CHAPTER III

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CHAPTER - III

PUBLIC INTEREST LITIGATION IN UNITED STATES

A. INTRODUCTION

At the very outset it is essential, firstly, to define and find the meaning of Public Interest Law. Then the question arises -- what is the importance of Public Interest Law?; why do we need Public Interest Law? Then, what is the history of Public Interest Law in the United States? How is the world of Public Interest Law today in the United States? How the old institutions are adopted to newer needs and goals in the United States? What is the contribution of Public Interest Lawyer and how they have changed the American scene? -- This part of the study the present researcher proposes to divide into following parts: A. Empowering the Powerless Poor; B. Citizen’s participation in Communications Media; C. Consumer Protection; D. Environmental Protection; E. Assistance to the Poor; F. Political Reform; G. Mental Health and Prison Reform; H. Civil Rights; and I. Women’s Rights.

Since, we have borrowed the strategy of Public Interest Litigation from United States, therefore, in this chapter of the study, the present researcher will elucidate position in United States.

The present researcher proposes to look into two types of Public Interest Law - Firstly, those issues that involve matters
which affect large segment of society; and secondly, the type of law which principally affects individuals, i.e., 'poverty law'. Corporation litigation, where one corporation is battling another, although it may have a large impact on society, e.g., anti-trust litigation, is not considered Public Interest Litigation for the purposes of present research work.

B. WHAT IS PUBLIC INTEREST LAW?

Defining the Public Interest Law is an aggregation of three constituent parts which make Public Interest Law, viz., 'Public', 'interest', and 'law'. Therefore, firstly, it would be appropriate to explain the meaning of various terms involved in the concept of Public Interest Law.

Therefore, what is the meaning of the term 'interest'? The dictionary meaning of 'Interest' is: "Interest is the most general term that can be employed to denote - a right, claim, title or legal share in something." The word 'interest' is used to denote the object of any human desire. It includes varying aggregates of rights, privileges, powers and immunities, distributively to mean any one of them.

And 'Public Interest' is the interest shared by citizens generally in the affairs of local, state or national Government. The expression 'Public Interest' means - act beneficial

to general public. It means - action necessarily taken for public purpose. Thus, there is something common in 'Public Interest' and 'Public Purpose'. The expression 'Public Purpose', however, cannot be defined precisely, and has no rigid meaning. It can be defined only by a process of judicial inclusion and exclusion.

A broad test has been formulated for defining 'Public purpose', viz., "Whatever furthers the general interest of the community, as opposed to the particular interest of the Individuals, must be regarded as a public purpose". The expression "interest of the general public" embraces in it - "public security, public order, and public morality". And "Public policy" is a principle of judicial legislation or interpretation, founded on the current needs of the community. Here, the interest of the whole public must be taken into account.

The Supreme Court in Gherulal Parekh v Mahadeodas Maiya has made following observation about 'public policy':

"Public policy...is an illusive concept; it has been described as 'unruly horse', etc.; ...this doctrine of public policy is only a branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for courts to

5. AIR 1959 SC 781.
expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days."

However, Andhra Pradesh High Court in *Ratanchand Hiralal v. Askar Nawaz Jung* observed in different vein as, "In a modern progressive society with fast changing social values and concepts, new heads of public policy need to be evolved whenever necessary. Law cannot afford to remain static."

Both these contradictory propositions have been quoted with approval in a recent decision of Delhi High Court in *C.O.S.I.D. Inc. v Steel Authority of India*. However, such oscillating judicial opinions leads to uncertainty.

Recent years have seen a steady expansion in Public Interest Law. There is no accepted definition of Public Interest Law. Public Interest Law has been defined in a variety of way be commentators. Public Interest Law is the area where social conscience meets the law. Public Interest lawyers seek to

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6. *Supra note 5.*
advance the right of persons or causes who are victims of unnecessary and harmful abuses.

The most accepted definition of Public Interest Law is:

"Public Interest Law is the name given to efforts to provide legal representation to interests that historically have been unrepresented and under-represented in the legal process. These include not only the poor and disadvantaged, but ordinary citizens who, because they cannot afford lawyers to represent them, have lacked access to court rooms, administrative agencies, and other legal forums in which basic policy decisions affecting their interests are made."

The American Bar Association has given a much wider definition of Public Interest law involving lawyers in the pro bono process generally. According to this definition, Public Interest Law means:

"Legal service provided without fee or at a substantially reduced fee which falls into one or more of the following area: (1) Poverty law ...; (2) Civil Rights Law ...; (3) Public Rights Law ...; (4) Charitable Organization Representation ...; (5) Administration of Justice ...."

Rajeev Dhawan has defined Public Interest Law as:

"Public Interest Law is part of the struggle by, and

11. Ibid.
on behalf of, the disadvantaged to use 'law' to solve social and economic problems arising out of differential and unequal distribution of opportunities and entitlements in society. In an effort to procure 'justice between generations' it is also concerned with preventing the present and future needless exploitation of human natural and technological resources."

