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'COMPUTATION OF RESPONSES' ALONGWITH 'ANSWERS' RECEIVED = FROM JUDGES, LAWYERS, SOCIAL ACTIVISTS AND ACADEMICIANS = IN RESPONSE TO THE 'QUESTIONNAIRE' MAILED AND 'INTERVIEWS' TAKEN BY THE PRESENT RESEARCHER
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Since material for carrying out research always lags behind the present day position even in most extensive up-to-date libraries, accordingly, the present researcher took up the task of 'interviewing' and mailing 'Questionnaire' to the experts involved in, and interested in Public Interest Litigation movement. The experts involved belonged to various fields as the judiciary, the bar, social workers, academicians, etc. The present researcher approached the experts in Ahmedabad by firstly, personally delivering the 'Questionnaire' so that they are in a position to give their opinion in a better way during the interview session. Fortunately, 90% of the experts approached, responded and gave lengthy interviews, at times giving 2 to 3 sittings, for the benefit of the present researcher. But, some of the experts have requested to maintain their anonymity as they are holding official positions, as Judges of High Court of Gujarat. Accordingly, their opinions are referred herein but their anonymity is kept as per their desire. The present researcher could seek the interviews of 12 experts,
personally. As regards, answers to the 'Questionnaire' mailed, the response has been about 30% only. Some of the experts to whom 'Questionnaire' was mailed, had replied that they cannot give their opinion in writing as they are holding their official positions. Out of 22 persons to whom 'Questionnaire' was mailed, 8 of them responded. Their views are given below. Those holding official positions have insisted on keeping their anonymity, accordingly, albeit their views are incorporated below, their names against it are not disclosed.

'ANSWERS' TO THE QUESTIONNAIRE RECEIVED BY THE PRESENT RESEARCHER

Q.1. In your opinion, what are the factors responsible for the emergence of Public Interest Litigation in India?

According to Ex C.J. P.N. Bhagwati, two main factors responsible for the emergence of Public Interest Litigation in India are: i. the poverty, ignorance and illiteracy of the masses; and ii. the inappropriateness of the judicial system to dispense justice to the large masses of people, who are living a life of want and destitute, hunger and homeliness, and who are victims of exploitation, and who are denied their rights which are given to them by the Constitution and by the law.

1. Ex C.J. P.N. Bhagwati, Supreme Court of India, in his interview given to the present researcher on January 7, 1991.
According to Justice S.B. Mazumdar, it is the poverty of large number of masses, which is responsible for the emergence of Public Interest Litigation or Social Action Litigation in India. He opines that Social Action Litigation is essentially a movement for the downtrodden and illiterate masses who need the 'assistance' in approaching the appropriate courts by resorting to Social Action Litigation. And that 'assistance' can be provided by any 'public spirited person' with no personal axe to grind. If personal interest of the 'public spirited person' conflicts with the interests of the class or groups of persons to be represented in Social Action Litigation, then this movement would cease and cannot be encouraged. He adds, that the Courts before which Social Action Litigation is filed will also have to be alive to the importance of such litigation, and the fact that there is the need for rendering quick and effective justice to needy.

2. Sitting Judge, High Court of Gujarat. Also Vice-Chairman of Gujarat State Legal Aid and Advice Board, and also holding the post of Co-Chairman of Gujarat High Court Legal Aid Committee. Hon'ble Justice gave his above-stated views in an interview given to the present researcher in two sittings, on February, 20 & 22, 1991.
Ex Justice N.H. Bhatt, Dr. B.M. Shukla, and Mr. M.D. Pancholi, opine that it is the people's ignorance, an apathy to general welfare, administrative irresponsibility, are the factors responsible for the emergence of Public Interest Litigation in India. Due to these reasons, they say that public spirited citizens came forth to serve public cause.

Dr. P.C. Juneja, says that the main factors are the 'poverty' and ignorance on the part of the unorganized poor masses, the consciousness and alertness of social workers, social service minded advocates and journalists, and conscientious and ready to help judges. Ex Justice K.M. Satwani also says that

4. Dr. B.M. Shukla, Director, School of Law, Ahmedabad, gave his views in an interview given to the present researcher.
5. Mr. M.D. Pancholi, Principal, Sir L.A. Shah Law College, gave his opinion in an interview given to the present researcher
6. Reader, Faculty of Law, Maharishi Dayanand University, Rohtak, in his answer to the 'Questionnaire' mailed to him.
7. Ex Secretary, Legal Department, Government of Gujarat and Retired District and Sessions Judge. Presently, practising in the High Court of Gujarat, in his interview given on March 20, 1991.
the new consciousness of the rights of the citizens is another factor. Justice R.K. Abhaychandani adds that the progressive judges sitting on the bench of the Supreme Court ignored the strictness of procedural technicalities and allowed the 'third party interventions' on behalf of the poor and ignorant, and thus extending the scope of 'locus standi'. According to Mr. Girish Patel the real mother and also the real nurse of Public Interest Litigation in India is - the higher judiciary.

Dr. S.C. Jain opines that two factors, viz., interests of large number of persons involved, and delay in the Courts in the case of individual petitions are mainly responsible for emergence of the movement. Rest all the interviewees say that 'poverty'

9. Mr. Girish Patel, Ex-Member of Gujarat State Law Commission; Ex-Principal of New Law College, Ahmedabad; President of 'Lok Adhikar Sangh' - working for vindication of Human Rights of Poor; A social activist; presently practising as an advocate in High Court of Gujarat, Ahmedabad, in his interview dated March, 24, 1991.
10. Joint Secretary to the Government of India, Ministry of Law, Justice and Company Affairs, Shastri Bhawan, Delhi, in his answer to the 'Questionnaire' mailed.
of law and its procedure, are the main factors responsible.

