaths and selling their own children in Kalahandi; accidentally injured persons dying in the course of their taking to doctors entitled to take up medico-legal cases; accountability of political executive for misappropriation of public funds; restraining the telecast of serials on Television; discrimination in giving 'reservations' to SCs/STs; Doctrine of 'equal pay for equal work'; initiating contempt proceedings against parties to litigation criticising the judges and court proceeding during the pendency of litigation; 'absolute liability and adequate compensation - commensurate with the size of the enterprise so as to act as deterrent in future' - for victims of industries engaged hazardous operations, etc.

An analytical perusal of Public Interest Litigation cases before Indian Supreme Court and High Courts show that the courts have been really very liberal in granting 'standing' to the persons coming from different fields. It is apparent that the courts are more concerned with the 'kinds of issues' raised than with the persons bringing those cases to the courts. This liberal trend is all the more apparent from the fact that the courts, especially the Supreme Court, have admitted the letters, post-
cards, telegrams, and even newspaper items as writ petitions under Article 32 of Indian Constitution. In justifying its stand in expanding its judicial power, the court reasons that it must innovate 'new methods and strategies' to remedy injustices by providing 'access' to justice to larger masses of people who are denied basic human rights.

The new judicial trend is not to allow 'poverty' to stand in the path of justice. In criminal cases, courts have dismantled the 'barriers of poverty' and an indigent accused can have free legal services of lawyer as a matter of right. The Court would ask the accused whether he wants legal aid as it is available to him at state expense. Thus, now courts have the responsibility of asking the accused and providing him with the legal aid unless accused specifically refuses to avail of the aid. So much so that Supreme Court has even quashed the conviction of an indigent accused who was not provided with the legal aid at the trial stage. The court negatived the argument of the government that accused did not ask for legal aid.

In United States, the civilian private law—public law dichotomy and the historical cleavage between individual and the state, upon which the 'aggrieved individual' standing is based, is quite firmly footed. But gradually, United States recognized its role in furthering the assertion of social and meta-individual rights, and have utilized such devices as 'representative standing', and 'group legal services'.
In United States of America, the surge of Public Interest Litigation began in late 1960s. Till 1976, the trend toward Public Interest Litigation appeared to be on the rise and gathered momentum. But since 1976, counter-tendencies emerged as advocates, people, press and even academicians became increasingly sceptical of judicial activism as means of correcting governmental abuses by the use of Public Interest Litigation devise. In case after case, the United States Supreme Court was seen rejecting new Public Interest Litigation. The Court started limiting the litigation to traditional private law model especially on the issues of 'standing', 'class actions' and 'relief'. And more so, since 1982, counter-reactions to Public Interest Litigation had become even more stronger. The United States Supreme Court has constrained judicial activism by relying on norms drawn from traditional private litigation. Besides, a number of extra-judicial events have also had great impact on this 'reversal' trend of Public Interest Litigation. Public Interest Litigation is also losing public support considerably. It is surprising that Public Interest Litigation in United States of America, which once stood as model for others to follow, is losing it's flavour.

Comparatively speaking, if past decade has seen a period of restraint and decline for Public Interest Litigation in United States, just the opposite has been the trend in India over the same period of time. In India, the spectacular growth of Public Interest Litigation contrasted dramatically with parallel
decline of the movement in United States.

In United States doctrine of 'standing' has been a major battle ground between the traditional private law model of litigation and the new Public Interest Litigation. The liberalisation trend started with Data Processing case giving judicial protection to new social, public and 'diffuse' rights and interests. But later, the United States Supreme Court has repeatedly relied on 'standing' itself to reject Public Interest law suits without consideration of the merits.

American jurist may not be at the best vantage point to realise the potential impact of recent decisions which undermine or obstruct the effectiveness, and hence, as a by-product, sap the vitality of such inter-mediate societies. The potential impact is to throw the burden of asserting meta-individual rights back on to single individuals - the very thing which proved inadequate by the Civil law experience.