Public Interest Law rests on the conviction that the 'public interest' is more likely to emerge, and the legal process is to function more effectively, if all sides to a dispute are represented. Public Interest law has been response to the problem that policy formulation in our society is too often a one-sided affair -- a process in which only the voices of economically or politically powerful are heard. Those with substantial financial resources marshall the terms of lawyers and other experts to plead their cases before the courts and administrative tribunals. The formulation of public policy is often shaped by one-sided advocacy. In contrast, Citizen Groups, are under-financed and poorly organized are at a disadvantage in pressing their claims. They are unable to pay for sophisticated legal services necessary to affect policy-decisions. In many cases, regulatory or welfare schemes established by centre and the states to protect the

public interest or to protect particular segments of public have been undermined in their implementation because the protected groups were not able to demand effective enforcement.

A similar problem occurs when public interest institutions, such as prisons, school systems, and welfare systems directly infringe on the rights of citizens. Such institutions can develop a momentum that dictates basic policy, while the people affected have no voice in the decision-making process. The unavailability of legal representation to the affected people frequently prevents their practical 'access' to the courts, denying them the only forum in which they might assert their basic rights against the institutions that control them. Thus, Public Interest Law is a strategy that attempts to correct these imbalances.

C. IMPORTANCE OF PUBLIC INTEREST LAW

The importance of Public Interest Law within the legal profession has been widely recognized. Manytimes, Public Interest issues affect large segments of society and the issues involved go beyond the interest of the immediate parties to a dispute, thus, affecting the general public. Public Interest Law seeks to fill some of the gaps in our legal system. Earlier successes of Civil Rights, Civil Liberties, and Legal Aid Lawyers acted as foundation stones for Public Interest Law, which has today moved into new new areas.
In United States, Public Interest Lawyers provide representation for a broad range of relatively powerless minorities, before the courts, administrative agencies and legislatures. For instance, to the mentally ill, to children, to the poor of all races. They also represent neglected interests that are widely shared by most of us as consumers, as workers, and as individuals in need of privacy and a healthy environment. Indeed, it is an important contribution by Public Interest Lawyers who have won many important victories for their clients in Public Interest Law. They have also made legal process work better, broadening the flow of information to decision-makers. They have made it possible for administrators, legislators, and judges to assess the impact of their decisions in terms of all affected interests. By helping to open the doors to our legal system for the protection of masses Public interest Law have moved the judiciary a closer to the ideal of 'equal justice for all'.

Public Interest Law has affected the lives of all citizens. It has created new bodies of law to protect the rights of all groups, and has reshaped - how the government and corporations should function. In short, it has had a major impact on the substantive and procedural development of American law.

Besides, Public Interest Law also deals with individual problems which are the reflection of societal ill. For instance, a Legal Aid Society lawyers represent not those who are too poor to afford a lawyer, but who without the assistance of an lawyer would be denied effective access to the legal system.
Day-to-day cases taken by a Legal Aid Society Lawyer may not have a large impact on the society as a whole. But the collective work of all Legal Aid Lawyers has certainly tremendous impact on society as it gives to the down-trodden the ability to fight and survive against much stronger and wealthier elements. So strong is the impact of Legal Aid Programs in poverty areas that they are credited with diffusing the tensions in the society.

Whereas, for a Public Interest lawyer, the key question, when asked to handle a case, is - whether the right or issue is important enough to warrant a major financial and time commitment? Usually, the determinative or important factor is not so much the amount of money recoverable for the plaintiff or the lawyer. Rather, the determining factor is - what are the policy issues that require organizational involvement?

D. WHY NEED PUBLIC INTEREST LAW?

Behind the notion of Public Interest Law lies the special relationship between legal representation and the responsiveness of the political system. Legal profession is a natural aristocracy of a democratic society suggesting that in governance of law, it is not men, but is is the 'men of law' who govern.

Oftlate, there have been serious threats to the traditional adjudicative machinery of the legal system. This institutional crisis can be attributed to three reasons. Firstly, there is the incapacity of the courts to deal with the increased workload they
nor face which is posing most critical problem in the field of judicial administration. This problem is even more critical than particular substantive issues of law.

Oftlate, there has been creation of a vast, and still growing array of legally vested rights which are enshrined in statutes and court decisions but which are not honoured in practice. There has been number of cases regarding the rights of juveniles, tenants in public housing, persons accused of crimes, welfare recipients, minority group members, women in protective homes, pavement dwellers, food starvation, accident victims, who have challenged the capacity of legal system. In criminal field, the newly expanded right to counsel for those charged with a crime, which will naturally require five-times more lawyers to defend them. In Civil field, the crisis is even more acute because they take longer period to come to trial resulting in steadily increasing congestion in court calenders. Thus, resources will have to be doubly expanded in order to provide legal representation to the indigent in non-criminal cases.