Justice R.K. Abhaychandani says that one reason is that citizens bestow almost absolute confidence on the judiciary. This confidence of the judiciary is built up over the years because of its 'independence', because of the fact that the men who administer judiciary are believed to be infallible and more so because of the fact the the public entertains an opinion that judges are not controversial. Mr. Girish Patel further says that two factors attributed to the development of Public Interest Litigation. Firstly, members of the executive from top to bottom, instead of serving the public misuse their offices for furthering their own interest; and secondly, victims of injustices are poor, illiterate and mostly ignorant of their rights, and thus unable to initiate the legal battle gains the state or capracious contractors. Thus social welfare organizations, social activists, social reformers, journalists, professors, have come forward to move the petition on behalf of the indigents, helpless, poor masses. And the court also acted liberally in granting 'standing' to sue to them.

Q.2. Can we have an effective Public Interest Litigation movement in the existing legal system? If 'Yes' - How and where can we accommodate it in the present set-up? If 'No' - What changes are to be brought about in the present set-up?

Ex C.J. P.N. Bhagwati says that Public Interest Litigation is a departure from the adversarial model because in the
adversarial model which we have inherited from British Government the two sides are represented by lawyers who present their evidence, and their arguments, and the court sits like an umpire, adopting a shade of neutrality, and then decides on the basis of evidence which has been laid, and the arguments which have been presented by the counsel. But, adversarial model is not suited to the needs of the people because it basically relies upon two postulates - one, self identification of the injury; and other is, self selection of remedy. Now only a person, who knows that a legally repressible injury is done to him and he is entitled to 'relief' can think of going to court of law. Both these postulates are of no use to the large masses of poor, uneducated, ignorant people because they lack three As, viz., 'Awareness'; 'Assertiveness'; and 'Availability of legal machinery'. Accordingly, adversarial model can never succeed in giving justice to the weaker sections of the community. Ultimately, he says, that judges have found in many cases that where a person is not adequately represented, he always stands to suffer as against a person who is represented by a real competent lawyer. And secondly, if he is not represented at all, then he will never be able to get justice. He cited famous American Supreme Court case of Gedeon v Wainright in which a person, accused of 'robbery', which was committed on a person sitting a car, and the whole case hinged upon identification of the person as it was dusk. The Gedeon was unrepresented because he was too poor to

\[1\] . 372 US 335(1963).
afford a lawyer. As a result he could not cross-examine properly, he could not present his case, he was, thus, convicted and sentenced to jail. From jail, he addressed a letter to the United States Supreme Court saying that he was denied 'due process of law'. The United States Supreme Court entertained the said letter as writ petition for a writ of certiorari, and examined the whole question. The Supreme Court laid down that 'legal aid to an indigent' accused of criminal trial is part of 'due process' and therefore, is a fundamental right. The Supreme Court of United States set aside the conviction, sent the case back to the Magistrate of the lower court, and directed the State to provide free legal assistance. Later, the case was heard, Gedeon was properly represented, and ultimately he was acquitted because the 'identification' was absolutely filmsy. This case shows that the presence of legal representation makes all the difference in our system of administration of justice. Not only that poor person cannot produce evidence, but also, people who know, and have seen the incident, they will not come to court to tell the truth. Thus, our present system of justice denies justice to large masses of people, with the result people loose faith in efficacy of the judicial system to deliver justice. Therefore, C.J. says that they felt the necessity to change the system in order to make it effective vehicle for delivery of justice to the large masses of people in India. And now one of the impediments in the way of the poor people getting justice was rule of 'locus standi' as the rule requires that only a person who has suffered
legal harm or injury himself can go to court of law to vindicate his rights. Accordingly, in one seminal decision, he, along with other judges, took the view that where any legal wrong is done or legal injury is caused to a person or class of persons who by reason of poverty, ignorance, or socially or economically disadvantaged position cannot approach the court of law for justice, then any 'public spirited individual' or social action group, acting bonafide can file an action on behalf of such person or class of persons. He adds that in petition for writ of habeas corpus, the court always entertains petitions even from outsiders, the writ petitions need not come from person himself as he is in custody. If the court allows third person to file a writ of habeas corpus because the person concerned is in custody, therefore, physically incarcerated, then he felt, that when by reason of physical incarceration if a person is unable to file a petition and he allows other person to do so, them similarly, if a poor person is unable to file a petition because of poverty or disability or socially or economically disadvantaged position, the same principle must apply to him also and so someone else should be able to file an action on behalf of the person whose rights are denied, therefore, Ex.C.J. P.N.Bhagwati, says that they extended that particular doctrine of locus standi from habeas corpus to other writ petitions.

Justice S.B.Mazumdar says that in the existing adversarial system, Social Action Litigation can be effectively reconciled as existing adversarial system caters to the need of contesting
individual parties, while Social Action Litigation will operate in a different field, presenting conflicts between class of needy, illiterate, downtrodden masses on the one hand, and authorities on the other hand against whom the writ petition is filed. Nowadays Public Interest Litigation is treated as Social Action Litigation as it brings to the notice of the court a injustice made on deserving downtrodden sections of society whose legal grievances cannot be vindicated by adversarial legal system. But, for effective implementation of Social Action Litigation 'public spirited citizens' and courts with enlightened view point would be a pre-requisite.

Ex Justice N.H. Bhatt suggests that we can have an effective Public Interest Litigation even in present legal system. The Supreme Court itself has in a catina of authorities recognized this right, and at the apex level in the state, it can be an effective movement.

Dr. P.C. Juneja says that we can Public Interest Litigation movement in the present legal system. Since we have accepted the adversary system and it here for centuries, and has gone into the blood of common man, not it will be difficult to shift to some other system. Under adversary system, every plea has to be proved and the decision is based on evidence on record, it has inherent safeguards against the judges going astray.

Dr. S.C. Jain, optimistically adds that since the Supreme Court is sympathetic in Public Interest Litigation cases, there should be no problem
Q.3. Presuming that we can have an 'effective' Public Interest Litigation movement in the present legal set-up, then the question arises - How can we reconcile this movement with the procedural dimensions of judicial process, namely, 'locus standi', 'res judicata', 'exhaustion of alternative remedies', etc.?