In total contrast to position in United States, the Indian Supreme Court has deliberately liberalised the rules of 'locus standi' in order to promote Public Interest Litigation. This transformation of the doctrine of 'locus standi' in India can be seen as 'refining' and 'alloying' processing both working

1. For instance, Warth v Seldin, 422 US 490(1975); Sierra Club v Morton, 405 US 727(1972); Simon v Eastern Kuntu

together, because today not only elements of doctrine of 'locus standi' has been clearly laid down, but also peculiar social problems and potentialities of Indian society have been used to strengthen a new 'poverty-oriented' jurisprudence.

Viewed as a reform of traditional model, in India, Public Interest Litigation can be surely seen as an improvement on the American doctrine of 'standing' which has intermingled two separate and distinct issues - viz., Whether the petitioner is 'sufficiently motivated to present a good case to the court?; and Whether there is an 'injury' that requires judicial redress? Infact, American law presumes that only someone with personal stake can meet the first requirement of motivation.

But, the Indian Supreme Court has rejected this presumption in two ways. Firstly, by allowing any member of the public to seek judicial redress for a legal wrong done to a person or to a determinate class of persons, who by reason of poverty, helplessness or disability or socially or economically disadvantaged position is unable to approach the court directly. Herein, the Court has granted standing to a 'representative' of another person or group of persons. This type of 'representative standing' evolved by the apex court is an expansion of 'standing exception' which allows a third party to file a writ of habeas corpus on the ground that injured party - the prisoner - cannot approach the court himself due to his incarceration. This is the kind of litigation called by Ex C.J. P.N. Bhagwati as Social Action Litigation because herein the Indian Supreme Court has
settled the dismal problem of lack of 'access to justice' to the poor and oppressed sections of Indian society by empowering volunteer representatives or organisations to approach the court on behalf of the poor and oppressed.

And secondly, in United States Supreme Court has, of late repeatedly denied 'standing' to petitioners seeking remedy for public generally, rather than personal injuries. And while rejecting such claims the court has confirmed the assumption that role of the court is to protect only individual rights. Here again, in contrast to position taken by United States Supreme Court, Indian Supreme Court has ruled that any member of the public with 'sufficient interest' to assert 'diffuse, collective and meta-individual rights' is allowed to initiate the legal process. Herein, a citizen is given standing, not as a representative of poor and oppressed, but in his own right as 'member of the citizenry' to whom a public duty is owed. This is another innovation by the apex court in India, and in defense of this development the court says this type of 'standing' given to citizen is not to intended to improve 'access to justice' for the poor, but it is meant to vindicate the rights that are so 'diffused' among the public generally that no individual right can be enforced. Cases involving consumer and environmental issues fall under this second type of new development.

2. Ex C.J. P.N.Bhagwati gave this opinion to the present researcher in his 'interview' on January 7, 1991. For details see Appendix - 4 of the present study.
Public Interest Litigation is different from adversarial model of litigation. Thus, it is a non-adversarial litigation. Here also, Indian Supreme Court has taken in two procedural innovations, unlike United States of America. Firstly, in India, Public Interest Litigation is viewed as a 'collaborative effort' on the part of the petitioner, the court, and the Government or the public official to see that basic human rights become meaningful for the large masses of the people. Accordingly, first kind of Public Interest Litigation is a 'collaborative litigation' wherein the court acts in different capacities. The Court acts as 'Ombudsman'—since it receives complaints and brings the important ones' to the attention of the responsible Government officials. The Court provides 'forum' for discussion of public issues. And also, the Court acts as 'mediator' and suggests compromises.

Secondly, in a Public Interest Litigation, if one party to the litigation is too poor with no material and social resource, no services of a lawyer for legal representation who can produce relevant evidence before the court, the Court has taken upon itself an 'investigative role' by appointing commissions of enquiry to collect evidence and produce facts before it. This is 'Investigative Litigation' developed by the Indian judiciary for enforcing fundamental rights of the poor and downtrodden. This procedural innovation is also unlike United States.

