CHAPTER II

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CHAPTER - II

TRADITIONAL DOCTRINE OF 'LOCUS STANDI' GIVING WAY TO NEW NEEDS AND GOALS

A. INTRODUCTION

In this chapter of the study, the present researcher is trying to elucidate how doctrine of 'locus standi' has undergone transformation resulting in birth of Public Interest Litigation, both in India and United States. Herein, there will be a comparative study between India and United States. Therefore, it became necessary, firstly, to describe - what traditional doctrine of 'locus standi' is? The what ends the concept of 'locus standi' is meant to subserve? And what is the policy behind the doctrine? Naturally, the question would arise why did the judiciary, both in India and United States felt the need of liberalizing the doctrine? The present researcher will show the position of the doctrine in the light of experience of United States through critical case analysis. How the United States courts reacted to environmental and consumer protection cases?

Then, there will be discussion on what is the position of doctrine of 'locus standi' in the light of Indian experience going through again critical case analysis. What is the position under the Indian Constitution and Code of Civil Procedure, 1908? Thereafter, the evolution of the doctrine, in India, will be
divided into four parts, viz., (i). Action by any person; (ii). Action by member of class or residents; (iii) Action by rate payers and tax payers; and (iv). Standing under the Statute. Then, there will be an analysis of Supreme Court's bold experiments with the doctrine of 'locus standi'. Here, there will be comparative analysis of experience of Indian Supreme Court and United States Supreme Court with the doctrine. Thereafter there will be concluding observations.

Today, it is unrealistic to say that person looks to law solely to protect his interests in a narrow sense. There is wider breadth of interests that today's citizen expects the law to protect, and he expects from the court, where necessary, to provide that protection. He is not interested in procedural niceties of law, rather he is interested in its results.

Consequently, rule of locus standi, the hangover of the olden order, obstructive of justice dimension of democracy -- social, economic and political -- needed liberalization. No democratic country with democratic polity and socialistic axiology can accept the theory of individualized cause of action. It is aptly commented by Justice Krishna Iyer that:

"Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good cause is turned away, merely because he is not sufficiently affected personally, that means government agency is left free to violate law, and that is contrary to
public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare case where they wish to sue merely out of public spirit, why should they be discouraged”.

Therefore, herein below the present researcher is trying to show how the doctrine of ‘locus standi’ was transformed gradually both in the United States and India.

B. WHAT IS TRADITIONAL DOCTRINE OF ‘LOCUS STANDI’?

To a common man, the very existence of the court indicates that anyone can make use of it for dispute resolution. If A and B are private parties, and A hurts B, then in that case B has standing to get a determination of the legality of A’s action. The question is why should not, then, the law be the same, whether A is the government, an agency, an officer, or a private party, and whether the injury is to the B’s person, his physical property or his intangible interests? It is too simplistic to say that injury in fact is enough for standing. The question about the standing is the determination of what interests deserve

2. In United States, the rule of ‘locus standi’ is called ‘standing’. 
protection against and injury, and what should be enough to constitute an injury? Whether certain interests deserve legal protection depends upon whether they are sufficiently significant, and whether good policy calls for protecting them or denying them the protection.

The courts have enunciated various rules to confine the right to access to only those persons possessing certain interest in the issue. Doctrine of locus standi has been one of the major imbediments in the way of access to justice as far as poor is concerned.

The concept of locus standi is inherited from Anglo-saxon system of jurisprudence. It denotes the existence of a right of person to have a court enter upon an adjudication of an issue brought before that court by proceedings instigated by the person. According to this doctrine it is only that person can go to the court for the judicial redress who has suffered or is likely to suffer a legal injury by reason of actual or threatened violation of legal right or legally protected interest by the impugned action of the state or public authority or any other person. In other words, the court, while determining the question whether particular plaintiff has locus standi, endeavours to determine if a particular plaintiff has sufficient interest in the case to warrant judicial intrusion. Such person who suffers legal injury is called 'person aggrieved'.

The problem of locus standi or standing to sue or initiate proceedings in a court of law assumed great importance in public law litigation in the wake of state taking on ever greater role in socio-economic fields with its concomitant duties and obligations of public nature. Traditional private law litigation concerned with private rights arising out of property, contract and tort, here there is no big problem because the person who has suffered a specific legal injury by reason of actual or threatened violation of his legal rights or legally protected interest can knock at the door of the court. The problem arises where a public wrong is committed in the sense that a law is enacted which is of doubtful constitutional validity, or an administrative act of omission or commission is unlawful and/or productive of public injury or mischief. Should such illegality or wrong be allowed to persist? If not, then who should have the legal capacity to challenge such an act in the court of law? This question is debatable, and is discussed hereinafter.

In India, this question has assumed great importance in the light of Supreme Court cases as Municipal Corporation, Ratlam v Vardhichand. Fertilizer Corporation Kamgar Union v Union of India, and in particular S.P.Gupta v Union of India.

5. AIR 1980 SC 1622.
7. AIR 1982 SC 149.
C. WHAT ENDS THE CONCEPT OF 'LOCUS STANDI' IS MEANT TO SUBSERVE?

The answer to the above-stated question is that — **firstly** the locus standi provide 'access screening' by weeding out the unnecessary flow of litigation to the courts. This serves the public interest in that the judicial apparatus is not unnecessarily resorted to. **Secondly**, locus standi serves the interest of the defendant also in that he is not unnecessarily forced to incur the expense, trouble and other disadvantages involved in a law suit. **Thirdly**, locus standi protects the status quo by reducing the challenges that may be made to it, and to its institutions. **Fourthly**, it restricts by its operation those who may 'stand' to challenge administrative actions. **Fifthly**, it takes out of the cognizance of the courts the issues which are generally regarded as falling within the domain of the legislative and executive instrumentalities of the state. And **Lastly**, it regulates the exercise of judicial functions by excluding from the scrutiny of courts 'abstract questions' or questions involving no 'concrete and controversial issues'.

D. WHAT IS THE POLICY BEHIND DOCTRINE OF 'LOCUS STANDI'?

The rule of locus standi is based on sound policy. That

policy is that judicial time as well as energy ought not to be wasted over hypothetical or abstract questions or at the instance of a professional litigant or busy body. According to S.A.de Smith:

"All developed legal systems have had to face the problem of adjusting conflicts between two aspects of public interest -- the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the courts in matters that do not concern him."

The traditional doctrine of locus standi is a rule of ancient vintage and it arose during an era when private law dominated the legal scene. The doctrine is an effort to distinguish a threshold procedural requirements for the actual merits or substantive issues of the case. The courts attempted to articulate standards to evaluate the claims of standing. In a typical case of private law litigation the judicial redress is sought to vindicate private rights whether personal or proprietary. The judicial redress is sought by a person in whom

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legal right is vested. And some legal injury is caused to the person or the property of the plaintiff who brings the action.

And in case of public participation and the recognition of the 'public interest', there are two notions which are the foundations for different approaches of judicial review, thus having a direct bearing on the determination of a locus standi question. The first notion is 'Contentieux objectif', wherein the judiciary assumes the role of protector of the public interest by control of the executive and legislative functions of the government. In such an approach the emphasis is on bringing the matters under review. Accordingly, the locus standi would be generous as to the categories of persons that could participate in the action. The examples of this 'objectif' approach are 'Action popularia' of historical Roman law; the 'Public Interest Litigation' in India; and to a lesser extent the 'zone of interest' concept in the United States.

The second notion is 'Contentieux subjectif' wherein there is an interference by the executive and legislative branches of the government with 'personal' individual rights. Here protection of public interest is dependent on the encroachment of individual rights. The locus standi rules would, therefore, confine judicial review to persons particularly affected by the government actions. The role of Attorney-general to uphold the public interest when there is no corresponding interest conferred on a private individual, gives theoretical support to this 'subjectif' system.
As is always the case, there are arguments in support of both the approaches, viz., 'Contentieux objectif' and 'Contentieux subjectif'. Consequently, all common law countries, have to some extent, a mixture of legislations or jurisprudence reflecting both. In the last twenty years, however, there is an apparent shift from 'subjectif' to 'objectif' approach in United States and India. And for past fifteen years, there has been uniform 'subjectif' approach.

E. WHY DID JUDICIARY FEEL THE NEED TO LIBERALIZE THE DOCTRINE OF 'LOCUS STANDI'?

With the advent of welfare state, radical changes are taking place in constitutional process. Traditionally, the courts of law were considered a heaven for rich persons to vindicate their personal and proprietary rights. But millions of people in India, steeped in poverty could not afford to go near and knock at the doors of law courts. To those poor masses justice was a far off dream.

This unhappy situation is now being remedied by the higher courts in the land by liberalizing the technical rules of procedure and evolving a new mechanism of public interest litigation. The down-trodden masses in India now have a hope in
the twilight of public interest litigation. The prisoners are getting out of their woes, the bonded labour is becoming free, the worker is receiving more for the sweat of his labour, protective homes getting new light and pavement dwellers achieving more rights.

Earlier, the courts were the traditional forums -- for resolving disputes, and redressing grievances between individuals.


individuals. With the advent of welfarism, bidding farewell to laissez faire, many affairs originally regarded as belonging entirely to the individual domain, and once thought of as inappropriate for state action, have become matters of public concern and intervention. The transformation of the ever increasing functions and powers of state agencies and authorities in resolving disputes among individuals and between individuals and the state, had its impact upon the legal system as well as on the concept of access to justice. The state has now become not only a provider of welfare services, a regulator and an entrepreneur, but also an umpire in protecting the rule of law.

In the welfare state, the private citizen is forever encountering public officials of many kinds, as regulators, dispensers of social service, managers of state operated enterprise. It is the task of rule of law to see to it that these multiple and diverse encounters between the two are fair, just and free from arbitrariness. As the custodian of public interest and individual liberties and dispenser of justice, the higher judiciary has attained a greater role. In supervising the functions of the state and state agencies, the frontiers of higher judiciary has widened its jurisdiction.

15.Friedmann, The STate and the Rule of Law in a Mixed Economy (1971) at p. 3.
The problem of locus standi or standing or initiate proceedings in a court of law has assumed great importance in public law litigation in the wake of the state taking over an ever greater role in socio-economic fields with its concomitment duties and obligations of a public nature.

In contemporary society, because of the rise of welfare state government and unprecedented dimension of class conflicts, human actions are no longer merely individualistic, but have assumed collective character. Now they do not refer to one or a few individuals alone, but they refer to groups and class of people. Even basic rights and duties are no longer exclusively the individual rights and duties of olden days, inspired by natural law concepts, rather they are now meta-individual, collective, social rights and duties of associations, communities and classes.

That does not, however, mean that individual rights no longer have a vital place in our society. But what present researcher is suggesting is that in today's set up, the individual rights are practically meaningless unless they are accompanied by the social rights necessary to make them effective, and in reality accessible to all.