Concern over high-priced justice system lies behind the Supreme Court's decision in United Mine Workers v Illinois State Bar Association wherein the state's traditional power to regulate the practice of law within its own courts came in conflict with the critical need of the public for financially viable arrangements to secure access to counsel in matters involving private legal injuries.

Thus, the incapacity of the court to handle such increased workload due to emergence of new right, which were previously either not known or if known, were not honoured in practice, is posing a real threat to the traditional justice system.

**Secondly**, with the emergence of each new 'rights', there has also arisen an expectation that a 'remedy' exists for the resulting grievances. There are a vast number of grievances which deserve redressal, but since they fall short of magnitude necessary to give them the status of legally recognized grievances, albeit, in certain situations, such grievances are elevated to Constitutional status. For instance, in Hamilton, in *Alabama* case black woman successfully challenged an official for addressing her by her first name. But, by and large, such as this type of grievances are neatly ignored. Yet, such petty grievances are cumulatively making access in courts. Thus there is 'explosion of grievances' in modern times.

Finally, the third dimension of the present crisis of judicial system is in 'rule of law'. The immunity of officials - who administer major Government Grant Programmes in the fields of poverty, welfare, housing, transportation, urban renewal, and pollution control - from any meaningful form of scrutiny, surveillance, criticism, challenge, or accountability.


Then, another factor, is the 'sovereign immunity' of the officials. Government spends millions of rupees, presumably, to aid the poor, and other millions are spent on fighting crime and pollution. Yet, the poor are still impoverished. Their children are still uneducated. Their lives are still shorter. And the public is told that it must measure the efforts of the Government by intentions and expenditures, and not by results, not by sincerity, and not by achievements.

Naturally, the mounting challenges to official discretion means problem of securing additional legal resources. So if the 'rule of law' is to cope up with the three recent phenomena of modern times, viz., 'rights explosion', the 'grievance explosion' and the 'sovereign immunity', explained above, then the legal system will have to be expanded and restructured.

**E. HISTORY OF PUBLIC INTEREST LAW IN U.S.A. -**

**SOME IMPORTANT STAGES OF DEVELOPMENT OF PUBLIC INTEREST LAW MOVEMENT IN UNITED STATES**

The use of the term 'Public Interest Law' to apply to all of the various efforts to provide legal representation to unrepresented groups or interests goes back to mid-1960s. But, various movements and programs that contributed to shape, structure, and the underlying ideology of Public Interest Law goes back to as early as 1876, when the first Legal Aid Office was established in New York City. Although, there were many events in
the next 100 years that helped to shape modern Public Interest Law, the present researcher has chosen to include in this study, only that set of movements and organizations that exemplify important stages of development, and that have created or suggested institutional models that others have adopted, and in some cases improved upon, viz., (i). The Legal Aid Movement, with its systematic effort to represent the un-represented and its new concept of a salaried staff of attorneys to serve that clientele; (ii). the Progressive Era as epitomized in the career of Louis Brandeis, and his twin beliefs that lawyers have an obligation to consider the public interest in their work, and that the administrative agencies should consider the interests of the public in their decision-making; (iii). the American Civil Liberties Union (A.C.L.U.), with its involvement in questions of highest national importance, and its assumption that if Government is to serve the Public Interest then it must be closely monitored from outside; (iv). the N.A.A.C.P. Legal Defense and Educational Fund (N.A.A.C.P./L.D.E.F.), with its office of salaried attorneys acting as a policy-oriented organization, using law in a strategic way, establishing new precedents, and laying the ground work for a political agenda of change; (v). the Legal Services Program, with its application of the work of the A.C.L.U. and the N.A.A.C.P./L.D.E.F. to the problems of the poor, and its demonstration that government funding can be used effectively to support a network of private Public Interest Law programs acting as independent monitors of
government and private activities; (vi). the Lawyer's Committee for Civil Rights Under Law, with its demonstrations that the lawyer in private practice can play an important role in representing and legitimising unprecedented interests in broad areas of constitutional and statutory law enforcement; and (vii). the new Public Interest Law, which began in the late 1960s involving programs funded by private foundations and the general public to serve the environmentalists, consumers, elderly, children, women, prisoners, and a diversity of other constituencies that had not been represented as interest groups in the decision-making processes of the government.

Hereinafter, the present researcher will elaborate the above stages in the history of Public Interest law in United States.

(i). THE LEGAL AID MOVEMENT IN AMERICA

In United States, the organized Legal Aid for the poor began in 1876 with the establishment of a program of legal assistance by the German Society of New York for the then recently arrived immigrants.