According to Justice S.B. Mazumdar, when 'genuine' Public Interest Litigation is resorted to, the question of 'locus standi' would pale into insignificance as it is linked with adversarial system. Public Interest Litigation operates on different wavelength and dimension. About the applicability of principle of 'res judicata', the Hon'ble Justice says that if a particular legal grievance is already adjudicated upon a group or class of citizens vis-a-vis authorities by competent court, then the same question cannot be re-agitated for the very same group or class of person. But, ofcourse matter can be challenged before higher Court, i.e., appellate court. And with regard to 'exhaustion of other remedies', Hon'ble Justice says that in appropriate cases touching large number of persons, 'exhaustion of other remedies' should not come in way as it is typical of adversarial system of litigation.

Dr. B.M. Shukla says that the Indian Judiciary has done real appreciable service in the field of giving relief to the undertrial prisoners, amelioration of the conditions of the women in protective homes, prohibition of traffic in women, release and rehabilitation of bonded labour, environmental protection, etc.
Public Interest Litigation is promoted by adopting a liberal interpretation of the doctrine of locus standi, even if it bypassing some procedural rules, it is consistent with the 'fair process', and this is the aim of justice system.

Dr. P.C. Juneja says that there is no contradiction with principle of 'res judicata'. If the public spirited persons are allowed to represent the poor, the cases should be entertained by the courts and 'exhaustion of all remedies' should not stand in the way. Even at present it is the discretion of the High Court to entertain the petition without insisting for exhaustion of all remedies. He reasons that Public Interest Litigation is only to substitute a public spirited person in place of the 'aggrieved person'. If we modify the definition of aggrieved person and allow the public spirited persons or legal aid cells or voluntary organizations to file the cases on behalf of the poor masses, the movement will be successful indeed.

Q.4. Seeing the present attitude of - the people, judiciary, bar, press, social organizations - can we envisage a bright future for Public Interest Litigation in India?

Ex Chief Justice P.N. Bhagwati says that he would not say that there is a bright future for the movement because everything depends upon the judicial attitude towards it. Those judges, who have been trained in the British tradition, have never been able to appreciate the efficacy of this particular strategy. This is so because this strategy marks a departure from the regular/ordinary system of justice in two ways, one - locus
standi, where someone else can join; and second - collection of evidence - because in Public Interest Litigation judges have departed from adversarial model and started appointing 'commissions of inquiry' for the purpose of investigation of facts as court has found that many of the social action groups that come before the court for vindicating the causes of the poor are very often unable to produce evidence as many of them are living hand to mouth. They do not have resources. Their only asset is their commitment to a cause. Therefore, how are they going to collect evidence required by court of law? Accordingly, the court started appointing commissions of inquiry and started taking interest in the whole adjudication of the dispute. The court reasoned that if you can't do it, court is not going to fold hands in despair, and thus dismiss the petition as that would amount to denial of justice. And not only that, court will be failing in it's Constitutional duty of power and duty to enforce fundamental rights, and besides, as an ancillary or incidental to this power, the court and judges have power to do all that is necessary for the purpose. Therefore, the court resorted to appointment of commissions of inquiry. And this departure from normal system of administration of justice is something which many judges have not been able to really understand and appreciate as they are trained in old British tradition and they are reluctant to move with the times. So unless the judicial attitude changes, and judges begin to feel that their task really is to do justice to not only those who can
come to court with purse and power, but also to large masses of people who are denied justice, then only Public Interest Litigation will be able to prosper and grow.

Justice S.B. Mazumdar says that there is certainly a bright future for Social Action Litigation in cases where such litigation is resorted to in real public spirit by social activists who have no personal interest in the litigation.

Dr. S.C. Jain, Dr. P.C. Juneja, Dr. B.M. Shukla, Mr. M.D. Pancholi, Ex. Chief Justice B.J. Diwan, Ex Justice N.H. Bhatt, Mr. Girish Patel, and Justice R.K. Abhaychandani are optimistic about the future of Public Interest Litigation in India, and answer in affirmative.

Q.5. What measures should be taken to have an effective Public Interest Litigation movement at following levels: i. Law College level; ii. by judiciary; iii. at bar level; iv. by social organizations; v. by people at large?

Justice S.B. Mazumdar opines that at law college level, Public Interest Litigation can be made effective by either introducing a topic for study on these aspects as part of civil - or criminal law or even independently, or by having lectures or seminars on such topics so that law students can be enlightened and trained on this aspect. At the level of judiciary, he says, it is through the judgments of the apex court, the effectiveness 12. This view is shared by majority of the judges, lawyers and academicians interviewed by the present researcher.
of genuine litigation of this type can be brought home. There can also be discussions or seminars where members of bar and bench, deliberate on effectiveness of Public Interest Litigation.

With regard to bar also same method can be adopted. As regards people and social organizations, they can be groomed up by having discussions at various levels or lectures by eminent persons in this area. Public Interest Litigation can also be brought home by requesting State Legal Aid and Advice Board to hold Legal Literacy Camps. The Board can also be requested to introduce this as topic in Legal Aid Clinics, wherein law students, lecturer in law, and enlightened citizens can discuss academically, meeting every fortnightly or once a month.

Dr. P.C. Juneja and Mr. M.D. Pancholi say that at college level, Legal Aid and Service of Society should be part of the curriculum. The students should be trained to take up the problems of the poor masses. Mr. P.S. Sayeed says that the Legal Aid Clinics in some colleges are already doing a good job. The judiciary should be properly oriented. The bar also realising it's responsibility towards the society, should make it compulsory for it's members to do at least tow cases in a year free of cost. Dr. S.C. Jain says that effective and coordinated effort at all levels will be necessary.

13. Secretary, Gujarat High Court Legal Aid Committee, Ahmedabad.
Q.6. In order to strengthen the Public Interest Litigation movement and to accelerate its pace in achieving the cherished goals of Indian Constitution - who should finance this movement? Should it be the state, and/or the bar, and/or social organizations, and/or donations from public or private, and/or any other alternative remedy that you may kindly suggest?