Thus, in United States, the modern Bill of Rights, and in

\[16\] Mauro Cappelletti, ed., *Vindicating the Public Interest*, vol. 3, at p. 517.
India, the fundamental rights, would protect not only the traditional individual rights — which essentially required non-interference of governmental authorities with private sphere of the individual — but also the new social rights which essentially require active intervention by the state and other public entities. The addition of new ‘social’ and ‘economic’ rights to the traditional civil rights is particularly necessary in our time. Among the new social rights are — the right to work and obtain employment; the right to health, material security and repose; leisure for children, mothers and the old; the right of adequate means of support of those who cannot work; right to education; freedom from indigence, ignorance and discrimination; the right to a healthy environment; the right to social security; right to protection from massive financial, commercial, corporate, or even governmental oppressions and frauds.

Infact, more and more complexity of modern society generates situations in which a single human action can be beneficial or prejudicial to a large number of people, thus making the traditional scheme -- merely a two-party affair-- entirely inadequate. For instance, due to false information given by large corporation, the injury may be caused to all who buy shares in that corporation; an anti-trust violation may damage all who are affected by the unfair competition; the infringement of a collective labour agreement by an employer ———

violates the rights of all his employees; the imposition of an unconstitutional tax or the illegal discontinuance of a social benefit may be detrimental to large communities of citizens; the discharge of waste into a lake or river harms all who want to enjoy its clean waters; defective or unhealthy packaging may cause damage to all consumers of these goods. The possibility of such mass injuries represents a characteristic feature of our epoch. As a rule, the individual alone cannot protect himself so efficiently against such injuries. And even if he has a legal cause of action, other factors may preclude judicial relief — as his individual right may be too 'diffuse' of too 'small' to prompt him to seek its protection, or excessive costs may obstruct his legal action in court, or he may fear the powerful violator, or he may even be unaware of his rights.

Thus, it is necessary to abandon the individualistic, essentially *laissez faire*, nineteenth century concept of litigation -- a concept which awards the right, if at all, solely to the subject personally aggrieved in his own narrowly defined individual rights. The new social, collective, 'diffuse' rights and interests can be protected only by new social, collective, 'diffuse' remedies and procedures. Infact, the quest for these new remedies and procedures is the most fascinating feature in the modern evolution of judicial law.

The growth of modern welfare government, the parallel growth of socio-economic interdependence of groups, categories and classes of citizens and resultant emergence of an
environment in which acts or negligence of one person or agency have effects on persons far removed, thus calls for a corresponding growth of the task of 'judicial protection'. We have entered into new age, where collective rights, meta-individual rights have become more important. Albeit, newly emerged meta-individual, 'diffuse' rights and interests represent an undeniable and growing reality of all modern societies, they still remain, to a large extent, alien to the concepts of judicial process. To begin with, they are the rights and interests for which — who has 'standing' to sue for their defense is a difficult question.

The important issue here is -- Whether the rule of standing should be liberalised in order to protect the weaker sections of the society, to conserve public resources, to direct, if necessary, to correct, the exercise of public power and other matters which may come under the area of public interest litigation or social action litigation.

The traditional legal doctrine has sharply distinguished substantive law and rights into -- 'private' and 'public'. 'Private' rights are those rights which 'belong' to private individuals. Whereas 'public' rights are those rights which 'belong' to general public -- the 'populus' represented by state or 'res judicata'.

Consequently, the traditional doctrine of standing, 'legitimation ad causam', attributes the right to sue either to the private individual who 'hold' the right which is in need of
judicial protection. Or in the case of public rights, right to sue is given to the state itself, which sues in the court through its organs, usually, in France, it is ministere public, in America, the American federal and state attorneys general and district attorneys, who act as the general representative of the state in litigation.

Thus, the basic rule in civil litigation is that standing to sue belongs exclusively to the private person who is, or is the legal representative of the 'holder' of the right in issue, whereas in criminal litigation, where public (state) is always at stake, the 'monopoly' to sue belongs to the ministere public. Sometimes, a 'public' right can be subject matter of civil litigation also, as is the case in incompetence and certain matrimonial proceedings. In these exceptional cases, the ministere public also has the standing to concurrence or intervene in civil litigation, since the state is viewed as the 'owner' or one of the 'owners' of the limited right.

As today's reality is much more complex and pluralistic, therefore the abstract dichotomy cannot prevail. Between the individual and the state there are numerous groups, communities and collective, which forcefully claim the enjoyment and judicial protection of certain rights which can neither be classified as 'public' nor as 'private' in the traditional sense.

As a product of modern societies, new rights and

18. For example, the guardian of a minor or incompetent person.
legitimate interests have emerged, which although not 'public' — that belonging to the state — are collective or 'diffuse' in the sense that either they do not 'belong' to any single individual in particular, or that individual 'own' only an insignificant portion of them. For instance, who is the 'owner' of the air that we breathe? The traditional concept of standing to sue as the monopoly of the sole person or persons to whom the substantive right in issue 'belongs' appears inapplicable to those 'rights without a holder' — which belong, at one and the same time to every one and yet to no one. Of course, 'rights without a holder' should be distinguished from those rights which do not belong to specific individuals, but which are 'too small' to prompt their individual holders to act for their protection, as far instance, many consumer and social rights. So even though 'rights which are too small' to prompt their individual holder to act for their protection in the court of law, and the 'rights which have no holder' fall under two different categories, still for the purpose of present study, they can be considered together because they present similar problems in so far as their effective enforcement is concerned.

The rigorous application of traditional concept of locus standi will deny 'justiciability' of these 'diffused' rights.

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19. Of course, the connection between 'standing' and 'justiciability' is widely recognized, even though the concepts are not inter-changeable. The term 'justiciability' is used here in the general sense of 'access to judicial protection'.
It is the struggle for the protection of these new 'diffused' rights - for instance, for the conservation of clean air - that represents major challenge of all legal systems in developing, industrial societies. The courts in many countries, including the United States Supreme Court, in its recent crusade against public interest litigation, to a large extent still deny justiciability to collective and diffused interests.

And to deny justiciability of collective and diffuse interest is the logical and rigorous consequence of concept of locus standi which attributes 'right of action' only to the person who is personally aggrieved. Such denial is offensive to the vital values and exigencies of our epoch because the protection of diffuse rights has become crucially important for

20. For instance, Warth v Seldin, 422 US 490 (1975); Schelesinger v Reservists to Stop the War, 418 US 208 (1974); U.S. v Richardson, 418 US 166, 177-80 (1974). In fact, what is striking in these decisions is not so much the denial of standing to taxpayers and citizens, but the strong language used, which indicates that the liberalisation of standing requirement in such previous cases as U.S. v SCRAP, 412 US 669 (1973), is not a peacefully accepted development. Indeed, in the later decisions such liberalisation is viewed as an unwarranted expansion of judicial power.
the progress, perhaps even the survival of humankind.

It will be appropriate here to cite the powerful dissent of Justice Douglas in *Warth v Seldin*:

"Standing has become a barrier to access to the federal courts, just as 'the political question' was in earlier decades...[c]ases such as this one reflect festering sores in our society; and the American dream teaches that if one reaches high enough and persists, there is a forum where justice is dispensed. I would lower the technical barriers and let the courts serve that ancient need. They can in time be curbed by legislative or constitutional restraints if an emergency arises."

It is humbly submitted that since there is the need to mitigate the rigours of poverty and to reach social justice to the large masses of people, there is the need to liberalize the doctrine of standing where a legal wrong is done, or a legal injury is caused to a person/s who because of their indigence cannot approach the court of law to seek justice. The standing should be given to any 'public spirited person' or 'social action group' to file an action on behalf of those poor and disadvantaged sections in our society in order to enable them to enforce their rights and entitlements.

Courts in several countries, including India, United States, Canada, United Kingdom, Australia, have extended its protective umbrella over these 'diffuse' rights by liberalizing the arciac standards of 'locus standi'. The courts in India have excelled these countries and are allowing 'third party intervention' on behalf of the poor to vindicate their rights, which we will be shown in following part of this chapter through case analysis.

F. POSITION OF 'STANDING' IN THE LIGHT OF AMERICAN EXPERIENCE

= A CASE STUDY

In United States, the question of locus standi is governed by 'cases' and 'controversies' under Article III of the United States Constitution. By 'cases' and 'controversies' it is meant that the claims and actions of the litigants brought for determination, for the protection or enforcement of rights or prevention, redress or punishment of wrongs. Adverseness of parties is the sine qua non of this parties. Courts are therefore concerned with parties before them, the claims they make and rights which they assert.

In its constitutional dimensions, the 'standing' imparts justiciability whether the plaintiff has made out a 'case or

controversy' between himself and the defendant within the meaning of Article III. This is the threshold question in every federal case determining the power of the court to entertain the suit. As an aspect of justiciability, the question of standing is: Whether the plaintiff has alleged such a stake in the outcome of the controversy as to warrant his invocation of federal court jurisdictions and to justify exercise of court's remedial powers on his behalf.

The judicial power under Article III exists only to redress or otherwise protect against injury to complaining party, even though the court's judgement may benefit others collaterally. A federal court's jurisdiction, therefore, could be invoked if the plaintiff himself has suffered some threatened or actual injury resulting from putatively illegal action.

In Perkins v Lukens Steel Co. the steel companies failed to show any injury or threat to their own rights as distinguished from public rights. Thus, they were denied the standing to challenge the Wage Determination Order.

In L. Singer & Sons v Union Pacific R. Co. both - the city engaged in constructing new market facilities and the private operators of market - were denied standing to secure injunctions against unlawful construction of rail extension to serve a competitor because they suffered no legal injury.

25. 311 US 295(1940).
The traditional view was expressed in *Tennessee Electric Power Company v Tennessee Valley Authority* wherein the defendants sought to implement a power scheme for the area. The plaintiffs were public utilities engaged in the generation of electricity. They sought an injunction to restrain the defendants on the ground that impugned scheme would cause them economic loss because of illegal competition. The preliminary issue was - whether the plaintiffs had the 'standing' to bring the action. Justice Roberts speaking for the court held that the plaintiff could not seek judicial review of an executive act unless the right invaded is a legal right, one of property, against tortious invasion, or one founded on a statute which confers privileges.

It was further observed that the allowance or prohibition of competition with utilities was a matter of state policy and the declaration of a policy creates no vested right to its maintenance in utilities. The court opined that the local franchises conferred no contractual or property right to be free of competition.

Further, the extent and the nature of the injury is insisted upon by the courts in determining the question of locus standi. The injury suffered by the person must be direct, distinct and palpable. It must be one suffered to an extent or of

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26 306 US 118(1939).

a character different from an average member of the public. In other words, he who sought relief had to show that he is more particularly affected than the other people. Also the injury suffered must be substantial, and generally of a physical or pecuniary nature.