16. For a detailed history of the very ancient roots of Legal Aid to the poor see M. Cappelletti, "The Emergence of a Modern Theme" in Cappelletti, Gordley & Johnson, Toward Equal Justice: A comparative Study of Legal Aid in Modern Societies, (Dobbs Ferry, Oceana, 1975).
From the very beginning, the Legal Aid has operated on the assumption that there are individuals who are generally unable to participate in the legal system. Thus, making conscious efforts to provide such individuals with advocates is important, both for the system of justice, and for the society as a whole. In the beginning, legal service was not provided as a gift from individual advocate to individual poor clients, who met by chance. Rather, it was a social service under the third-party subsidy of an independent organization.

Legal Aid was a diffuse movement, haphazard in its growth till 1919, when Reginald Heber Smith, an advocate with the Boston Legal Aid Society, published a work — *Justice and the Poor* — which contributed some important new ideas. He saw Legal Aid as not purely a charitable enterprise, but rather as a group of programs consciously discharging the bar's collective social responsibility. He said that the legal system was essentially neutral in which citizen automatically obtained that degree of access to advocates to which he or she was entitled.

Thus, the new idea — that there was a 'collective social responsibility' on the bar to provide opportunities for the unrepresented masses to secure access to justice system — was a crucial development in Public Interest Law. Smith also believed that Legal Aid should and would grow beyond dealing with individual problems to represent representing the collective interests of the poor.

Then, came organizational form of Legal Aid in which there
was an independent private office - separate from any commercial law firm - with salaried lawyers working full-time on the problems of clients. This form was, however, critical to the development of Public Interest Law. It was a new kind of institution that moved away from the concept of individual service performed on a voluntary contribution basis. It was a model that has been followed because it is effective. Under this model, those running the program were allowed to predict costs, and the advocates knew that they will have an income. Thus, under this model, the advocates do not have to treat Public Interest service as an uneconomic afterthought to an otherwise lucrative commercial practice. It was a revolutionary beginning.

However, Legal Aid failed to meet the objective of trying to offer basic legal service to all of the poor, which was too big an objective for private charity to support. It relied on local sources of funding which kept it vulnerable to local pressures. It sought close relationship with the organized bar in order to make itself into 'the lawyer's charity', but the lawyers did not respond with much financial assistance. Ultimately, it provided, only reactive assistance helping clients who already had an acute problem to iron out individual difficulties rather than anticipating the problems or eliminating their sources.

But, surely, the Legal Aid movement accomplished a great deal. Besides assisting millions of individual poor people over the yeas, it continuously asserted the idea that - there is a social and professional responsibility to provide legal
representation for those who are excluded from participation in the legal system. It also recognized that the problem of providing legal services could only be solved through establishment of a new institutional mechanism. Thus, it created the institution of a staff of salaried lawyers working full-time to provide representation to a special client population - the poor.

(ii). THE PROGRESSIVE ERA

The period from 1890s through the first decade of the twentieth century was a time when major changes were taking place in the institutions of government and law. When the country was shifting from principally agricultural, economic and social base to one that was urban and industrial. The Legal Aid, which was the first form of institutionalized legal representation for interests that could not secure lawyers in the market place, grew up. This was the period when the legislatures were groping for 'ways' to deal with conditions being brought about by rapid social and economic change. The courts were largely unsympathetic to such efforts. State and Federal judges over-turned protective labour legislations and statutes designed to regulate the use of industrial property on the grounds that such laws either interfered with the right to contract or involved a taking of property interest by state without just compensation. For instance, *Penna. Coal Co. v Mahon*, wherein a Pennsylvania

17. 260 US 393(1922).
statute that limited coal mining in areas where cave-ins of structures on the land surface might result, was over-turned, as a taking of property without compensation. The court relied upon such doctrines as 'substantive due process', and acted as defender of laissez faire capitalism, albeit, those ideas were being publicly criticised at that time.

By the beginning of the century, however, the principle that government should intervene in the economic life of society in order to see that the market does not operate in such a way as to injure the public, secured general acceptance. This very principle laid the ground work for public interest lawyers of a later generation.

Louis Brandeis, a prominent lawyer in Boston started the fight as a 'public spirited citizen'. In 1897, he began devoting major part of his time to acting as a 'Public Interest Legal Reformer' by entering into a battle with the Boston Elevated Railway Company. He accused the company of trying to slip past a supine legislature, a franchise that would grant the company an inordinate financial returns and sacrifice the interest of the public. He entered into many subsequent battles ranging from those over anti-trust policy and protective labour legislation to one over the conservation of Federal wilderness lands in Alaska. He believed that the legislatures and administrative agencies would prove the best means for advancing the public interest, and he urged the courts to let them work out their own way of dealing with economic and social problems.
Brandeis said that lawyers have a social obligation, as an economic, intellectual and managerial elite, with exclusive license to engage in their profession, to act independent of their clients, to act as more than the adjuncts of great corporations. This view of Brandeis later became a major theme in Public Interest Law. Most of Public Interest Lawyers today hold same viewpoint as Brandeis. They too believe that government has an obligation to respond to changing public needs and interests in an effective way, and that lawyers have a social obligation to consider the social implications of their professional work.