In final analysis, it can be concluded with regard to these procedural innovations developed by the Indian Supreme Court in
Public Interest Litigation cases, unlike United States, the strategy for giving the poor and oppressed a real and meaningful 'access to justice' is not to provide funds so that they may participate in the traditional system on an equal footing. But, Public Interest Litigation is a strategy to change the system itself, slowly and surely. This is quite clear from the fact that public spirited person/s or voluntary organizations or groups are given standing so liberally when ever gross violation of human rights of the poor and downtrodden is indicated or whenever an injury to public generally is brought to light. So much so that even a letter addressed to a judge or to editor of newspaper is converted into writ petition. Thereafter, the whole process starts. And the most interesting thing is that the court will shoulder most of the burden of establishing the facts through commissions of enquiry appointed by the court itself. And also, where ever possible, in the interest of justice, the court will not hesitate to simply give 'relief' immediately, without even determining liability for past acts. Another point is that, in India, when confronted with social injustice, there is continuous willingness on the part of the judiciary to depart from procedural rules of traditional model as 'res judicata', 'exhaustion of other remedies', etc. Indian judiciary has also departed from fundamental principles of traditional Anglo-American legal system that required plaintiff to have a personal stake; that judges should be passive arbiters of facts produced by the parties to the case; that 'relief' have the basis of
'rights'. The courts have given 'relief' even without declaring 'rights'. While at other times, the courts have declared 'rights' without any grant of 'relief'. All these aspects are peculiar to India in the area of Public Interest Litigation.

As expected, all these procedural innovative developments evolved by the court are criticised on the ground that they violate traditional laws of procedure. For instance, the use of socio-legal commissions allows evidence to be collected ex parte, immune from cross-examination. To this, it is observed by the court that the constitution makers had deliberately, no where, laid down any particular forms of proceedings for the enforcement of fundamental rights, nor did they stipulate that such proceedings should confirm to any rigid pattern or straight-jacket formula. Ofcource, the court did suggest that the evidence and the reports would be made available to all affected parties, and that they would have an opportunity to dispute the facts.

It is true that there exist dangers in such liberal attitude of judiciary towards Public Interest Litigation cases. The court will have to understand it's limitations. It is humbly submitted that the court should scrutinize the claims of Public Interest Litigation very carefully lest it may become a resort of the pseudo social activists with selfish ends and to gain cheap publicity. The Court will have to be vigilant so that under the garb of Public Interest Litigation busy bodies and professional litigants should not prosper. Accordingly, 'locus standi' may be granted only when those whose rights are sought to be enforced
are unable to do so, and have nothing else but 'public interest' to pursue.

Thus, Public Interest Litigation has to operate under certain restraints. The courts have to be careful that the member approaching the court in 'Public Interest' is acting bonafide and not for any personal gain or oblique considerations, and that judicial process is not abused by politicians, and the courts in their turn do not overstep the limits of judicial function and trespass into areas reserved for executive and legislature.

The 'new jurisprudence', and 'new judicial activism' may be understood as part of the court's effort to retrieve a degree of 'legitimacy' following the Emergency. Public Interest Litigation represents a strategic reversal of previous judicial priorities in order to win popular support and achieve a more prominent role in the Indian society.

The substantial accomplishments of Public Interest Litigation in India in its short span of a decade in India, surely proves that it is a development worthy of the most serious considerations by jurists, lawyers, judges, and social activist from all societies and particularly from the United States where the parallel and contrasts are so striking.

The question arises - whether reform alone will be sufficient to make the courts still more effective instruments of social justice, and if not, whether a more revolutionary approach is possible without destroying the fundamental sources of judicial power. At stake is nothing less than the role of courts in a
A pervasive criticism mounted against Public Interest Litigation is that courts are usurping the function of the administration thus taking on the tasks of policy determination and resource allocation that are best left to the expertise and discretion of other officials.

It is humbly submitted that it is true that Indian Courts have penetrated policy formulation and administrative operations to a larger extent. But the judiciary is also aware of the danger of taking a policy role to a degree characteristic of political authority, and indeed running the risk of being mistaken for one. And, the doctrine of separation of power - while suggesting good reasons as to why such lines must be drawn as judicial non-accountability, institutional competence, etc. - does not of itself indicate precisely where they should be placed. But when a citizen seeks vindication of a fundamental right or Directive Principle the court cannot simply shrug its shoulders and say priorities are a matter of policy, and so it is a matter for the policy-making authorities. Therefore, when ever a court is called upon to scrutinize an official decision or operation, it is immediately and inevitably engaged in both policy analysis, and the political exercise of determining its own jurisdiction. As regards the question that - whether the courts have the capacity to carry out the kind of policy analysis which is required in public interest matters - the answer depends on their ability to collect and assess the necessary data, assign
priorities to, sometimes, conflicting public objectives.