In *Frothingam v Mellon* a taxpayer attacked the constitutional validity of Maternity Act, 1961 which established a federal program of grants to those states which would undertake the program to reduce maternal and infant mortality. She complained that the result of alleged unconstitutional enactment would increase her future federal tax liability and

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28. *Frothingham v Mellon*, 262 US 447(1923). This ruling became popular as 'Frothingham barrier' which stood for 45 years in the United States as impenetrable. It was over-ruled by the court in *Flast v Cohen*, 392 US 83(1968), which liberalised the rule of locus standi.

29. *Anderson v Commonwealth* (1932) 47 Common Law Reports at p.50. In *Baker v Carr* 396 US 186(1962), the court enunciated a test, viz., whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. *Ibid.* at p. 204.

30. 262 US 447(1922).
thereby her property without 'due process of law'. The court held that the tax-payer had failed to allege any type of ‘direct injury’ necessary to confer standing on her. Court observed that to have standing the challenger must show that he or she has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement and not merely that he suffers in some infinite way in common with the people generally.  

This strictness of doctrine of locus standi was assuaged as the attitude of the judiciary became sympathetic and receptive to the demands of changed social, economic and political environment. The first such step in liberalizing this notion was taken by the courts in hearing an average member of a class that as a whole was affected by the impugned act. For instance, the court allowed taxpayer and ratepayer suits even though the plaintiff did not allege that he was sustaining an injury greater than the average taxpayer. For instance, in *Flast v Cohen*, a tax payer was given standing to complain against the spending of Federal funds on religious schools. In this case, the court expanded the scope of 'standing' and allowed a taxpayer to challenge the congressional action under taxing and spending clause, alleged to be in derogation of the constitutional restrictions on the taxing and spending power.

The next step towards liberalisation was taken to enlarge the scope and nature of the legal rights and the injuries with a

31. Supra note 30, at p. 488.

32. 392 US 83(1968).
view to accommodate the emerging new rights and interests. The case which drastically changed the law of 'standing' is Association of Processing Service Organization v Camp, popularly known as Data Processing case, wherein the question was whether sellers of Data processing services had the 'standing' to challenge a ruling of controller of currency allowing national Banks to provide such services - that as an incident of their banking services, national banks make Data processing services available to other banks and to bank customers. The Supreme Court rejected the 'legal interest theory' and held that 'standing' involves a question whether interest sought to be protected by the complainant is arguably within the 'zone of interests' to be protected or regulated by statute or constitutional guarantee. The interest, at times, may reflect aesthetic, conservational and recreational, as well as, economic values. 'Standing' may stem from non-economic values or economic injury. The existence or non-existence of legal interest was held to be different from the


34. Supra note 27. In this case it was held that unless the right invaded was a legal right, one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege, one was without 'standing'.

35. Supra note 33, at p. 153.
problem of standing. Instead of 'legal interest', the test of 'injury in fact' was developed. This test was satisfied by the injury from new competition in which data processing was caught.

The decision in Data Processing case is regarded as locus classicus for the accommodation of new social, public and diffuse rights and interests under the umbrella of judicial protection. Justice Douglas speaking for the court laid down certain tests. These tests are: Firstly, whether the plaintiff alleges that the challenged action has caused him 'injury in fact, economic or otherwise'. Secondly, whether the interest for which the complainant seeks protection is arguably within the 'zone of interests' to be protected by the statute or the constitutional guarantee in question. And thirdly, the interests sought to be protected may, at times, reflect aesthetic, conservational, and recreational as well as economic values.

This case has replaced the 'legal injury' test with two new tests. The first test specified the necessity of an 'injury

36. In Planned Parenthood v Danforth, 428 US 52(1976), the court upheld the 'standing' of two physicians without mentioning the principle, and what injury did they suffer. In fact, they asserted the 'right of third party', thus further liberalizing the 'standing'.

37. Supra note 33 at p. 154.
in fact, economic or otherwise.' The 'otherwise' has been interpreted to include 'aesthetic, conservational and recreational values'.

The 'injury in fact' test has salutary effects in that it tends to give effect to the simple and natural proposition that one who is hurt in fact should have standing to sue. But the concept is not free from difficulty. Though, reasonably clear in the core meaning, it is a little uncertain around the fringes. Should a trifling little injury suffice for standing? If even an aesthetic interest is enough, what of the broad interest of a civil libertarian in seeking the assurance that justice is done to landless labourers, brick-kiln workers, tribals in forest or other socially and economically disadvantaged persons with which he has no special relationships.

The second test, i.e., 'zone of interest' test contains an important element, viz., where the legislature enacts a statute, it expects that the statute must be implemented. In other words, by the very fact of its enactment, the interest within the purview of the statute become legally protected interests. Further, by that very fact, individual or groups complaining of its violation acquire standing to move the court to ensure the

implementation of the statute. However, Kenneth Culp Davis has cast doubt on the validity of second test. He has favored the first test of *injury in fact*. He says that the statutes frequently make no reference to what interests are to be regulated or protected and when they do refer to, the reference is often not clear. Therefore, he concludes that validity of the second test is not beyond doubt.

It is humbly submitted, that it is difficult to imagine that the legislature, while enacting the statutes yet intended that there be no way to ensure that they are implemented. It is well known fact that the modern collective interests are too 'diffuse' to be sufficiently 'felt' and 'taken seriously' by the public administration.

The next stage in the evolution of liberalisation of the doctrine of 'standing' was the expansion expression *person aggrieved* i.e. those able to vindicate the 'public interest'. The concept of those who are able to vindicate the 'public interest' needed to be expanded in order to adequately consider the 'public interest' claims in today's legal system. In other words, now the focal point was expression *person aggrieved*.


Traditionally, 'standing' was accorded to person having suffered 'legal grievance'. That is to say, 'person aggrieved' is a person against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something, or wrongfully affected his titled to something. However, gradually there was expansion of the expression 'person aggrieved'. The requirement of 'legal grievance' was gradually changed into one of 'genuine interest.' In Data Processing case, Justice Douglas observed, "the legal interest est goes to the merits. The question of standing is different." In Office of Communications of the United Church of Christ v F.C.C. while according standing to the television viewers, the court observed that since the concept of standing is one designed to assure that only person with a genuine and legitimate interest can participate in proceedings before the court, therefore, standing is to be guaranteed to those with such an obvious and acute concern as the listener concern.

41. Ex parte Sidebotham (1880) 14 Chancery Division 458, at p.465.
42. 397 US 150(1970), at p. 188.
44. Ibid. at p. 333.
Thereafter, the requirement of 'genuine interest' in the matter was replaced by only a 'special' or even 'sufficient' interest in the matter. In Data Processing case, Justice Brennan had observed that the issue is not whether the plaintiff had a legally protected interest, which action of the defendant has invaded. But the issue is whether the person whose standing is in dispute, is a property party to request an adjudication of particular matter by the court. It can, therefore, be argued that a plaintiff claiming the protection of a right, privilege, immunity or power is simply less important than the need for the courts to give 'just' treatment. Here 'sufficient interest' is analogous to the concept of 'zone of interest'. Also 'sufficient interest' does not appear to require a finding other than 'injury in fact', and the injury may in fact be minimal. The question of injury need not be substantial. As in Baker v Carr a fraction of vote was considered sufficient to confer standing.

Thus, there has been fading away of the notion that there has to be a legal interest in order to establish standing of the plaintiff. Instead, the more liberal standard of an 'injury of fact' came in place of 'legal interest'. Now, a provable injury to 'any' interest is sufficient. It is not necessary pre-requisite for standing that there was previously existing legal right. In the absence of any legislative exception to this new doctrine, there has to be a judicial determination of the question — whether

45. 369 US 186(1962).
the interest asserted is, in the circumstances of the case, one deserving of judicial protection. In *Sierra Club v Morton* it was laid down that the fact that particular environmental interests are shared by many rather than a few, does not make them less deserving of legal protection through the judicial process. Aesthetic and environmental well-being, like economic well-being, is important.

Thus, the fact that the interests are shared by others is no ground to disentitle them to seek redress through judicial process.

**ENVIRONMENTAL AND CONSUMER PROTECTION IN UNITED STATES**

Even though, 'standing' in environmental protection cases need special treatment because it is the basic right of every single member of the society to a healthy, peaceful, and aesthetic environment, still all people, whatever be their class, affected by environmental degradation, with water and environmental pollution, with product safety, with consumer protection, are denied their interests in all key decisions. In *Sierra Club v Morton* the Sierra club brought an action against the construction of large recreational

46.405 US 727(1972).

47.Ibid.
project, viz., Sky project, in the Sequoia National Forest on the ground that it has special interest in the conservation of the national parks and scenery. So the grant of license for commercial exploitation of 'mineral king valley', a national games resort was challenged by a conservative club alleging its sound interest in the conservation and sound maintenance of national parks, games, refuges, and forests, and prayed for injunction. The District Court granted the injunction. Court of Appeal reversed the decision, and Supreme Court affirmed the decision of the Court of Appeal. The court held that since Sierra club had failed to allege that it or its members were adversely affected by the proposed action, it had no locus standi to file the petition. The court ruled that the party seeking review must be among the injured having a direct stake in the controversy. The Supreme Court did not show any keenness in maintaining the ecological balance in nature and aesthetic and physical balance in humanity. Justice Blackmun, in his dissenting judgement, observed that traditional concept of standing is expanded imaginatively to enable an organization like Sierra club which is possessed of pertinent bonafide and recognized attributes and purposes in the area of environment to litigate environmental issues.

It was because of the caution laid down in Sierra club

48. Supra note 46 at p. 745.
case that the judicial process is saved from being used as a vehicle for vindication of value interests of by-standers. The court had held that as the club had not claimed any adverse effects to its members, the action would fail at threshold.

But when the requirement of injury was met in United States v SCRAP the court willingly granted 'standing' to environmental group formed by law students contending that rail road rates increase, permitted by Inter-state Commerce Commission would adversely affect the shipment of the garbage which would disturb the environmental balance. The court of Columbia granted them 'standing' on the ground that the members of SCRAP used the natural resources around Washington, enjoyment of which would be dampened by the deleterious environmental injury. The court distinguished the SCRAP case from Sierra club and observed that in SCRAP the action was not confined to a limited group of persons but possessed a wide geographical coverage. Also in SCRAP, the alleged injury to the environment was far less direct and perceptible. Rather the injury was general and tedious to reach from the challenged rate surcharge.

The decision in both the above-stated cases show that the pleadings must be something more than an ingenious exercise in the conceivable. The decision in SCRAP case further liberalised the standing. The court, however, affirmed the proposition that 'standing' is not to be denied simply because many people suffer the same injury. That means even a single person can raise his

voice against pollution due to smoke, noise, or industrial waste polluting the river water.