Today, Public Interest lawyers argue that three quarters of a century of experience with the agencies of government has demonstrated that without public participation before governmental agencies, and without sufficient judicial supervision, the governmental agencies tend to entirely confuse the interests of the public with those of the industries or parties whose behaviors they are supposed to regulate. Legislatures are tolerant of governmental activities that clearly deny equal protection and due process of law.

Nonetheless, the origins of Public Interest Law can be traced to an era - in the end of the century - when both, the notion of lawyers for the public challenging practices that 'sacrifice the interests of the public to that of a single corporation', and many of the institutional problems that they have subsequently come to challenge, began.
(iii). THE AMERICAN CIVIL LIBERTIES UNION (A.C.L.U.)

The American Civil Liberties Union, as a phenomenon of Progressive-Populist Era, with its concern over government abuses began in 1916. The A.C.L.U. was the first Public Interest Legal Organization which took up many constitutional rights cases, in the period up to mid-sixties. Unlike the Legal Aid Movement, however, whose local programmes grew out of purely local concern, the local activities of the A.C.L.U. focused on important policy matters that were part of a national agenda or set of objectives, treating local disputes in the context of national institutions and nation wide issues. This emphasis on important policy questions later became a major characteristic of subsequent Public Interest Law Organizations. The A.C.L.U.'s central structure - combining an active group with legal action, and its approach to fund-raising - obtaining small contributions from a wide public, also formed a model for such later organizations as Ralph Nader's Public Citizen & Common Cause.

(iv). N.A.A.C.P. LEGAL DEFENSE AND EDUCATION FUND

The true beginning of policy-oriented public interest in United States is seen in the early 1930's. At that time the

N.A.A.C.P. broke with the model of a citizen's lobby and service organization by adopting a strategic plan for using litigation to bring about specific social objectives. Virtually, all subsequent Public Interest legal endeavours share, in some respects, followed the early examples of N.A.A.C.P. and later the N.A.A.C.P. Defense and Education Fund (N.A.A.C.P./L.D.E.F.).

The N.A.A.C.P./L.D.E.F. grew out of National Association for the Advancement of Coloured People (N.A.A.C.P.), founded in 1909, in reaction to accounts of a race riot in Springfield, Illinois. Originally, the N.A.A.C.P. was an educational and lobbying group, and not a legal action effort. Albeit, it was involved in several important precedent-setting cases, its use of judicial forum was sporadic and unplanned. It was supported entirely through dues and small donations. In 1930, it received a sizable grant from American Fund for Public Service (The Garland Fund), to begin 'a comprehensive campaign against the major disabilities from which Negroes suffer in American life - legal, political and economic. In 1939, the N.A.A.C.P./L.D.E.F. was established as a separate entity, but it maintained a close working relationship with the N.A.A.C.P. proper as, gradually, the N.A.A.C.P./L.D.E.F. and its staff of lawyers used precedents that ran counter to

\[\text{Plessy v. Ferguson and Cumming v Richmond County Board of}\]

\[\text{Supra note 18, at p. 619.}\]

\[\text{20. 163 US 537(1896).}\]
Education to build a chain of decisions that eventually did away with school segregation and all segregation in public facilities.

In order to organize and perform its work, raise funds, and institutionalize victories, the N.A.A.C.P./L.D.E.F. developed an institutionalized model. Some of its aspects were:

(a). Like Legal Aid, it used a full-time salaried staff of highly qualified lawyers as a core group. It did not rely upon volunteers or counsel hired on an ad hoc basis to deal with particular disputes;

(b). Like the A.C.L.U., it decided against handling routine 'service' cases, in which the matter is primarily of concern only to those who are directly affected by the question at issue;

(c). It did not adopt a reactive or defensive posture in representing the client's interest. Rather, it assumed an active role in the strategic accomplishment of its goals, using litigation as a primary tool for bringing about changes in the way in which political and social institutions deal with minority interest;

(d). Even though it served a very special, relatively poor interest group, for financial support it primarily depended upon a widespread national membership that gave

21. 175 US 528(1899) - popularly known as The School Segregation case. Other school segregation case was -Berea College v Kentucky, 21 US 45(1908); Gong Lum v Rice, 275 US 78(1927).
small sums to support the work of the organization;

(e). In strategic manner, it rejected simple accumulation of big cases, and favoured series of incremental victories which, besides building a favourable legal climate, also fostered a public and legislative atmosphere that converted victories in the courts into changed social behaviour patterns;

(f). It worked through a self-created network of private attorneys to follow up victories achieved and convert theoretical statutory rights into practical substantive benefits;

(g). In order to convert its work from Public Interest Law into a market place endeavour in which private lawyer could routinely participate in it, it institutionized the said network of private attorneys by obtaining legislation authorizing attorney's fees.