Ex C.J. P.N. Bhagwati says that funding problem will always be there but there are social action groups in all parts of the country who have some sort of funding. They get some funds from some foundations - foreign and Indian. Or they collect money from people they serve or charitable institutions, and they manage anyhow, but their resources are not very large.

Justice S.B. Mazumdar says that Public Interest Litigation can be financed at State level by State Legal Aid and Advice Board and other enlightened social organizations, and clubs - as Rotary club or Lion's club. Even Central Comet for Legal Aid and Advice, in Delhi, can also be requested to finance the movement.

Mr. M.D. Pancholi says that public and private foundation can donate towards this end. Dr. S.C. Jain says that financing of this movement has to be at the private level, i.e., through voluntary and social organizations or individuals.

Dr. P.C. Juneja says that main financing should be done by the government. But there should be a separate and independent organization or corporation, funded from the consolidated fund of India. Since, it will be independent of Government, it would be free to take up the cases against the Government. If we analyze
properly we will find that government itself also is a great exploiter of the poor. In addition to state funding, the funds should be raised from other resources also. To ensure the independence of the working, the representatives of the common masses should be effective members of the corporation and should have say in it's working.

In this regard, Ex Justice N.H. Bhatt says that the state is wedded to public welfare, and that is the cherished goal of our present politic. So it is the state that should bear the brunt of financial burden of this movement.

Q. 7. In Public Interest Litigation cases there is a serious problem faced by the courts, i.e., 'fact finding' and 'fact evaluation. How should, in your opinion, the court effectively tackle this problem? Should the court adopt any one or more of following mechanisms - Ombudsman of Continental system, and/or Commissioner/s appointed by the courts, and/or recognizing the reports drawn by various organizations as authentic, and/or any other alternative that you may kindly suggest?

Ex C.J. P.N. Bhagwati says that Ombudsman, an institution by itself which examines usually cases of corruption, mal-administration, cannot be there in India in near future although everyone is talking about it. Success of commissions of inquiry, he says, depends upon the choice of the right person to be appointed as commissioners, as he/she must have integrity, credibility and objectivity then only he/she can succeed.
Normally, findings of the commissioner are difficult to be challenged by the parties, the court treats it as prima facie evidence subject to the rebuttal by either side. But then it is not final, it is a piece of evidence which can be contradicted by either party.

Ex Justice N.H. Bhatt says that it is not the inflexible rule that courts shall not go into question of facts. This is a rule of convenience and in suitable cases it can well be dispensed with. Ordinarily Commissions of inquiry are appointed by the court to have the first-hand information and in many cases research reports and fact finding reports are liberally relied upon as authentic. Possible grievance on this part can be mitigated by giving the other side an opportunity to counterbalance such reports. Commissioners carry out their investigations invariably in the presence of other party and so these methods work quite well. For instance, in Bhopal Gas Leak case, they were required to record evidence in court.

Justice S.B. Mazumdar says that court has to follow the same procedure as it follows in adversarial proceedings for apparatus of the court has to operate uniformly.

Dr. S.C. Jain says that the Supreme Court and the High Courts can seek the help of either courts subordinate to them or at other official levels within the executive as the facts of the case may demand.

Dr. P.C. Juneja says that there should be a permanent body attached to the High Courts for fact finding and also for fact
evaluation. The members of this body should come from public. They should be known for their honesty, straight-forwardness, just thinking, and there term on the fact finding body should not be for more than three years. To maintain continuity in the body a few of them say one third should retire every year, and new persons co-opted. The members of this permanent body should be given allowances per case. In addition, the court should be free to appoint commissions and accept their reports. The reports given by various organizations should be got evaluated by it's permanent body.

Q.8. Whether over-extensive reliance on socio-legal commissions of inquiry does not give to the court a partial and biased view of the facts?

Mr. M.D. Pancholi says that these apprehensions are exaggerated. The facts upon which the courts are to rely are definitely made available to the concerned parties, and also an opportunity is given to them to respond. Further, affidavits can be challenged, additional reports can be commissioned and new evidence can also be entertained, should the need arise.

Justice S.B. Mazumdar says 'No' to this question because he says commissioner appointed by court has no personal axe to grind. He will not mislead the court.

Dr. P.C. Juneja says it will be judged from his previous conduct. More over it is the case and it's examination which will help in assessing the honesty and seriousness of the public
spirited person. If the petition is concerning the matter of serious public importance, even if the so-called public spirited man is not serious, the court can get it pursued by some voluntary organization or by some other public spirited person known for his honesty, and awarding some compensation for the work done by him as the Supreme Court has done in M.C. Mehta case.

Q.9. Seeing the manner in which Public Interest Litigation is initiated, and activism of the judiciary in prosecuting Public Interest Litigation cases, don't you feel that judges are shopping for particular issues and causes, and litigants are shopping for particular judges?

Justice R.K. Abhaychandani opines that judges' shopping is certainly a known formula in other countries and the control of bench by the Chief Justice of any court at least makes possible the distribution of case assignments according to particular color. But the initiation of a litigation is an insignificant opportunity for a judge to bring political 'bias' to bear on a case.

Justice S.B. Mazumdar opines that in the beginning of Public Interest Litigation, a progressive era, some of the Judges were clearly known to be the protagonists of Public Interest Litigation and some of them as anti-movement. Accordingly, the complainant would write 'letters' directly to the protagonist judges, which judge used to place before their own Court after
converting it into writ petition. Now such a practice, naturally, lead critics to raise the voice that complainants were shopping for their judges, and judges in turn were shopping for the causes of their own interests and preferences, and thus choosing their litigants. This practice lead Justice Tulzapurkar to criticize the same in a public lecture at Pune, on October 29, 1982. He said that such a practice would result in conferring privilege on the complainant to have a judge or forum of his own choice, which is clearly subversive of judicial process which enjoins that no litigant can choose his own forum. He further added that it will also result in erosion of administrative powers of Chief Justice. It is in the interest of fair procedure that letters should be addressed to Chief Justice, and not to individual judges.