Similarly, in *Citizen's Committee for Hudson Valley v Volpe* a national conservation organisation was given 'standing' to challenge the construction of express ways under the River and Harbour Statute. In *United States v Public Utilities Commission* a consumer was held to be a 'person aggrieved' within the statutory terms and legally protected interest was not insisted upon in giving him 'standing'. In *Office of Communication v Federal Communication* the court recognized the 'standing' of representatives of the television viewers challenging the discriminatory action taken against blacks by FCC in denying them the opportunity for fair programming.

Whereas, in certain cases the 'standing' is expressly provided by the statute to ensure that Government officials obey the law. As for instance, the Clean Air Act provides:

"Any person may commence a civil action on his own behalf against the administrator (of Environmental Protection Agency) where there is alleged failure of Administrator to perform and act or duty which is not discretionary."

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51. 151 F. 2d 609(1945).
52. 359 F. 2d 994(DC Cir 1966)
54. Ibid.
It is humbly submitted that under the new liberal standards of 'standing' there is also some risk of abuse of Public Interest Litigation. A 'public interest group' claiming that is at best an abstract injury, an aesthetic damage to the environment, can press its policy views under the guise of a law suit and influence the course of public policy through judicial resolution.

There has been judicial experimentation and consequent evolution in the area of consumer protection also. In a complex economy, the acts and omissions of one may produce a series of beneficial or prejudicial effects over a large number of persons through numerous channels. Likewise, the relationship between the producer and the ultimate consumer, which is always indirect, also has the same consequence. The claim of consumer suffering an injury by the product of manufacturer is usually too small to be noticed. Besides, the un-noticeable status of the consumer also gives him no authoritative voice against the manufacturer who has violated his interest.

In case of environmental and consumer protection cases the rationale is that by the very fact of enactment of legislations in respect of environmental and consumer protection, it becomes a legally protected interest. And by that very fact the individual or groups alleging its violation acquire standing to move the court. The reason for this rationale is that it cannot be assumed that the Congress enacted these laws, and yet intended that there be no way to ensure that they are implemented. Schwartz points
out that such interests have received importance as a new perspective from the growing movement towards so-called 'participatory' democracy. He says that the legal system, like other institutions of contemporary society, is seeking to give the citizens a means of making its impact felt more directly on the governmental process.

Thus, in United States v Public Utilities Commission a consumer was held to be a 'person aggrieved' within statutory terms and a 'legally protected interest' was not insisted upon by the court.

Again, the emerging liberal trend was given impetus in Office of Communication v Federal Communications Commission where the court recognized standing of the representative of television viewers. The petitioners had challenged the discriminatory action taken against blacks by F.C.C. in denying them an opportunity for fair programming. Justice Berger emphasized, "right adherence to the requirement of direct economic injury in the commercial sense is no longer the touchstone. Further, there is no reason to exclude those with such an obvious and acute concern, as the listening audience."

But of late, there has been a regression in this dynamic liberal trend in the United States. Certain cases in 1970's show

55. Supra note 40.
56. 151 F. 2d 609(1945).
57. 359 F. 2d 994(D.C.Cir. 1966).
58. Ibid. at p. 1002.
a retreat in the liberalising trend, which is discernible in *United States v SCRAP* and other cases. In its recent crusade against the expansion of judicial power for Public Interest Litigation, the United States Supreme Court has denied access to collective, 'diffuse' interests, thus arresting the further development in public interest actions.

In *United States v Richardson* a federal taxpayer challenged certain provisions concerning secrecy of expenditure under Central Intelligence Act as being violative of Article 1 section 9 clause 7 of the United States Constitution which provides that a regular statement of accounts of receipts and expenditure of all public money shall be published from time to time. The plaintiff contended that he had time and again requested the authority to supply the statement, but of not avail. The plaintiff was refused 'standing' on the ground that there was no nexus between the status of tax payer and the claimed failure to supply a detailed report of Agency’s expenditure. The court held that general grievance common to all members of the public did not establish tax payer's 'standing'. The Berger court has re-asserted the traditional principle of *Frothingham v*


60. 418 US 166(1974).
Melon and treated *Flast v Cohen* as a special exception. In this case, the court specifically retreated from the position in *SCRAP case* wherein it had asserted that 'standing' is not to be denied simply because many people suffer the same injury. But Justice Douglas, a liberal protector of citizen's rights, observed in his dissenting opinion:

"The sovereign in this nation is the people, not the bureaucracy. The statement of accounts of public expenditure goes to the heart of the problem of sovereignty. If tax payer may not ask that rudimentary question, their sovereignty becomes empty symbol and a secret bureaucracy is allowed to run over affairs."

In the above stated opinion, Justice Douglas has opened the vistas for citizen's standing on a basic constitutional ground. As a sovereign, people or one amongst the people, i.e., citizen can ask for the enforcement of any provision of law. A citizen can ask for the enforcement of environmental protection laws, consumer protection laws, labour welfare laws, and also constitutional obligations of the government. As a sovereign, the

61. 262 US 447(1923).
63. *Supra note* 60 at p. 201.
citizen has not to show the 'injury' or 'personal stake', he has simply to see that laws are being properly implemented.  

Again in Schelesinger v Reservists to Stop the War an association of present and former members of Armed forces Reserves, formed for the purpose of opposing military action in Vietnam, challenged the reserves' membership of members of Congress as being violative of compatibility clause of the United States Constitution. The issue before the court was - whether the interests of a citizen in constitutional governance would be sufficient to provide 'standing'? The members of association were not granted 'standing' as they had not suffered concrete injury caused by the action challenged as unlawful. In denying the 'standing', the Supreme Court was divided over the powerful dissents of Justices Dougles, Brennan and Marshall. Justice Dougles, dissenting, observed that citizens were interested in guarantees written in the Constitution and so any citizen had the right to have the compatibility clause enforced.

There were two major factors that weighed in the decision of the Supreme Court. Firstly, the relief sought was to

64.418 US 208(1974).

65. Article 1 section 4 clause 2 provides, "No Senator or Representative shall, during the time for which he was elected be appointed to any civil office under the authority of United States...no person holding any office under the United States shall be a member of either house during his continuance in office."
compel the executive branch through judicial decision to act in conformity with the incompatibility clause. The petitioner has merely a general interest common to all members of the public. The court was of the opinion that it was a mere speculation whether the claimed non-observance of that clause deprives citizens of the faithful discharge of legislative duties of Reservists members of Congress. What in effect would be adversely affected was the generalized interest of citizens in constitutional governance, which is abstract injury. Concrete injury was essential for a person to claim standing for it imparted specificity to the dispute.

It is humbly submitted that to move the court is the enviable right of the citizen whose role qua citizen is inevitably bound to constitutional governance. And citizenship is itself a conglomeration of rights and duties. When an injury to those rights is pleaded, it does not matter if the rights are political. And merely because the injury involves norms of constitutional governance or has a political complexion, it does not make it abstract.

Secondly, the court observed that actions such as in the present case would be replete with mischief. Such actions would create the potential for abuse of the judicial process. They would distort the role of the judiciary in its relationship to

66.United States Constitution, Article 1 section 6 provides, "No person holding any office under the United States shall be a member of either House during his continuance in Office."
the executive and legislature. And such actions would also open the judiciary to an arguable charge of providing 'government by injunction'.

In *Warth v Seldin* petitioners were from a low-income group and coincidentally they belonged to racial and ethnic minorities. They sought to challenge the 'Penfield Zoning' ordinances on the ground that purpose and effect of the 'ordinance' would be to exclude the members of such social and ethnic groups, who are normally from low-income group, from residing in Penfield. In other words, they alleged that by the application of the provisions of zoning law, they were excluded from living in the community. But the court denied them 'standing' to sue on the ground that the petitioners had not alleged and shown that they had been personally injured. The petitioners sharing attributes common to persons who may have been excluded from residence in the town was insufficient to predicate that the petitioners themselves were excluded or their rights were violated by respondent's actions.

The above three cases show the reversal in trends in the 1970's resulting in narrowing down of the scope of 'standing'. The position is that - a petitioner in United States must show personal stake to claim standing. However, juristic thinking is the standing to raise constitutionally based claims should be approached differently. There are two things - to see whether the constitutional right is a *right in persona*, or whether

constitutional right is a right of people in gross.

The emerging view, shared by American jurists, is that standing should be granted to any citizen challenging the violation of constitutional provisions generating exclusively in gross rights. The personal challenges can be limited to those individuals who have suffered a violation of their specific in -persona interest.

However, the fact remains that the most striking thing in these cases is not the denial of 'standing' to tax payers and citizens, but it is the strong language which is used in these cases indicating that the liberalising trend in locus standi, as in 69 U.S. v SCRAP, is not happily accepted development. Indeed, in later coming cases, such liberalisation is viewed as an unwarranted expansion of judicial power and protection. A most drastic expression of the commitment to traditional views of the judicial role can be found in Justice Powell's concurring opinion in U.S. v Richardson. He stated that the relaxation of standing requirements is directly related to the expansion of the judicial power and such relaxation would significantly alter the allocation of power at the national level, with a shift away from


69. Supra note. 49.

70. Supra note. 60, at p. 188.
a democratic form of government.

It is humbly submitted that the increase in powers of the government requires corresponding increase in the judicial power also in order to meet the demands of the situation and to create a balanced system.

G. POSITION OF DOCTRINE OF 'LOCUS STANDI' IN THE LIGHT OF INDIAN EXPERIENCE

Traditionally, as in the United States, in India also, the plaintiff seeking judicial redress was given standing to move the court on showing that some of his legal right or interest was infringed or threatened or clouded. This traditional view was based on the theory that court will give relief to those individuals who are seeking redressal of private wrongs done to them. 'Legal right' meant private law right as right to property, easement or a right to relief against a tort committed against the petitioner. It is only infraction of such a right that constituted legal injury or wrong redressible under the rules of private law. The complained action amounting to tort was also included in it for which damages were granted. There was no confusion as far as injury to private interest was concerned.

But on the question of 'standing' in cases of injury to 'public interest', the court had problems. Since injury to public interest cannot be dissociated from the interest of the
individuals, it is nevertheless different from injury to private interest. If the possession of a private or personal right is insisted upon in every case where the relief is sought against the invasion of the public interest, then much of the utility of public law remedy would be lost.

It is, therefore, increasingly being recognized that the interest of an individual in vindication of a public right would also give him 'locus standi' provided that the individual is prejudiced by the injury to the public interest more than the other ordinary members are prejudiced thereby. Therefore, the petitioner must have some interest over and above the interests of other members of public before he can be allowed to represent the public interest distinguished from private law rights. And when the orthodox view proved out to be inadequate, it paved way for the liberalisation of doctrine of 'locus standi'.

1. POSITION UNDER THE INDIAN CONSTITUTION AND CODE OF CIVIL PROCEDURE, 1908.

Article 32 of the Indian Constitution, confers a unique, unprecedented and extraordinary jurisdiction on the Supreme Court to issue directions, orders or writs for the enforcement of fundamental rights. Article 32 is itself a fundamental right and it guarantees the right to move the Supreme Court by 'appropriate proceedings' for the enforcement of fundamental rights.