Today, all Public Interest law endeavours, virtually, follow above-stated aspects of this model in one way or another. The N.A.A.C.P./L.D.E.F. demonstrated that a minority cannot only challenge the constitutionality of individual statutes or policies, but also build an agenda for change that will shift the political system into positive action, and may even erode the legal ground under the opposition.

In N.A.A.C.P. v Button the United States Supreme Court

rejected the attempt by the state of Virginia to use its barratary statute to prevent attorneys working with the N.A.A.C.P./L.D.E.F. from seeking out and providing representation on questions with clear political importance where there was no profit to the individual attorney involved.

Thus Button case made it possible for civil rights groups to seek out clients and opening use of litigation as part of a broad strategy of reform on behalf of the interests they represented. Button case also made it easier for subsequent Public Interest Law organizations to treat the law strategically, and to make known the availability of their services to potential clients.

In 1958, it was N.A.A.C.P. that persuaded the Congress to establish a Federal Commission on Civil Rights. Also, with the aid and support of President Lyndon B. Johnson, it obtained Civil Rights Act of 1964, which created a statutory basis for the federal enforcement of equality of treatment in education, employment and public accommodations.

The A.C.L.U., the Legal Service Program, the environmental movement, the Public Interest Law Centres concentrating on reform of the administrative agencies of government, and the programs of legal representation for the rights of other minorities, all have borrowed vigour from N.A.A.C.P./L.D.E.F.
(v). PRIVATE FOUNDATIONS

In the early 1960s, Private Foundations, which had previously been hesitant to venture into granting funds to law-related programs, began taking interest in supporting civil rights law programs. The Twentieth Century Fund, the New World Foundation, and the Ford Foundation, all began to provide some financial assistance.

Consequently, the legal aid movement, which had been virtually bypassed in New Deal Era as a result of its image as a private charity, was revitalized.

The entry of Private Foundations also had an important impact on the American Civil Liberties Union. The A.C.L.U. became more and more involved in civil rights movement. Special efforts were mounted in areas such as military law, prisoner's rights, women's rights, sexual privacy, and objector amnesty.

(vi). FROM LEGAL AID TO LEGAL SERVICES

In government funding of legal aid, there is potential risk of government domination. The fact remains that the beneficiaries of any program of legal assistance to the poor are politically weak, and also targets of political attack. It is

23. In New Deal Era, there had been substantial interest in the use by government of legal tools to address social and economic problems, and a growing acceptance of social program under government subsidy.

realised that if law offices are to be staffed by government employees, such lawyers may be subject to political abuse and manipulation. If any program is effective at the local level then it may come in conflict with local government, directly or indirectly. And if such programs are under the administration of local government then in that case it is feared that an adequate and effective legal representation may be prevented.

Thus, it is argued that if there are to be poverty law projects, then they should be independent of local government. This argument, indeed, helped to shape the future structure of the Legal Service Program, which has sought to avoid, both local and federal government domination.

In the early 1960s, a series of experimental programs in legal services to the poor were taken up. These experiments were to have a profound effect on the future of Public Interest Law. But it was not until 1974 that a legislation creating an independent Public Corporation to manage the legal service program was passed. The Legal Service Program is, today, firmly institutionalized part of the universe of Public Interest Law.

Legal Service Program has expanded on the model developed by the N.A.A.C.P./L.D.E.F., and it has shown that law reform is a concept that can legitimately and effectively be applied to questions other than those of racial discrimination.

Legal Service Programme is involved in a great deal of strategic, policy-oriented work before the courts, administrative agencies, legislatures, and executive bodies. Given the size of
the problems with which it has been faced, and the limitations of the legal process, it has been successful as a policy-oriented movement.

The program has managed to achieve a local control, while keeping the guarantees largely free from political domination by relying upon a funding source that is largely independent of local pressures, and by funding local guarantees - that are corporations, entirely independent of government. Legal Service has also shown that, although, for all aspects of Public Interest Law government funding may be neither practical nor desirable, still government funding does not automatically mean that there will be governmental control over policy, or an automatic avoidance of controversial issues. And Legal Service has demonstrated that there can be cooperation between Public Interest lawyers and the organized bar.

Since, by using the model of - first, litigating an issue, then seeking legislation to make the decision of the courts more effective, and then following up the legislation with further litigation to achieve effective enforcement, it has thus provided a useful lessons to the rest of Public Interest Law.