A judge of the High Court says that by 'alertness' and 'watchfulness' it can be avoided.

Another judge of the High Court forcefully says that allowing a complainant to choose a judge or forum of his own choice is clearly subversive of judicial process which enjoins that no litigant could choose his own forum. He even questioned the propriety of a judge who has received a letter or a complaint entertaining the same.

Yet another judge of the High Court says that no communication or petition can properly be addressed to a particular judge, and which judge should hear which case, is exclusively a matter concerning the internal regulation of the business of the court and interference with such procedure by a
litigant or member of the public constitutes the grossest impropriety. This view is supported by Mr. M.D. Pancholi, Dr. B.M. Shukla and a social activist. They reason that it avoids the allegation that judges are seeking public popularity. They say 'letter' should not be addressed to judge directly.

Q.10. Can we have a permanent Public Interest Litigation Cell in High Court of Gujarat?

Justice S.B. Mazumdar says that there is no need to have a permanent Public Interest Litigation Cell in the High Court of Gujarat as the High Court Legal Aid Committee is already catering to such needs and instituting them through High Court Legal Aid Committee.

Whereas, Ex C.J. P.N. Bhagwati strongly says that every High Court should have Public Interest Litigation cell where letters are received from people in distress, these letters can be then examined and referred to Chief Justice of the High Court. In cases where it is felt that the case cannot be taken as Public Interest Litigation, it can always be referred to Legal Aid Committee in the High Court or in the Districts. If a matter is not worth while High Court interference directly, it can be sent to the District Legal Aid Committee, asking the District Legal Aid Committee to contact the person who has addressed the letter, and then to take action, file a suit or what ever is proper. But if there are cases wherein fundamental rights or legal rights are involved against the state then the letter can be treated as writ
petition by the High Court itself. So all letters coming to Public Interest Litigation cell should be properly attended to, sorted out and then appropriate action must be taken.

One Judge of the High Court says that one cannot be specific in identifying the areas of public interest. One can say any law which concerns the whole public becomes a matter of public interest. Not only this, a matter concerning a group of poor persons say their exploitation or even for that matter exploitation of a single poor person who cannot defend himself because of poverty, is a matter of public interest.

Q.11. How can it be decided that - whether or not a 'public spirited person' is honest, 'serious' enough to be held 'adequate representation' of entire class or sub-class?

Ex C.J.P.N. Bhagwati says that court will have to judge the seriousness, honesty, integrity and bona fide of public spirited person on the basis of affidavits whether he is really acting for the benefit of poor or acting for his own publicity. So it is subjective satisfaction of the judges that will decide.

Ex C.J. P.N. Bhagwati says so far as poor and disadvantaged are concerned there is no question of blackmailing. There are two kinds of Public Interest Litigation and he is talking in terms of Social Action Litigation, on behalf of poor and downtrodden masses only. The other kind, where causes of 'public interest' are taken up where injury is to general public and not to a class of person, he is not talking in terms of this second type.
Ex Justice N.H. Bhatt says that public spirit and honesty are abstract attributes and they are to be judged from professions - what he professes, and his credentials.

To this, Justice S.B. Mazumdar says that as to the question whether the person who moves Public Interest Litigation is a public spirited person in the real sense of the term or not, it can be judged by scrutinizing the prayers made in the petition, the purpose of the petition for which it is moved, and/or whether he has any personal interest, directly or indirectly, involved in the petition. On inquiry, if it is found that directly or indirectly the concerned person has special interest, i.e., person gain, in the Public Interest Litigation, then he cannot be considered to be a genuine public spirited person who can move such a Public Interest Litigation. In that case, the party interested becomes a real party to the litigation. If he is not a public spirited person and intends to gain under the guise of Public Interest Litigation, then that cannot be permitted. This can be scrutinized by the concerned Legal Aid Committee.

Q.12. How can negligence, abuse, blackmail, be prevented?

Justice S.B. Mazumdar says that negligence on the part of a public spirited person, who moves such litigation before a court, can be remedied by obtaining better material or data concerning the question involved, say from the respondent authority. Alternatively, in a given case, a Commission can be appointed to go on the spot and to find out the actual factual position that
may be prevailing. So far as abuse of such litigation is concerned, it can be properly scrutinized and prevented by examining the credentials of the person who moves such litigation. This will also cover the question regarding blackmailing by any such person. Thus, it can be found out whether the person who moves such petition is having oblique motives or personal gains to be obtained, either directly or indirectly, by moving such petition, and whether he is really interested in espousing a genuine socio-legal cause of the down-trodden.

Ex Justice N.H. Bhatt says that negligence can be done away with by the court taking reigns in its own hands. Abuse and blackmail are not difficult to be detected and person/s who are found to have abused the legal process or are found to have come forth with ulterior objective of blackmailing anyone can be suitably dealt with under 'contempt' of court. The court's hands are sufficiently long to deal with miscreants, provided there is a desire to bring them to book.

Q.13. What are the underlying criteria to identify 'public interest'? Can we draw a priority list out of various public interests?

Ex Justice N.H. Bhatt says that no criteria can be envisaged to identify public interest. Nor is it feasible to draw any list or priority list because in the changing society the needs also go on changing and therefore in his view it is inadvisable to put such a concept as public interest in any
straight jacket formula. Any such attempt in short run will smother the cause.

Justice S.B. Mazumdar opines that so far as 'public interest' identification is concerned, as stated in answer to above question, scrutiny of grievances placed for consideration in the petition can easily reveal as to whether the interest involved is 'public interest' or 'private interest. If it is seen that the case is moved for persons who on account of ignorance, poverty or social backwardness and absence of enlightenment about their rights, cannot themselves move the court, and if their grievances are, prima facie, found to be genuine and fall within the legal framework of the contours of such Public Interest Litigation, they can be protected by such litigations. So far as priority is concerned, in cases of genuine Public Interest Litigations, there cannot be any pick and choose. However, as compared to a smaller section of persons if larger class of persons are concerned in different Public Interest Litigation then infuse propriety can be fixed, but otherwise all such litigations will have to be dealt with in accordance with law and in serial order.