It is humbly submitted that the requirements of
'appropriate proceedings' under Article 32 have, to a certain extent, faded/diluted in relation to development of Public Interest Litigation in India. It is due to the fact that there are, and there have been certain distinguished, unprecedented and unique, albeit much desired, developments in this area. That is, the court is, and has been for quite some time in the past, entertaining letters, post-cards, Telegrams, and even newspaper articles and letters to the editor, espousing the cause of socially or economically disadvantaged sections of Indian society, as writ petitions under Article 32. Prof. Upendra Baxi has termed it as 'epistolary jurisdiction'.

Further, Article 226 of the Indian Constitution gives to every High Court the power to issue orders or writs for the enforcement of fundamental rights guaranteed under Part III of the Constitution and for any other purpose. And Article 227 empowers the High Courts with a power of superintendence over all Courts and tribunals in the territories in relation to which they exercise jurisdiction.

In India, the horizons for 'standing' are very wide. Section 9 of Code of Civil Procedure, 1908, also gives a very wide jurisdiction to the courts to try any suits of a civil nature excepting suits of which their (court’s) cognizance is either expressly or impliedly barred.
11. EVOLUTION OF DOCTRINE OF 'LOCUS STANDI'

Traditional rule of locus standi is that a person who has suffered a special legal injury by the violation of his legal right or legally protected interest only can bring an action for judicial redress. The doctrine of locus standi never had a fixed content and had been assuming new contents time to time through legislative or judicial process in order to meet the changing demands of changing situations. Just as in United States, the 'standing to sue' has undergone change, same way 'locus standi' in India has gone through, more or less, same stages of transformation.

The stages of the process of liberalisation of locus standi can be studied under three broad categories dealing with specific situations, viz., Actions by any Person; Action by Rate-payers and tax payers; and Action by a Member of Class and Residents.

(a). ACTION BY ANY PERSON

Here, there are two situations. First, that in quo-warranto proceedings the courts have ruled that every citizen has a sufficient interest in the conduct of public affairs. Accordingly, any citizen can challenge the authority of a public officer to hold his post, even though his personal rights are not
Second, it is well settled that in case an aggrieved party who is directly affected, is not able to approach the court for securing his release on account of physical incarceration, then in that case a 'third person'—who may be a friend or any other person—can make a petition for writ of habeas corpus. Thus, in case of writ of habeas corpus it is possible for a 'third party' to move the court on behalf of the accused if he cannot himself do so by reason of his physical incarceration.

(b). ACTION BY A MEMBER OF CLASS OR RESIDENTS

There are a number of cases recognizing the right of a member of a class or residents to move the court. For instance, in Briji Prashad v Ramu Seethamma and others wherein the residents were allowed to challenge the transfer of land by the Municipal Corporation to a school. Then in Municipal Council, Ratlam v Vardhichand a 'public minded citizen cum resident' was allowed to compel the public authority to clean the slums by writing to the Magistrate. In Sunil Batra II v Delhi

71. See G.D.Karkara v T.L. Shevde, AIR 1952 Nag. 330; and

Maseh Ullah Shah v Abdul Rehman Sufi, AIR 1953 All. 193.

72. AIR 1983 A.P. 118.

73. AIR 1980 SC 1622.
Administration the court recognised the right of a prisoner to move the court complaining of alleged torture of another prisoner. In Akhil Bhartiya Soshit Karamchari Sangh(Rly.) v Union of India an unorganised union was allowed to challenge certain circulars of the Railway Department. In Fertilizer Corporation Kamgar Union, Sindri v Union of India members of worker's union were allowed to move the court with respect to matters affecting their jobs and livelihood.

In P.S.R. Sadanathan v Arunachalam when state had refrained from pursuing the case for reasons which do not bear on the public interest but are prompted by private influence and other extraneous considerations, the right of the brother of the victim to pursue criminal proceedings against the accused was recognised by the court.

There is existence of acute inequality in the bargaining power among the people in India and this has an important bearing on locus standi. For those with very little or no bargaining power access to justice is an illusion. And for that there exist many reasons. Firstly, the right to complain against societal tyranny is merely illusory for those who are socially oppressed, exploited and repressed. For instance, in the case of landless

74. AIR 1980 SC 1579.
75. AIR 1981 SC 298.
76. AIR 1981 SC 344.
labour, brick-kiln workers or tribals in forest, who, though they are not physically incarcerated, but are terror-stricken that it is just unrealistic to expect them to approach the court for redressal of their grievances. Second reason which compels them to accept the degrading jobs or jobs that endanger their health and life is economic factors. The economic deprivations prevent labourers from asking for better deal in a labour surplus economy. As for instance, adivasis losing limbs and lives while collecting metal on firing range in Madhya Pradesh or the state of workers in slate and pencil factories dying of scleroris in Mandsaur. It was the economic deprivation that kept them from moving the court of law. The third reason is the ignorance and illiteracy that makes access to justice system a stark impossibility. For instance, bonded labour, child labour, women workers, prisoners, under-trials, and the rural poor who are completely ignorant of the duties of the state towards citizens like them. They are also ignorant of the powers, procedures and concerns of the courts. Fourthly, the fact that with the change in society, the nature and the extent of 'injury' also changes. As now, the injury to a single person need not necessarily be direct, dramatic or substantial. The ultimate injury is more ----


often than not generalized and 'diffused' affecting all the persons uniformly. As a consequence of such an injury no person can claim that he had been injured to an extent, quantitatively or qualitatively greater than the an average citizen. As for instance, deforestation due to collusion among the officers of the state and capricious contractors leads to more and more frequent lethal land slides and increased incidents of floods. Also in case of adulteration of food, drugs and other goods, health and lives of consumers is thereby, more or less, equally endangered. Here, in neither of the cases the injury is direct, dramatic or substantial. All the people are uniformly affected. Thus, the injury is general and 'diffused'. And if such are the existing circumstances in society, how can the court insist that only direct victims shall have standing. And if the court does so, that would simply foreclose the relief altogether.

Thus, narrow interpretation of 'injury' is irrational or inefficient because of the fact that the effects of the impugned action and subsequent litigation are not really confined to one person alone. Therefore, in such situations - crying for justice through law - should the court not intervene at the behest of genuine and bonafide 'public-minded citizen'? To answer this query, judiciary acted to innovate the strategy called Public Interest Litigation. The above-stated reasons justified the court's non-imposition of technical rules of locus standi because these rules tended to cripple the judicial function rendering it incapable of acting when court action was needed the most.
Besides the above-stated reasons, it was the decision of Indian Supreme Court in *Maneka Gandhi v Union of India* that gave a new dimension to the concept of locus standi. The court in *Maneka Gandhi case* placed a very liberal interpretation to the provision contained in Article 21 of India Constitution, thus paving way for a new direction to be followed for all times to come. The court held that the 'procedure prescribed by law' must be 'just, fair and reasonable procedure and not any arbitrary, oppressive or fanciful procedure'. There after in a series of cases the Supreme Court did not lag behind in delivering social justice to the weaker sections in our society. Supreme Court created new positive rights as aspects of fundamental rights. And then in its quest for justice for the needy sections in society of India, the court even proceeded to enforce those new positive rights by issuing directions to the state to create all necessary conditions in order to ensure the enjoyment of those rights. Some of these new rights that emerged as important components of fundamental rights in the light of Directive Principles of State Policy are the - right to speedy trial,

80. AIR 1978 SC 597.
right to legal aid, right to human dignity, right to bail, right against torture, etc.

Thus, when the orthodox view proved out to be inadequate, it gave way to the new trend giving a very liberal interpretation to the locus standi doctrine. As for instance, in Godde Venkateshwara Rao v Govt. of Andhra Pradesh the residents of village were given 'standing' to challenge the order of the government opening a health centre in another village. The court ruled that the expectations raised in the mind of the applicants were sufficient to give him locus standi. Likewise in N.V. Subbarao v Govt. of Andhra Pradesh petitioner complained of opening of a bone factory in the locality which, according to him, was not only a legal injury to his private interests but it was also prejudicial to the interests of all other residents in- 84

84. Francis Coralie Mullin v Delhi Administration, AIR 1981 SC 746.


86. Sunil Batra I v Delhi Administration, AIR 1978 SC 16775; Sunil Batra II v Delhi Administration, Air 1980 SC 1579.

87. AIR 1968 A.P. 98.
the locality. Court gave 'standing' to the petitioner. In these two cases, the petitioner had not to show that grievance suffered by him was in any way over and above other residents.

In Krishankali Malik v Babu Lal Shaw the court held that the illegal permission granted to the defendant by the municipal corporation for the construction was an invasion on the rights of the plaintiff to enjoy his own property, and that the defendant owed an obligation to the plaintiff to obey the law.

In Radhey Sham v Lt. Governor, Delhi the municipal corporation of Delhi had resolved to make a children's park. Whereas the Lieutenant Governor, illegally, ordered the municipal corporation to sanction the construction of a building on the said plot by and on behalf of Delhi Wakf Board. Naturally, the petitioner, Radhey Sham, a close neighbour to the said plot was interested in the implementation of the resolution of the corporation to have a children park in the locality. Accordingly, the petitioner was granted 'standing' to challenge the order of the Lt. Governor.

(c). ACTION BY RATE PAYERS AND TAXPAYERS

The court recognised the 'standing' to sue of rate payers to challenge the illegal actions of the municipalities or
corporations of which the plaintiff was the rate payer. Thus, the court here deviated from the earlier theory that to vindicate a 'public interest' the plaintiff must show injury over and above other members of the public. Perhaps, the first case was, Municipal Corporation, Bombay v Govind Laxman. In this case, Justice Chagla held that every rate payer has the right to prevent the public body to which he pays the rate, from acting contrary to the law or contrary to its own charter.

The right of rate-payers and tax-payers to control the deliberations of the corporations has been well recognized. In R.Vardarajan v Salim Municipal Council the taxpayers were allowed to approach the court to control the deliberations of the municipal corporation's meetings or to challenge the decision to erect a statute.

Thereafter, in K.R. Shenoy v Udipi Municipality the ratepayer's objection to the giving of approval by the municipality for the construction of Cinema in a residential locality was recognised by the court.

Again in Narendra Nath v Corporation of Calcutta the issue before the court was – whether a rate payer and a member of the public has the right to ask for the issue of a writ to

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92. AIR 1949 Bom. 229.
93. AIR 1973 Mad. 55.
94. AIR 1974 SC 2177.
95. AIR 1960 Cal. 102, at p. 112.
control the deliberations of the Corporation in which he cannot take part, although as a member of the public he can be present in the public galleries. Justice D.N. Sinh observed that since a rate payer pays rates and taxes, apart from the expenditure of money, therefore he is entitled to demand that the Corporation should render prompt service in return for such payment. And when Corporation spends its time in pursuits which are not in its competence and postpones the consideration by the counselors of the problem that concern rate payer resulting in inefficiency and delayed services by the Corporation, then in that case rate payer has a right to complain against the Corporation. Here, the rate payer was given 'standing' to challenge not only the misapplication of Municipal funds but he could also challenge the wastage of time on unnecessary and unconcerned meetings. This was indeed a case giving a very wide 'standing'.