(vii). THE LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW

In part, the Legal Aid Movement closely identified itself with the bar, and it became lawyer's charity. Though, the A.C.L.U. never sought an institutional relationship with the Bar
Organization, but it has always relied heavily upon the contributed services of private lawyers. Then came, N.A.A.C.P./L.D.E.F., which also used volunteer lawyers, but through the award of attorney's fees in civil right cases, it tried to make it financially worthwhile for private lawyers to engage in work supportive of its goals. Finally came, the Legal Service Program, which relied heavily upon the organized Bar for political support, while its local guarantees have used volunteer attorneys to serve as board members and to handle its overflow of cases.

However, for all these organizations, private Bar has been a supplementary resource. In 1963, one national organization that has sought to rely primarily on voluntary commitments of time from private law firms, and that has sought to build it's program structure around the concept of volunteer lawyers handling major policy-related cases in an important area of Public Interest Law, is the Lawyer's Committee for Civil Rights Under Law.

In United States, lakhs of lawyers are engaged in the practice of law. It is proposed that these lawyers should devote a portion of their time and wealth to provide representation in policy-related matters for those who would otherwise be unable to obtain adequate legal service.
It was the successes of N.A.A.C.P./L.D.E.F and its allies, in the civil rights movements; the court room victories of the Legal Services Programme and its allies in the poverty law movement; and the tendency of Federal courts to evolve new procedural remedies adequate to address old legal wrongs, that convinced many people that the courts were going to play a crucial role in the political life of the country. During this period, great proliferation and growth of Public Interest Law took place.

Public Interest Lawyers won many victories under the same statutes which had remained un-enforced due to either - lack of enough interest or inability to bear the burden of enforcement. Different social, political, and intellectual factors interacted with one another in a manner that led to the development of number of new programmes, creating un-predicted pattern. There was rapid development of new Public Interest Law Centres.

Another important and critical development that took place in late 1960s was the new willingness of private foundations to support not only civil rights and poverty law centres, but also the groups that proposed to use the law to advance new causes, such as protection of environment, and defense of consumers. The work of new Public Interest Law Centres quickly led to widespread acceptance of the view that administrative bodies and
decision-making agencies will function in better manner when those who are affected are adequately represented before them. This also led to the reform of various important areas of substantive law in the late 1960s and early 1970s.

In last years of 1960, there was a growing sense of frustration with the government on the part of financially comfortable segments of the urban and suburban-middle class. There was a public sense that government officials were using their powers of office to block change, and that timid legislators were immobilized by the fear of offending, one or another, power bloc.

These frustrations led to concern over a number of causes. The first cause was that of consumerism. Ralph Nader advanced his concern towards institutional indifference to the health, safety, and convenience of the average worker and consumer. His book, entitled "Unsafe at Any Speed", published in 1966 had tremendous influence. In 1970, Nader established an action group of his own, the Public Interest Research Group which was supported entirely from Nader's own earnings. Within a year, however, it became evident that the organization would need more funding than Nader could personally supply to accomplish its goals.

Therefore, in 1971, Nader set up Public Citizen, a body principally supported by small contributions from the public. Now, this is principal Nader Organization and consists of a number of sub-divisions. It conducts research, participates in

administrative agency proceedings and engages in litigation on a wide range of consumer interests. Nader's work received wide press coverage and had great impact, especially, in Washington.

The second effort - which developed in the same period - in Public Interest Law was the establishment of several new programmes. The origin of this effort can be traced to the work done by Louis Brandeis. These new programmes were closely entwined with the rise of Nader network of programs. It was realised that certain interests are so widely 'diffused' throughout a large class of individuals or throughout the society as a whole that no one individual is likely to have the time, the resources or the personal interest to provide for adequate representation.

Brandeis believed that agencies themselves could act, both, as spokesman for the public and as arbitrators of conflicting claims. But, the lawyers felt that the agencies were in essence functioning as forums for adversial proceedings where only one aide was being heard from.

The first process-oriented law centres, The Centre for Law and Social Policy (C.L.A.S.P.) began in Washington in 1969. The C.L.A.S.P. was model for a variety of new centres ranging from the Institute for Public Interest Presentation and Citizen's Communications Centre in Washington, Public Advocates in San Francisco, and Centre for Law in the Public Interest in Los Angeles.

And it interacted with and influenced yet another group of
programs - those concerned with Environmental Protection. In United States, there is a long tradition of citizen's establishing organizations for the conservation of natural wilderness areas and the preservation of wild life. But the tradition of conservationists and environmentalists going to court and the agencies, is relatively recent. Earlier, there was no way to bring an environmental matter into the court unless one could establish standing to sue by showing actual damage to one's own interests, which were normally defined in economic terms.

However, in 1966, in Scenic Hudson Preservation v Federal Power Commission, the second circuit court of Appeals ruled that an environmental preservation group, the Scenic Hudson Preservation Commission, had the 'standing to sue' to protest the siting of a proposed power generating station on Storm King Mountain in New York state.