Dr. S.C. Jain says that no priority list need be drawn, the discretion should be left with the court concerned.

Q.14. Can Public Interest Litigation be made part of Legal Aid Movement?

According to Justice S.B. Mazumdar, publicity is already
made about Legal Aid movement - conducted by the Gujarat State Legal Aid & Advice Board - taking up litigation in 'public interest' also.

Ex Justice N.H. Bhatt says that Public Interest Litigation is, in one sense, part of legal aid movement.

Whereas Ex C.J. B.J. Diwan cautioned that legal aid should not have anything to do with Public Interest Litigation as legal aid depends on government funding and since Public Interest Litigation is mostly against government, and governmental agencies and semi-governmental bodies, legal aid should thus be kept out of Public Interest Litigation. Legal aid is for individuals.

Mr. P.S. Sayed says that Public Interest Litigation can be successful only if it is made part of Legal Aid movement.

Q.15. Whether the existing 'lawyering techniques' are adequate to institutionalize this strategy?

Ex Justice N.H. Bhatt says that lawyers at one time were leaders of the society. The freedom movement of India was considerably guided by luminaries in this field. Unfortunately, after independence, this class as a whole, by & large, has become a parasite class. Any opportunity to smother such a healthy movement is viewed by them as an inroad on their field of operation. But they have not much voice in such matters. With a few brilliant advocates for this movement is a good sign. So there is no reason to feel any fear about lawyering techniques.

Justice S.B. Mazumdar says that in the beginning the
Public Interest Litigation movement was monitored and sponsored by few public spirited lawyers, working in different courts. But with the passage of time, enlightened social organizations and public spirited individuals have also sponsored such litigations. Legal Aid Board receives a number of such grievances by way of applications in the nature of public interest grievances, from various quarters. And social organizations and the Board, in appropriate cases sponsors the same by entrusting them to suitable lawyers.

Mr. Girish Patel says that the name Public Interest Litigation itself implies litigation before the court and consequently lawyering. The technique in public interest lawyering should be different. Normally, a lawyer adopts every technique to win the case for his client. The lawyer in such cases aims more at winning the case, and less at helping the court in delivering justice. The 'lawyering' in case of Public Interest Litigation has to help the courts in arriving at a true and correct position and delivering the justice and not only the judgment.

Dr. S.C. Jain says that no defect in the present 'lawyering techniques' has been brought to the notice by the queerest warranting any change.

Q.16. What role the Legal Aid Committee should play in the institutionalization of Public Interest Litigation?

Ex Justice, N.H. Bhatt says they are complementary to each
other and in one sense Public Interest Litigation movement is itself a species of legal aid movement.

According to Justice S.B. Mazumdar, Legal Aid Committee can finance and monitor genuine Public Interest Litigations in any court on the same lines as the High Court Legal Aid Committee has done in the past.

Mr. Girish Patel suggests that it should identify the legal problems of the poor and try to solve them amicably through compromise and if that is not possible it should file the case in the court on behalf of the poor and against the tormentor. Amicable efforts are 'must'. That will help reducing the case load in the courts, and help in understanding the case and identifying the persons at fault.

Q. 17. Since Doctrine of 'locus standi' has acquired a new dimension after liberal interpretation placed on Article 21 in Maneka Gandhi case in 1978. So far so good. But now, in future, with this new interpretation in the background - whether, in your opinion, the judiciary will not be entrenching upon the field reserved for legislature or executive?

Justice S.B. Mazumdar says that even though, the 'locus standi' concept is widened by a series of decision of the Supreme Court in the light of new interpretation given to Article 21, but in order to remain a genuine Public Interest Litigation, the grievance poised in such litigations must fall within the four
corners of legal grievances which can be legitimately dealt with by law courts. They include violations of fundamental rights and other legal rights by the State authorities and other instrumentalities. But that type of litigation cannot go beyond the scope of judicial review of administrative action and cannot entrench upon the legislative field or executive field, and if any order is passed which encroaches upon such fields, it will have to be treated as illegal and void. In this connection, the decision of the Supreme Court reversing the decision of the Himachal Pradesh High Court, when it directed the State authorities in a Public Interest Litigation to construct roads for the benefit of the residents of the area, may be seen with advantage.

Ex Justice N.H. Bhatt says that a best thing can be spoiled by bad implementation. The Constitution makers were conscious of this possible interse jealousy of the three wings of the government. Though the ideal is that every one in one’s branch is monarch of the field which one is assigned, and we have written Constitution which is partly rigid also, spheres of the three wings are sufficiently demarcate so as to disallow to trespass one into another’s field. But watertight compartmentalisation is not feasible. And that is why on occasions unhappy incidents come to be witnessed. Mutual respect for each other’s province can guide the holders of offices in the three wings.

A Judge of the High Court says that the main object is to do justice to the masses. The legislature and executive have
lagged behind. The legislature is very slow. The law of liability for the tortious actions of government servants is still the same as it was during East India Company's time. Tortious Liability Bill was introduced but was never passed. Ombudsman Bill was introduced thrice but never passed. We should be thankful to the courts that by giving liberal interpretation to Article 21, they have come to the rescue of poor masses.

Another Judge of the High Court says that what is important is not 'reservation of demarcated fields for legislatures but doing justice to the masses. And this job, the court is doing nicely. The court has interfered only where legislature has shirked its responsibility. If the legislature is active in making law and the executive alert in their duty, there will be no need of Public Interest Litigation.

A Judge, critic of the movement says that judiciary is not the sole panacea for all the ills of the downtrodden. Exercise of this power by the judiciary is fretted by many wants.

An advocate says that it is entirely a matter for the executive branch to decide whether or not to introduce any particular legislation. The court cannot mandate the execute or any member of the legislature to initiate legislation, howsoever necessary or desirable it may be in the opinion of the court.