As to the question - whether as a result of Public Interest activism, the popular legitimacy of the courts has been enhanced or diminished? It is humbly submitted that there is no doubt that the court's public profile has been considerably raised. The popular press, social action newspapers, magazines, and scholarly literature are complete with the reports on achievements of Public Interest actions entering into different arenas, protecting and declaring new rights never heard before. So the reports are by and large favourable. But the sheer volume of Public Interest Litigation petitions attests to the demands for a 'new forum'. It is humbly submitted that by transcending received liberal notions of judicial function, the courts are reprieving a degree of popular moral support at a time when other social and political institutions are facing legitimation crisis. Modern judiciary can no longer obtain social and political legitimacy without making a substantial contribution to the issue of social justice. The assumption of a political role beyond that traditionally ascribed to the judiciary will not undermine, but indeed it will enhance its credibility and support. Infact, the legal profession in India can be said to have filled the void of an effective national level political opposition in India. A large number of questions whose ordinary resolution belonged primarily to political authority in a democracy, have constantly been taken to courts.

In Indian society, the formal legal instrumentalities and
arrangements exist in total isolation from India's social realities. Therefore, it is certain that Public Interest Litigation has, and is going to secure better life for poor people in India. It is true that it has not ended bonded labour, it has not found homes for Bombay pavement dwellers, it has interpreted provisions of Articles 15(4) and 16(4) merely as enabling ones', it has not totally improved conditions in mental hospitals for mentally sick, it did not help much to sufferers of poisonous gas, it has turned back poorest of the poorest of the poor people of Kalahandi dying of starvation and selling their own children empty handed. Infact, litigative strategies such as Public Interest Litigation can never substantially re-distribute wealth or power. Litigative stragies cannot penetrate and affect the economic and cultural conditions which define the reality of India life. Naturally, the critics have questioned the utility of expending the scarce human and financial resources on litigative strategies. They say that the reach of judiciary is limited, and that judicial activism cannot be substitute for executive efficiency. And that social and economic change in a society organized around privilege, patronage and power cannot be brought about just by a few Public Interest Litigation actions, howsoever well-intentioned. They argue that for the down-trodden of the world, even if judiciary secures their rights by law, but what will happen outside the court room as they will be left to their own ways. They say, it is not enough to expose the innumerable and appalling social evils through the courts and the media.
So the court has to be linked up with social activists and social organizations which can provide the poor with ground support when they return to their grim, hostile world after the court victory.

Further, it is only a few judges in the Supreme Court and the High Courts committed to the cause of the poor and taking serious interest in the Public Interest Litigation. Rest of the judges are yet to be sensitised.

Moreover, it is only the writ jurisdiction which can be invoked in the Supreme Court or High Courts for initiating Public Interest Litigation. The movement has not yet spread down to the lower judiciary. Supreme Court and High Courts are far away from the source of the problem and so cannot have the first hand information. The public spirited person may be hesitant and also unable to pursue the case at a far off court. That might be the reason that many of the Public Interest writ petitions are lying unattended without any follow up action because the petitioner cannot reach the far off courts.

To this end it is humbly submitted that if District judiciary is empowered to entertain such cases, at least the geographical barriers will not deter a petitioner to pursue the cause of the poor. Accordingly, District and Sessions Judge should be empowered to entertain Public Interest Litigation suits and in such cases the stamp fees and other costs should be waived. Most of the governmental lawlessness can be checked by such arrangement. The petitioner instead of writing a letter can himself help the court by personally representing the cause of
the poor.

Further it is the prime duty of the government to implement the welfare laws. Since they are not doing it, the courts have been forced to take the initiative and ask the government to enforce the provisions of these laws, mostly labour laws, which are flagrantly being violated by the contractors, kiln owners, unscrupulous miners and even by government departments.