In K.R. Shenoy v Udipi Municipality, in violation of the Town Planning Scheme, the Municipality granted cinema licence by a resolution in the residential area. The appellant, a rate payer, resident of the same, challenged the said resolution of the Municipality granting licence. The respondents, however, challenged the very 'standing' of the appellant to move the court on the ground that even if there was a breach of statutory duty, the appellant was not entitled to any relief because he has not

96 AIR 1974 SC 2177.
suffered any injury. The court ruled that as resident of the area, the appellant had the right to compel the Municipality to perform its duty which was imposed by the statute.

Similarly, in *Vardarajan v Salim Municipality* the issue was whether the petitioner, as a tax payer, had the right to question the spending of funds by the Municipality. The court held that it was not disputed that at the instance of an individual tax payer, suit would even lie for an injunction restraining the Municipality from misapplication of Municipal funds.

Long before, the Bombay High Court had considered the same issue of maintainability of suit at the instance of an individual tax payer against the Municipality in *Yaman v Municipality of Shola Pur*. The court had held that the plaintiff could sue in their individual capacity if they were sufficiently interested in Municipal funds and that any interest, however, small, was sufficient to entitle them to do so.

97. AIR 1973 Mad. 55.

98. (1898) ILR 22 Bom. 646, at p. 651. This case was later followed by Bombay High Court in AIR 1949 Bom. 229; and by Calcutta High Court in *Narendra Nath v Corporation of Calcutta*, AIR 1960 Cal. 102.
(d). **STANDING UNDER THE STATUTE**

In a number of cases, the Statute itself recognizes the 'locus standi' of the applicant even though he suffers no legal injury. As for instance, Bombay Cinema Rules, 1954, made under the Bombay Cinematograph Act, 1918, recognize a special interest of persons residing or concerned with any institution such as a school, temple, mosque, etc., which is located within a distance of 200 square yards from the site on which a cinema is proposed to be constructed.

Also section 133, Criminal Procedure Code, empowers the magistrate, on receiving the report of a police officer or other information to make and order for remedying the public nuisance. 99

Thus, in *Ratlam Municipality v Vardhichand* when the municipality failed to carry out its statutory duty of constructing a drain pipe to carry the filth, the local residents invoked section 133 of the Criminal Procedure Code against Municipality. The court recognised the 'standing' of the local residents to move the magistrate under section 133, Criminal Procedure Code. 100

In *Milap Ram v State of Jammu and Kashmir* a resident of the state of Jammu and Kashmir challenged the grant of


100. AIR 1976 J&K 78. Also in *Nabaghan v Sadanand*, AIR 1972

Orissa 188, the members of general public having right to worship the deity were held to be interested in appointment of trustees.
certificate of residence to a person on the ground that if a non-resident was admitted as resident it would have affected the rights of the residents who had certain privileges under the law of the land. The grant of permanent resident certificate if governed by Jammu and Kashmir Grant of Permanent Resident Certificate Procedure Act, 1963, and the rules framed thereunder. Rule 4 of the Rules framed under the said Act gives right to any person to object to the grant of certificate, and section 6 gives any person right to seek revision of any order passed on an application for grant of the certificate pending or disposed of by the competent authority. Thus, High Court held that resident of the state had the 'standing' to move the court in this case.

In Warrangal Chamber of Commerce v Govt. of A.P., the doctrine of locus standi was further liberalised. In this case, the Warrangal Chamber of Commerce filed a writ petition for issue of mandamus against the government for enhancement of the commission of the commission agents, its members, for the assistance and advice rendered by them on the matters of protection and insurance of agricultural produce and livestock. On granting the standing court observed that even a member of the public who has sufficient interest in the fit matter should be accorded locus standi to approach the court for relief. Court 101. AIR 205 A.P. 245.
said that no more restriction should be placed on what constituted sufficient interest in order to see that administrative authorities must act in accordance with law and natural justice.

In *Bar Council of Maharashtra v M. V. Dabhokar*, which also arose in the same year, the issue before the court in this case was — whether Bar Council of a State was a 'person aggrieved' to maintain an appeal under section 38 of the Advocates Act, 1961. And section 38 provides that any person aggrieved by an order made by disciplinary committee of Bar Council of India under section 36 or 37, or the Attorney General of India, or the Advocate General of the State, as the case may be, may prefer an appeal to the Supreme Court. Chief Justice Ray observed that the phrase 'person aggrieved' needed more liberal approach in the background of statutes which do not deal with property rights but deal with the professional conduct and morality. The role of Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The court held that Bar Council was a 'person aggrieved' for it represented the collective conscience of the standards of professional conduct and is protector of the purity and dignity of profession. And if any decision prejudices the maintenance of standards of professional conduct and ethics, the Bar Council will have a grievance.

102. AIR 1975 SC 2092.

103. Ibid, at 2099.
Thus, whole emphasis of the court in *Dabholkar case* was on the broadening the concept of locus standi. In a particular case, whether there exists locus standi for the plaintiff or not, will depend upon many factors, i.e., the statute and its message, the existing social conditions and also the scheme of legislation in its social context.

In *J.M.Desai v. Roshan Kumar*, a 'no objection' certificate was granted by the District Magistrate to a rival to the appellant who was the proprietor of cinema theatre. The appellant sought to quash the said certificate. The court, refusing the 'locus standi' to the appellant as none of his legal right was injured, observed that the expression 'person aggrieved' could not be confined within the bounds of rigid, exact and comprehensive definition. Its scope and meaning depends upon diverse, variable factors, such as content and intent of the statute of which contravention is alleged; the specific circumstances of the case; the nature and the extent of petitioner's interest; and the nature and extent of the prejudice or injury suffered by him.

In *Fertilizer Corporation kamgar Union v. Union of India* the petitioners challenged the sale of certain machinery by the Sindri Fertilizer, a public undertaking. The petitioners alleged that it would result in huge loss to the public exchequer and

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104. AIR 1976 SC 578.
105. Ibid, at 581.
106. AIR 1981 SC 344.
would jeopardize the employment of about 11,000 odd workmen facing retrenchment. The then Chief Justice Chandrachud observed that the question whether a person has 'locus standi' depends mostly and often on whether he possesses a legal right, and that whether that right is violated. But, in appropriate case it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of 'locus standi' to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. He further observed that in case public property is dissipated then in that case defendant will have to put forth a strong argument to convince the court that how is it that representative segments of the public or atleast a section of the public which is directly interested, and is also affected thereby, would have no right to complain of the infraction of public duties and obligations. Since public enterprises are owned by people so those who run them are accountable to the people.

The most important question that arises is that in case actions of a Government company are malafide and relate to dissipation of funds then can a common man question the same in the court of law by invoking Article 32 and Article 226?

According to Justice krishna Iyer, 'locus standi' must be liberalised to meet the challenge of times. On the question as to how can one question the wrong committed or any illegal act of the corporation if one has suffered no personal injury to

property, body or mind. Justice Krishna Iyer has laid down in Fertilizer Corporation Kamgar Union case that:

"Law as I conceive it, is a social auditor and this audit function can be put into action only when someone with real 'public interest' ignites the jurisdiction."

He further elaborated his point as:

"If a citizen is no more than a wayfarer or officious intervenor without any interest or concern beyond what belongs to any one of 660 million people of this country, the door of the court will not be ajar for him. But if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busy body, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered."

Justice Krishna Iyer viewed that in competition between the court and the streets, as dispenser of justice, the rule of law must win the 'aggrieved person' for the law court and wean him away from the lawless street. In simple words, 'locus standi' must be liberalised to meet the challenge of times.

108. Supra note 106, p. 354.
110. Ibid., p. 353.
111. Ibid, at p. 353.
In Akhil Bhartiya Karamchari Sangh v Union of India some directives issued by Railway Board on different occasions, which were discriminatory in favour of scheduled castes and scheduled tribes, were challenged by Akhil Bhartiya Soshit Karamchari Sangh, which was not a recognised Association. On the question — whether the petitioners being an unorganised Association had the 'standing' to file a petition under Article 32. It was held that since there was a large body of persons with a common grievance, the petitioners were to be given the right to represent their class. The court observed:

"Our current processual jurisprudence is not of individualistic Anglo saxon mould. It is broad based and people oriented, and provisions of access to justice through 'class actions', 'public interest litigation' and representative proceedings....we have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdiction."

The liberalising trend in 'locus standi' reached its culmination in S.P. Gupta v Union of India. Before this case,  

112. AIR 1981 SC 298.  
113. Ibid.,p. 317.  
114. AIR 1982 SC 149, popularly known as Judges' Transfer case.
'locus standi' was available in cases wherein either the individual or a determinate class or group of persons had suffered a legal injury. In this case, the Supreme Court pointed out that there might be cases where the state or public authority have acted in violation of a constitutional or statutory obligation resulting in injury to public interest. The question was as to who would have locus standi to complain such act or omission of the state or public authority. The court observed that if no one is allowed to maintain an action for redressal of such public injury or public wrong, it would be disastrous for the rule of law, for it would be open to the state or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. Justice Bhagwati observed, "The court cannot countenance such situation where the observance of the law is left to the sweet will of the authority bound by it without any redress if the law is contravened."

The Supreme Court in Judge's case observed that whenever there is a public wrong or public injury is caused by an act or omission of the state or a public authority which is contrary to the constitution or the law, any member of the public, acting bonafide and having sufficient interest, can maintain an action for redressal of such public wrong or public injury. The court held, "the strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is

115.Supra note 114, at p.190.
evolved which gives standing to any member of the public who is not a mere busy body or a meddlesome interloper but who has sufficient interest in the proceedings." The court viewed that the risk of legal action against the state or such public authority to act with greater responsibility and care, thereby improving the administration of justice.

Thus, the court finally laid down:

"any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the constitution or the law, and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of constitutional objectives."

The court, however, warned that the member of the public who approaches the court in case of this kind, should be "acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration."

Thus S.P.Gupta v Union of India changed the whole

116. Supra note 114.
117. Ibid., at p. 194.
118. Ibid., at p. 195.
119. Ibid.
concept of 'locus standi'. From traditional individualistic approach, a modern democratic, participative and ombudsmanic approach emerged to gather more respect for rule of law, to make the state and the public authorities more responsible for fear of citizen's actions, and to awaken the citizens to be more vigilant against the inactivity and lethargy of the state and the public authorities resulting into deprivation or violation of public rights. This case has given birth to many cases wherein the contravention of public rights has been challenged.