Q.18. Till now, the courts were entertaining Public Interest Litigation wherever there was subversion of rule of law or public interest. But this gives too wide a scope to the judiciary to interfere with legislative and executive actions
even in cases where judicial intervention is unnecessary. In a short span of a decade in India, Public Interest Litigation has grown with such fast speed and vigor that a serious thought over its' consequences is required. Thus, what is the arena within which court should entertain Public Interest Litigation cases?

According to Justice S.B. Mazumdar, the court should entertain Public Interest Litigation which raises question of enforcement of fundamental rights and other legal rights, which can be legitimately dealt with, by the High Courts under Article 226 or by the Supreme Court under Article 32 of the Constitution or by a Civil Court under Section 9, Code of Civil Procedure. But what would be within the scope of permissible Public Interest Litigations as laid down by the Supreme Court in a series of decisions, especially the Supreme Court decision referred to by him in the answer to the question number 17.

Three Judges of the High Court agree that at least some flexible parameters must be laid down by the Supreme Court at earliest because, they say, Public Interest Litigation is a weapon which has to be used with care and caution so that under the guise of public grievance judiciary is not led or tempted to encroach upon the sphere reserved by the Constitution to the executive and legislature.

The necessity for laying down the guidelines in Public Interest Litigation cases is stressed by Dr. B.M. Shukla also.

However, Mr. Girish Patel says that arena for
entertaining Public Interest Litigation cases should not be fixed. The court is doing it's job very well. It is only vested interests that are raising hue and cry against the movement. Infact, he says, since 1980 we have got a tool in the form of Public Interest Litigation to use law for enforcing law. With out any strategy to enforce the law and implement court's order, the same remains only on books. Thus, we should be thankful to judiciary for innovating for us a strategy to vindicate human rights of poor masses through the machinery of law.

Q.19. Since every complaint may not involve violation of fundamental rights, so for minor grievances should/can Public Interest Litigation lie before District Court?

To this, Justice S.B. Mazumdar says that so far as district courts are concerned, under the Civil Courts Act, original jurisdiction is conferred on Civil Judge (Junior Division) or Civil Judge (Senior Division). Only limited original jurisdiction is now with the District Courts, as under the Hindu Minority and Guardianship Act, etc. Therefore, minor cases, Public Interest Litigation can be filed before the Junior Division or Senior Division Court, as the case may be. If Government is concerned in, such cases will have to be filed before the Senior Division Court. Ex C.J. B.J. Diwan says that once care is taken that it is not a mere busy body, Public Interest Litigation can be taken up in any court and not merely by the High Courts and the Supreme Court. It is a misconception that
only High Courts and Supreme Court can entertain Public Interest Litigation. As a matter of fact, the necessity for Public Interest Litigation is at the lowest lever because the ordinary citizens whose problems are solved through Public Interest Litigation can only approach the lower courts either as a witnesses or as persons supporting Public Interest Litigation. And also costly machinery of litigation at higher court level can only be availed of in rare cases.

But, Ex Justice N.H.Bhatt says that in the present state of affairs District courts should not be invested with the powers to deal with such public grievances.

But, social activists answer to this question in affirmative.

20. In your opinion, what unique characteristics the Public Interest Litigation has acquired in India?

Justice S.B. Mazumdar opines that the Public Interest Litigation in the proper sense of the term has now come to stay in India in the light of various decision of the Supreme Court. And one of it's unique characteristics is that every down-trodden person can get justice if a public spirited citizen comes to his rescue. The Legal Aid Committee working in the Districts can also be of help in monitoring such litigations.

Dr. P.C. Juneja says the unique characteristic is that one has simply to inform the court of injustice being done. Rest the court takes upon itself to look after.
Q.21. While deciding the future of growth of Public Interest Litigation in India, should the growth of this movement be limited or unlimited?

Ex Justice N.H. Bhatt says role of Public Interest Litigation and it's characteristics are quite commendable. There is no need at present to put any sort of embargo on the future growth of this movement in India. Any attempt to do or undo will cause harm to the movement, let it go on as it is going ahead.

Justice S.B. Mazumdar says that the growth of such movement can be unlimited provided it on correct lines, but not, it if deviates from the permitted lines. This can be achieved, by the courts by objectively deciding such litigations or even by the concerned Legal Aid Committee, by proper scrutiny, before deciding to sponsor such litigations.

All the interviewees, invariably, agree that no limits should be put on the growth of Public Interest Litigation. Albeit there are some inherent limits of reasoning and logic. One limit is that if and when the court receives a letter, instead of treating the same as writ petition, it should first refer to the body attached to it for the purpose, as for instance, Public Interest Litigation Cell, and verify the facts and veracity of the letter, and then some advocate should be engaged to plead the case.

Q.22. In view of the administrative resistance to effectively enforce the directions or orders issued by the court in...
a few Public Interest Litigation cases, what measures, in your opinion, should be taken by the courts to have an effective enforcement of its orders and directions?

In view of Justice S.B. Mazumdar, so far as the enforcement of an order is concerned, the moment the court passes an order, whether in a private litigation or in a Public Interest Litigation, that order has to enforced and is enforced in accordance with the law through the execution processes. That apart, even under the Contempt of Courts Act, 1871, action can follow treating it as a civil contempt, for which suitable action can be taken against the contemners by instituting contempt proceedings in the High Court, and therefrom proper relief by way of purging of contempt, resulting in compliance of the order, can be obtained, apart from the contemner getting punishment suitably.

Ex Justice N.H. Bhatt says that apex courts are not powerless in enforcing compliance with the directions and orders issued by them. The most powerful weapon in the hands of judiciary is recourse to 'contempt' of court, and erring officials can be detained till the due compliance is effected. But, he personally feels, some additional, special powers must also be conferred on the High Courts and Supreme Court to get their orders translated into reality forthwith.

In view of the interviewees, in enforcing the directions or order of the court, the role and also the help of the government is very important. If the order is against the government and the
government does not obey, the court should initiate 'contempt' proceedings against the official responsible.