Public Interest Litigation is surely a necessary and valuable tool in the hands of judiciary in the cause of the poor. But since it cannot be a substitute for organization of the poor, development of community self-reliance, and establishment of effective organizational structures through which the poor can combat exploitation and injustice, protect and defend their interests, and secure their rights and entitlements. Thus, judiciary alone cannot remove the barriers of poverty, ignorance and superstition, and guarantee equality of access to justice. Accordingly, it is humbly suggested that to remove these barriers, all the three wings of the government – judiciary, executive and legislature – have to act cooperatively. It has to be a mass movement in which students, lawyers, voluntary organisations, social activists, all have to join hands. And the problems of the poor cannot be solved merely by Public Interest Litigation alone, it has to be backed by social organizations. The fact that judiciary is willingly reading welfare goals into their interpretation of fundamental rights and enforcing
existing laws and regulations. And in India, this itself is a formidable enough task.

Thus, it can be concluded that in India, Public Interest Litigation has come to stay with firm footing and it's legitimation is now beyond doubt. The case analysis in foregoing chapters of the present study, and views of number of experts on Public Interest Litigation given in Appendix -4 of the study, clearly show that Public Interest Litigation movement in India is fastly moving into various newer areas, arousing high expectations, not merely for the vindication of governmental commitments to the well-being of downtrodden, poor masses, but also for effective social control, communal harmony, preserving rule of law, preventing decline of public morality. Public Interest Litigation has shown that Constitution can be used as a medium of silent-non-revolutionary-struggle against domination and abuse of power. Public Interest Litigation is a strategy evolved by the judiciary to give teeth to law, empowering the victims to use to courts to force the government to fulfil what it commits. It is a check to see that statutes are implemented as legislatures intended them to be.

Most of the Public Interest lawyers are strongly committed to the law as a means to achieve social reform. Some believe that in certain cases the interests of the poor will be more effectively and efficiently represented by Public Interest Litigation which attacks at the root of the problem, than by mere routine cases that manifest basic injustice which remain
ultimately unchallenged.

It is humbly suggested that there should be government support for Public Interest Litigation movement. The Legal Aid Services budget should also be increased to enlarge the programme nation wide so that it may provide at least one lawyer for every 1,000 poor people, albeit this ratio is still substantially below the ratio of the population generally. 'Special Assistance Centers' with specialized knowledge in areas of law of concern to the poor and oppressed should be established to assure that poor and downtrodden people are effectively represented in complex cases. 'Citizen participation' in judicial review of administrative proceedings should be increased. It should be assured that interested citizen groups with limited resources will be heard in matters that affect them.

It is also humbly suggested that in addition, independent central and state agencies should be established to provide representation to interests that would otherwise go unrepresented in administrative proceedings and other forums.

Another humble suggestion is that Court should award 'lawyer's fees' to a party who successfully brings suit to vindicate a significant public interest, where his economic interest is small in comparison with the cost of bringing suit or where he does not have sufficient material resources to adequately pay lawyer's fee and other costs. To this end, central and state legislatures should pass statutes giving discretion to the judges to make such awards of lawyer's fees, especially in cases wherein
litigation serves larger public interest, such as in the cases of civil rights, environmental and consumer protection.

Further, legal profession should also provide support for Public Interest Litigation and develop new mechanisms to meet its responsibility to assure that Public Interest Legal Services are broadly available. The Bar Association should establish a 'voluntary check off system' to invite members to contribute to the support of Public Interest Litigation activities. At state level, Bar Associations should establish 'Committees' to promote Public Interest Litigation, provide financial support for Public Interest Litigation activities, and support legislation to facilitate Public Interest Litigation practice. The new lawyers, can join such committees, and they should be paid for such services out of the funds of those Committee so that it does not act harshly on new law graduates. They should be encouraged to take up matters in Public Interest.

Another suggestion is that the legal doctrines should also be revised to improve 'access' to the courts. Limitations on 'standing' to sue and various other technical bars that unnecessarily delay and thwart the resolution of legitimate disputes should be reformed. Public Interest Litigation actions, should be encouraged, procedure for the same should be more simplified. The services of the Public Interest lawyers should be made readily available. This will require increased level of bar support, support from general public and government financing - all these will have to play an important role. There should be a
solid base for further growth and development of Public Interest Law field.

In the final analysis, in India, the fate of Public Interest Litigation may hinge on the concrete experience and continued faith and effort of social activists and their constituent groups.

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