In D.S.Nakara v Union of India the constitutionality of a 'pension formula' was challenged by a society registered under Societies Registration Act, 1960. It was a non-political, non-profit making, and voluntary organisation consisting of 'public spirited citizens' who had taken up the cause of ventilating legitimate public problems. The society had received large number of representations from old pensioners who were individually unable to undertake the journey through legal processes. The very 'locus standi' of the society was challenged. The Supreme Court, following S.P.Gupta case, in granting the 'locus standi' to the society reasoned that the society had sought to enforce the rights of infirm retirees.

In Brij Raj Parshad v Rama Seethamma the municipal corporation of Hyderabad decided to transfer certain land belonging to it in favour of a school. The object of the transfer

120. (1983) 1 S.C.C. 305.
121. AIR 1983 A.P. 118.
was to facilitate the school to run at a single place. The land proposed to be transferred was being misused by the residents as a dumping ground, and thereby polluting the atmosphere. On a portion of land there were public latrines which were no longer needed because the residents had constructed their own, and now these latrines had become a health hazard for the locality as they were emitting pungent smell and became breeding ground for mosquitoes. Moreover, some persons had encroached upon the land and some others had been making unauthorized use of the vacant site.

The petitioners who were authorisedly making some use of the vacant land though amenable to interference by corporation at any time, were held to have 'locus standi' to challenge the transfer of corporation land to the school.

This case gave a new dimension to 'locus standi'. It is not a question whether legal right has been violated or not. Here the petitioner was making some use of the vacant site though unauthorisedly, still he was granted 'locus standi' to interfere.

In case of Akhil Bhartiya Grahak Panchayat v APSE Board a body corporate registered under the Societies Registration Act, 1960, with its head office at Delhi has been established for the

122. AIR 1983 A.P.283.
purpose of educating consumers about their rights, to ensure quality and quantity and the correct price in the matter of supply of various goods, and also to make representations to the Governments etc. The Society commenced work in A.P. in 1978, and is committed to public justice and pro bono publico service. The A.B.G.P. questioned the excessive electricity tariffs and unsatisfactory service, and the failing standards in the quality and continuity in the supply of electricity, through a writ-petition.

On the question of 'locus standi', the High Court held that the petitioners had the 'locus standi' to champion the cause of consumer of electricity. Thus a consumer society was accorded 'locus standi' by A.P. High Court.

In P.Nala Thampy v Union of India the petitioners, an allopathic doctor by profession, claiming to be commuter of railways, was granted 'locus standi' to file petitions seeking Mandamus against Union of India for implementing Kunzru, Wanchoo and Sikri Committe Reports regarding appointment of fact finding commission to inquire, and report about the train accidents from 1970 onwards, and for providing safeguards to passengers, and for several other directions to the Union Government and the instrumentalities connected with the administration of Railway.

This case has great significance in that the court herein asserted that - to enable a citizen to enjoy his fundamental rights, the state is under an obligation to create and maintain

an environment in which the rights would be enjoyed. This case also points out that the reports upon the working of public utilities, can be got implemented through writ petitions before the courts. Obviously, the courts have no option but to act as 'ombudsmen' in cases where the inefficiency and lethargy in administration affects the rights of an individual. This is a healthy trend. So long as the institution of 'ombudsman' is not created in India, courts will act as such.

Another landmark case is National Textile Worker's Union v P.P. Ramakrishna wherein the modern liberalised concept of 'locus standi' has played a significant role in providing right to be heard to the workers in the winding-up proceedings. Normally, under The Companies Act, 1956, it is the creditors, shareholders, and in some circumstances, the Central Government or the Registrar who can present a petition for winding-up, and the workers have no 'locus standi' at all except when their dues are left unpaid in which case they would be heard in the capacity of creditors and not as workers.

Justice Bhagwati opined that it is not only the shareholders, who have supplied their capital, who are interested in the enterprise which is being run by a company, but the workers who supply labour are also equally, if not more, interested because what is produced by enterprise is result of their labour and the capital. He said that it is indeed strange that workers who have contributed to the building of the

124. AIR 1983 SC 75.
enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

Then, in *R. Ravinder Singh & others v Union of India & others* some private individuals sought to challenge the allocation of waters of Ravi and Beas rivers between Punjab, Haryana and Rajasthan which was done by the award of Prime Minister and later agreed upon by the three Chief Ministers. The petitioners also challenged Section 78 of the Punjab Reorganisation Act, 1966.

The respondent questioned the 'locus standi' of the petitioners because according to them, the judicial redress could be sought only by the State of Punjab, Haryana and Rajasthan. The petitioners being private individuals did not feel aggrieved by the original award of the Prime Minister or by subsequent agreement of Chief Ministers. The issue being a dispute pertaining to inter-state rivers, no public right of the petitioners was infringed resulting into their personal injury or public wrong.

The Punjab & Haryana High Court held that the traditional rule regarding 'locus standi' that a writ who has himself suffered a legal injury alone can seek judicial redress, has been whittled down and rendered archaic by the emergence of new jurisprudence in view of the widened horizon of the concept of 'locus standi'. Referring to the historic judgement of *Judges'* 125. AIR 1984 P&H 235.
Transfer case the High Court held that the petitioners had the 'locus standi'.

This case takes us too far in the jurisprudence of 'locus standi'. Though petitioners had not even the remotest connection with the river disputes yet they were allowed standing to challenge the allocation of river water amongst the states and the award of Prime Minister agreed to by three Chief Ministers. This is a deviation from Magan Bhai v Union of India, popularly known as Kutch Award case, wherein the petitioners wanted to challenge in the Supreme Court, the award by Kutch Tribunal created by an agreement between India and Pakistan over certain disputed territory in the Ran-of Kutch, wherein certain areas were proposed to be transferred to Pakistan from India. The Supreme Court had held that the petitioners had no 'locus standi'. Now after S.P.Gupta case the High Court of Punjab & Haryana has granted 'standing' to S.Ravinder Singh to challenge the allocation of water amongst the states.

But in Krishna Kant v Vice Chancellor, Banaras Hindu University the petitioners who sought to challenge the appointment of a lecturer in Banaras Hindu University was not granted 'standing' to sue because he had a personal axe to grind.

126. AIR 1969 SC 783.
127. AIR 1984 All. 350.
Thus, the courts have decided the issue of 'locus standi' differently in different situations. Except in Public Interest Litigation cases, the injury to the petitioner must be shown to exist.

In *R.Indira v Regional Transport Authority* applications for stage carriage permit were invited for operation on a particular route. But the Authority granted two permits. The petitioner who was not granted permit challenged the decision on the ground that the respondent should have decided about increase in number of stage carriages before calling the applications. The preliminary objection of 'locus standi' was raised. But the court held that where two permits were granted, whereas applications were called in respect of only one permit, the applicant for the one permit was the party aggrieved. If she had known that two permits were to be granted she would have applied for the other permit or filed objection for the same.

In *Narayan Nair and others v Joint Registrar* the Committee of Cooperative Society removed the president by passing no-confidence motion against him. While the president did not take any step to vindicate his rights, the members of the society filed a writ petition challenging the removal. It was held that in the absence of the president without any valid reasons for refraining from instituting legal proceedings, the members of the society could not be allowed to challenge the action of

129. AIR 1983 Ker. 136.
committee.

An M.L.A. and an educationist were held to have 'locus standi' to challenge the appointment of Vice-Chancellor as the petitioners were interested in the public affairs and the educational institutions. The petitioner, who was selected as paediatrician and joined the post but received communication that a stay was granted by Lokayukta and so his appointment stood suspended, was held to have 'locus standi' to challenge the interference by the Lokayukta.

In Mohd. Kutty v T. Kunhi koya Hajii two petitioners challenged the grant of licence for starting rice-milling industry. The first petitioner, who was himself owner of a rice mill in adjoining panchayat, and was a competitor in business, was not held to be aggrieved person because his no legal right was violated. The second petitioner, who was a manager in a school objected that proposed mill was very near the school and would cause a lot of disturbance and annoyance to teachers, students and would harmfully affect the educational activities in the school as well as health of the students, teachers and neighbors. He was held to have sufficient interest to maintain the petition.

130. Balbir Singh v G.D. Tepase, AIR 1985 P&H 244.


132. AIR 1985 Ker. 33.
In George Mompi1Iv v State, a medical practitioner, who was president of the 'Legal Forum to uphold Public Causes' formed with the object of upholding public causes through litigation, filed a petition for writ of certiorari for quashing the decision of the government regarding supply of arrack in small polythene containers by three public undertakings to liquor contractors throughout the state to enable the latter to supply the same to consumers through licensed shops. The petitioner was held to have 'locus standi' to challenge as he was a medical practitioner interested in the maintenance and protection of public health, and that the association of which he was the president was an association formed for upholding the public causes, had sufficient interest in challenging the act of state government affecting the public interest.

H. JUDICIARY’S BOLD EXPERIMENTS WITH TRADITIONAL DOCTRINE OF 'LOCUS STANDI'- A COMPARATIVE ACCOUNT BETWEEN INDIA AND UNITED STATES

The doctrine of 'locus standi' has been a major battleground between the traditional private law model of litigation and Public Interest Litigation. In United States, Supreme Court has repeatedly relied on 'standing' to reject Public Interest

133. AIR 1985 Ker. 24.
cases without consideration of merits.

In contrast to United States, the Indian Supreme Court has deliberatively liberalised the rule of 'locus standi' in order to promote Public Interest Litigation. The transformation of doctrine of 'locus standi' in India can be viewed as a striking example of, both, the refining and alloying processes at work. In India, not only have the elements of doctrine has been clarified so that out-moded and ill-founded can be discarded, but further, the special problems and potentialities of Indian society have been used to shape and strengthen all together a new jurisprudence. There are two types of 'standing' -- one is Representative Action and second is Citizen Action. Hereafter, the present researcher will elaborate on these two newer kinds of standing.

(i). REPRESENTATIVE ACTION

Public Interest Litigation in India is viewed as a reform of the traditional model. It is an improvement on the American doctrine of 'standing' which involves two distinct issues, viz.,

(a) whether the petitioner is sufficiently motivated to present a good case to the court, and (b) whether there is an injury that requires judicial redress? The American law presumes that only someone with a personal stake can meet the first requirement of motivation. The Indian Supreme Court has rejected this presumption by allowing any member of the public to seek judicial redress for a legal wrong caused 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." This modification of traditional doctrine of 'locus standi' can be termed "Representative action" because here the petitioner is accorded 'standing' to sue as the representative of another person or group of persons.

According to ex Chief Justice P.N. Bhagwati, Indian Supreme Court "Representative action" is a creative expansion of the well-accepted standing exception in Order XXXV, Rules 3, Part IV of Rules of Indian Supreme Court which allows a third party to file a petition for writ of habeas corpus on the ground that the injured party - the petitioner - cannot approach the court himself.