In this regard Ex Judge K.M. Satwani says that in some cases at least Public Interest Litigation should be utilized to make citizens duty-conscious. Article 51-A of Indian Constitution, introduced by Constitution (Forty-Second Amendment) Act, 1976, lays down the duties of every citizen of India. It is question for consideration, particularly for the responsible citizens of the country, as to how many of us even know about the existence of this provision in the Constitution laying down our duties. He goes further to suggest that while launching upon a case of Public Interest Litigation, it should be scrutinized whether the proposed beneficiaries have performed their duties in the matter before they seek the help of other to enforce their rights. As it is necessary to monitor sometimes relief granted by the court, it may also be necessary, at least in some cases to monitor the performance of the duty by every beneficiary of Public Interest Litigation. Every citizen should be compelled to respect provisions in Article 51-A of the Constitution. For instance, if persons residing in a locality seek relief in the nature of clearing the garbage and launch upon Public Interest Litigation against Corporation, the Public Interest Litigation authorities will also have to see whether the said persons do their duty and do not throw their own garbage on the road or any public place, and then call upon the Municipal authorities to clean the garbage.
Q.23. In your opinion, what are the inherent dangers to this strategy?

Justice S.B. Mazumdar fears that it may result into a great danger and may sometimes amount to blackmail. Hence, proper caution has to be exercised by the Board before sponsoring such litigation and also by those who adjudicate upon such litigation.

Ex Justice N.H. Bhatt says that he sees no dangers, latent or patent to the pursuit of this strategy.

Dr. P.C. Juneja says that there is only one danger of Public Interest Movement being misused for ulterior motives. But an alert judiciary will prevent this misuse.

Dr. S.C. Jain says that danger, if at all, could be upsetting of the delicate balance between the executive and the judiciary.

Q.24. In India, of late, there is spectacular growth of Public Interest Litigation, contrasting dramatically with decline of this movement in United States, which once stood as model for others to follow. What reasons, you'd attribute to the decline of Public Interest Litigation movement in United States?

Dr. P.C. Juneja says that Public Interest Movement in United States has not declined. It has now become just a routine and part of judicial process. In India also in the beginning there was much publicity of Public Interest Litigation as every
one saw it as a new thing and looked at it either with astonishment or with criticism. After the due course of time when Public Interest Litigation just becomes routine and part of judicial process, it will also appear as if it is declining, whereas actually, the talk, the appreciation or criticism, etc. will stop.

A Judge of the High Court says that it is due to 'abuse' that we are witnessing decline of the movement in United States. He says we are noticing the same in India also.

Ex C.J. B.J. Diwan says that in United States the movement has reached a 'plateau' and activists who have brought Public Interest Litigation to this level are themselves running short of ideas and getting set in mental ruts in a particular way.

Q.25. In India, so far, the Public Interest Litigation movement has, by & large, rendered remedial justice to the socially and economically disadvantaged people only. Should/can this movement also include, as in the United States, public participation in the decision-making process of all the social and political institutions—like legislature, judiciary, executive, administrative agencies, and other organizations of public character?

Justice S.B. Mazumdar say that so far as public participation in Governmental decision making process is concerned, as public in India is not mature enough, and also the social set up is not favorable, such an experiment may not be
successful here.

Dr. P.C. Juneja says that let this movement acquire maturity in this limited sense of rendering remedial justice to socially and economically disadvantaged persons, then we shall think of including public participation on the lines suggested in the question.

Q.26. In your opinion, what is the impact of this movement on democratic process?

Ex Justice N.H. Bhatt says that this movement has got a very salutary effect on people's awakening, which is called 'vigilance' in political science. Politically conscious people can raise institutions like this. Such movements in their turn accelerate public awakening. He says, today, even remote villagers, uneducated though, speak of filing a writ if executive ignores their grievances.

According to Justice S.B. Mazumdar, the impact of this movement in the democratic process cannot be in any way harmful as democratic practice is followed in political field, while this movement is the field of socio-legal justice to the needy and the down-trodden. There is no anti-thesis between the two processes, both aiming at the welfare of the concerned segments of the society.

Dr. S.C. Jain says that it is quite healthy, and may keep the Government on its toes, i.e., more alive to the day to day concerns of the public.
In final analysis, all the interviewees say that it is good and it helping the poor realize their rights and stand on their own foot. Democratic process improved when everybody is aware of his rights and everybody is secure against exploitation and is equal in fact.

Q.27. How should public interest lawyer structure his efforts so that he, both attracts individual clients and also helps the poor people organize themselves?

Justice S.B. Mazumdar suggests that Public Interest lawyer has to show special zeal so that he may cater to the individual clients, without being in any way obstructed in his efforts in helping Public Interest litigant. There cannot be any conflict of interests in such efforts. It is ultimately left to the concerned lawyer to mould his efforts accordingly. Moreover, the Public Interest Lawyer works due to his philanthropy, and he has no apprehension of losing his private clients. In the absence of such a bent of mind, perhaps, he may not really qualify to be called a genuine Public Interest lawyer. There is no real conflict between the two, and hence the need for special effort to attract both is ruled out.

Ex Justice N.H. Bhatt says the method and manner talked in this question is more a question of art than of a theory. In his view, a conscientious and service minded lawyer can flourish even in his individual practice and simultaneously have the divine pleasure in awakening 'right' conscientiousness amongst the
proverbial downtrodden poor people. What is needed for such a lawyer is to be true to himself, true to the client, and true to the society in which he lives, and which has imparted him his social and economic status.

Mr. M.D. Pancholi says that if an advocate identifies the problems of the poor and organizes them to help themselves and he also initiates Public Interest Litigation to enforce their rights, it will give him moral satisfaction, besides he will also get publicity with the result other clients will automatically come to him.

Dr. S.C. Jain says that this would depend on the individual lawyer's own load of work, the priority he gives to Public Interest Litigation and whether he is prepared to sacrifice his time and money for the sake of public interest causes. There is a long vacation period in court during which a lot of Public Interest work could be done if the causes are identified properly and well in time.

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