Infact, the first Public Interest case in Indian Supreme Court is

135. See note 114 at p.188.
136. This view was expressed by Ex C.J. P.N. Bhagwati of Indian Supreme Court in his interview given to present researcher on January 7, 1991.
Court, filed by Kapila Hingorani in 1979, was essentially a habeas corpus case - Hussainara Khatoon v State of Bihar- complaining of the unlawful detention of 18 prisoners awaiting trials for very long periods which ultimately led to the discovery of over 80,000 such prisoners. In this case the judicial craftsmanship of the activist judges expanded the doctrine and gave representative standing to other groups of persons also who were not 'free' to approach the courts because of socio-economic factors, rather than physical restraint. On this, Justice V.S.Deshpande said that the habeas corpus exception to the traditional doctrine of 'locus standi' can be explained on the theory that the personal liberty of an individual is a matter of public concern.

However, it is abundantly clear that the Indian Supreme Court took 'access' to the courts as the justifying principle for habeas corpus exception in adapting it to Representative action.

Thus, Indian Supreme Court took up the social problem of lack of 'access to justice' by the poor and oppressed, and used

137. Senior Advocate, Supreme Court of India,
138. AIR 1979 SC 1360.
140.Ibid.
that problem to build, upon the strong Indian tradition of voluntary social action by empowering volunteer representatives to approach the court on behalf of the poor and oppressed. The traditional assumption that only a petitioner motivated by self-interest will present a case well, stands refuted in the light of public interest cases. The representative petitioners press the claims with as much adversary zeal and enthusiasm as if they had a personal stake in the outcome.

The advent of Representative action by the Indian Supreme Court in cases where the directly affected persons cannot approach the courts themselves, suggest that this innovation is nothing but a modified form of Class Action. The reason is, like the petitioner under Representative action, the Class representative in a traditional class action can raise the claims of persons not before the court. The difference is that the traditional class representative must himself be a member of the class whose claims he raises, albeit there are some limited exceptions allowing, for instance, an attorney-general to act as a Class-representative. Thus, cases categorized as brought


142. For example, The Michigan Consumer Protection Act, U.S.A. instance, many of the Public Interest cases filed by Kapila and actual prisoners, the petitioner was Hingorani herself; Khatri v State of Bihar, AIR 1981 SC 928 – Bhagalpur Blinding of prisoners case; Govindram v Union of India, W.P. 20210 of 1985.
under Representative action could be recategorised as **Class actions with a non-class member representing the class.** For Nirmal Hingorani look like modified Class actions because they filed the cases using the name of the actual class members in the petition captions and not in their individual names, even though they themselves were actually the petitioners. And in at least one such major case, *Olga Tellis v Bombay Municipal Corporation* included both - the actual class members, the pavement and slum

**(ii). Citizen action**

The second modification of tradition doctrine of 'locus standi' is **Citizen action**. Reflecting a basic assumption that the role of the courts is to protect only individual rights, the United States Supreme Court has repeatedly denied 'standing' to petitioners who sought to remedy public rather than personal injuries.

143. For example, in *Hussainara Khatoon case*, AIR 1979 SC 136 although the caption of the petition carried the names of several dwellers, and public spirited citizens, two journalists and a Civil Liberties Organisation - among the petitioners.

144. AIR 1986 SC 180, popularly known as Bombay Pavement Dwellers case.
However, in India, in contrast to the United States Supreme Court, the Judge's Transfer case set down a rule allowing any member of the public with 'sufficient interest' to assert 'diffuse, collective and meta-individual rights'. Albeit, the doctrine of Representative action was first articulated in the Judge's Transfer case, actually it involves the second modification of the traditional doctrine of 'locus standi' regarding the issue of whether the petitioner has been injured.

Under Citizen action, a petitioner sues not as a representative of others, but in his own right as a member of the citizenry to whom a public duty is owed. The Supreme Court cases that can be characterized under Citizen action have taken up such issues as - the President's power to transfer judges; whether foreigners should be allowed to adopt Indian children; the environmental impact of limestone quarrying in the Mussourie Hills, and the leak of chlorine gas from a chemical plant. It is to be noted that none of these cases were brought on behalf of a determinate group of persons who suffered from poverty or social oppression, rather, the petitioners raised claims shared by public generally.

145. Supra note 144 at pp. 182-94.
146. Lakshmi Kant Pandey v Union of India, AIR 1984 SC 469.
Accordingly, the justification for the development of Citizen action is not to improve 'access to justice' for the poor, but to vindicate rights that are so 'diffused' among the public generally that no traditional individual right exists to be enforced.

The threshold question for Citizen action is—whether a sufficient public injury has been alleged to support the claim for which petition has been brought in the public interest?

In Public Interest cases involving consumer and environmental issues, the question of public injury is not difficult. However, in some cases the alleged public injury is far less tangible. As for instance in Judge's Transfer case itself, petitioners claimed to be vindicating the public interest in assuring the freedom of the judiciary from political influence. The court interpreted the potential injury as loss of faith in the rule of law and a concurrent loss of confidence in democratic institutions of government. It said:

"But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the state or any public authority, and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action of enforcing the performance of the public duty. If no one can maintain an action for redressal of such public wrong or public injury,
it would be disastrous for the rule of law, for it would be open to the state or public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it."

Therefore, it is by virtue of doctrine of Citizen action that there is significant expansion of the role of court - from that of protector of individual rights to that of guardian of rule of law, wherever it is threatened by official lawlessness. The effect of this innovation is clearly demonstrated in the recent decision of Karnataka High Court in Raju v State of Karnataka, regarding the bottling of arrack liquor leading to short-term resignation of Chief Minister Rama Krishna Hegde. Albeit, the case was initiated by the parties with traditional standing - the unsuccessful applicants for bottling rights - but these parties withdrew their petitions for certain reasons not made public. Accordingly, the allegations of nepotism and impropriety would have remained in dark, unadjudicated, had two persons not filed petitions claiming only an interest as citizens of Karnataka, in seeing that public business was conducted lawfully.

149. Supra note 114, at p. 190.

150. K.L.R. 1986 (1) (64).
(iii). THE DISTINCTION BETWEEN REPRESENTATIVE AND CITIZEN ACTION

Public Interest cases brought for asserting the rights of groups of poor or oppressed people as Representative actions conceptually harmonizes with Indian Supreme Court's activist role with a reformist approach to the traditional model. Unlike Citizen action - which has opened new horizons of judicial function - the Representative action, as a species of Class actions, appears to be an adjudication of individual rights albeit the 'relief' is multiplied across a class of similarly circumstanced persons.

It is very difficult to distinguish between Representative and Citizen standing because neither the court - with the exception of Judge's Transfer case - nor the parties make any distinction between the two. Rather, the two originally separate rationales for expanding the standing have merged into a single doctrine of Public Interest standing as is illustrated by the preamble to the Supreme Court decision in Forward Construction Company v Prabhat Mandal. The court observed:

"While Public Interest Litigation is brought before the court not for the purpose of enforcing the right of individual against another, as happens in the case of ordinary litigation, it is intended to prosecute and vindicate public interest which demands that violation

151. AIR 1986 SC 391.
constitutional or legal rights of a large number of people, who are poor, ignorant or socially and economically in disadvantaged position, should not go unnoticed, unredressed for that would be destructive of the rule of law."

The above-stated opinion of the court is, perhaps, based on the idea of redistributive justice which is an affirmative value under Indian Constitution - that a petitioner who sues to benefit one of the weaker sections of the society is actually redressing a public injury. Infact, such was precisely the position taken by the petitioner in Upendra Baxi v State of U.P. cited and discussed in Judge's Transfer case as a prior example of a case brought on behalf of persons unable to approach the court themselves. Prof. Upendra Baxi said that he took the stand before the court alleging that he was appearing as an ordinary citizen, bound under Article 51-A of Constitution of India, to respect constitutional rights.

152.Supra note 151, at p. 393.


154.Supra note 151, at p. 188.

155.For a discussion of this theory and the need for Citizen standing, generally see Arun Shourie, "On Why the Hon'ble Court Must Hear Us", 4 S.C.C. (J) 1(1981).
(iv). RE-EVALUATION OF DISTINCTIVE FEATURES OF REPRESENTATIVE AND CITIZEN ACTION

On re-evaluation of the distinctive features of Representative and Citizen action it seems that what at first appeared to be reformist adoption of the Class action, is simply one aspect of the much more revolutionary concept of Citizen law suit. In turn, the Indian blending of the concepts of Representative and Citizen plaintiff may prompt some creative reassessment of the American sharp demarcation between the Class representative - who has standing, and the 'ideological plaintiff' - who does not. On American Class action practice, Abram Chayes says that in many cases the attorney for the class, rather than the nominal class representative, initiates and controls the litigation. Indeed, there is well established American case law that once a court has certified a class action, the attorney for the class has a fiduciary duty to the class as a whole which supersedes his duty to the individual class representative, even though he is also the attorney's client.

Thus, in United States, an attorney may be duty bound to settle a class action contrary to the wishes of the class representative if he believes the settlement is in the best interests of the class.

Then, is it possible that in American practice, the Class action attorney may in fact sometimes function as a Citizen or 'ideological' plaintiff?

In United States, there is also a growing trend among some Public Interest litigators to use organizational plaintiffs to secure broad injunctive relief, benefiting a whole class of persons, wider than the organization's membership, as an alternative to the time consuming process of seeking class certification which often diverts the previous resources of both the parties and the court from merits of the case. William Burham in his recent article suggests that there is possibility of giving new life to the concept of 'ideological plaintiff' by recognizing that social reform organizations have aspirational and existential interests worthy of legal protection. This suggestion might bluster by the example of the fruits of the Indian Supreme Court's bold experiments with the traditional doctrine of standing.

I. CONCLUDING OBSERVATIONS:

Subject to certain limitations, the rule of 'locus standi' has been fully liberalised and any person with sufficient

interest has the 'locus standi' to challenge the public injury or to enforce the performance of public duty. It seems, there was no option but to liberalize the rule of 'locus standi' in the changed socio-economic circumstances.

In view of the poverty eradication programs, every possible effort is being made to reach justice to the poor. Now anyone with sufficient interest can ask for enforcement of his rights arising under the social welfare schemes and the welfare programs. Now, anyone through courts can compel the government or governmental authorities to perform their duties towards the poor and the downtrodden.

In United States, however, the trend of liberalisation was reversed in *Warth v Seldin* and many other cases, and petitioner has to show his personal stake to claim standing.

The Indian Supreme Court has excelled all the foreign courts by liberalising the rule of 'locus standi' in *Judges' case* to such an extent that now any body with sufficient interest can initiate the proceedings in the court to enforce any public right or welfare scheme, and also compel the government and its authorities to perform their duties, provided the person is acting bonafide and not for personal gain or private profit or out of political motivation or other oblique considerations. The liberalisation of 'locus standi' has resulted into the birth of Public Interest Litigation through which the judiciary is trying to reach the justice to the poor masses.