This case was the opening of which groups took advantage. In 1967, a group of scientists relying upon the Scenic Hudson case decision, in Environmental Defense Fund v Environmental Protection Agency filed a suit as members of the Brookhaven Town natural Resources Committee against the Suffolk County Mosquito Control Commission. They complained against environmental impact of the extensive use of D.D.T. on wild life and achieved one year ban on the use of D.D.T. The ban was later made permanent by the

27. 489 F. 2d. 1247(D.C. Cir. 1973).
county. This action was followed by a New York state-wide ban in 1970, and ultimately by an Environmental Protection Agency ban on mose uses of D.D.T. Emboldened by their initial victory, the scientists, thus formed the Environmental Defense Fund (E.D.F.)

In 1969, with the passing of the National Environmental Policy Act, E.D.F. began seeking foundation grants to launch a public membership drive and today, E.D.F. is a large and powerful organization.

In 1970, the Internal Revenue Service raised the question - whether this new Public Interest Law was charitable in the same sense as were the programs providing legal representation to the poor and other traditionally deprived minorities? And Whether 'Public Interest Law Firms ' truly differed from private one's?

Later, Internal Revenue Service accepted the definition that a charitable Public Interest Law Firm is one framed in terms of giving access to the legal system for interests that could not practically secure private representation.

Shortly, after the development of independent legal centres in the areas of consumerism, environmentalism, and citizen representation in the administrative processes of government, there was a proliferation of projects that were either part of larger organizations or closely affiliated with them. For instance, The Centre for Law and Social Policy developed the Women's Rights Project, and Lawyer's Committee for Civil Rights under Law created a Voting Rights Project, a South Africa Project, and an Attorney's Fees Project.
A wide number of new civil rights law centres were also established in the same period from 1969 to the present. As various Public Interest Law groups directed at serving special population sprang up, the Federal government, through such agencies as - the Department of Health, Education and Welfare; the Department of Labour, and the Department of Justice's Law Enforcement Assistance Administration, began to track the role of private foundations by funding special Public Interest Law programmes of its own. Centres were established under government subsidy to concentrate on the legal rights of such population as - the aged, the poor, ex-prisoners, and prisoners.

In the early 1970s, Law Firms also became involved in the movement. Young lawyers became volunteers with various Civil Rights Organizations for using law as a tool for ordering social change, and performed a substantial amount of pro bono work.

By the mid-1970s, the concept of lawyer's working to provide regular, systematic representation for the un-represented interests of the various segments of the public had become widely accepted and widely acted upon.

F. THE WORLD OF PUBLIC INTEREST LAW TODAY IN UNITED STATES

Although, the roots of Public Interest Law go back to 100 years, most of its growth has accord in last twenty one years. Prior to 1969, Public Interest Law took its shape from the handful of major centres then in operation, viz., The National
Defense and Education Fund (N.A.A.C.P./L.D.E.F). The American Civil Liberties Union (A.C.L.U.) and Foundation, the Lawyer’s Committee for Civil Rights Under Law, the National Committee Against Discrimination in Housing and a few O.E.O. Legal Services back-up Centres. Civil liberties and Civil rights and the problems of the poor were the main issues they addressed. Their chief clientele was blacks, poor people, and social and political dissidents. And their principal tool was their law suits.

By the end of 1975, the universe of Public Interest Law had expanded so that today its spectrum of issues includes - Consumer Protection, Environmental Protection, Land and Energy use, Tax Reform, Occupational, Health and Safety, Health Care, Media Access, Corporate Responsibility, Education Reform, Employment Benefits, and Manpower Training. It’s range of clients embraces workers, women, children, the elderly, prisoners, and the mentally impaired. And the tools it employs now include administrative agency actions, investigative research reports, arbitration, and negotiation, public education campaign and lobbying.

Before, 1969, Public Interest Law was a small, easily viewed and measured phenomenon, and today it has grown into a world of diverse and highly individualistic organizations operating over a wide geographic and social map.
In United States, the 'class' or 'representative' action developed since 1938, it developed even more since 1966, however, recently it is impaired.

There have been persuasive reasons, form a practical point of view, for this extraordinary growth in United States. The reasons can be identified with the compelling need to provide a flexible, efficient protection of group and collective interests against the abuses of mass economy and welfare government. Indeed, the unprecedented growth of modern class actions or public interest actions represents the most typical 'American Answer' to the exigency of giving adequate protection to those emerging 'diffuse' rights which have become so fundamental in the contemporary world.

This important devise is rooted in 'equity'. The original purpose of the class action (in equity) was simply to provide a procedural device so that mere members would not disable large group of individuals, united in interest, from enforcing their equitable rights, nor grant them immunity from their equitable wrongs.

The class actions have the potential of being the most effective method of vindicating the emerging meta-individual rights. The class suitor is typically a 'private attorney general' in that his initiative is not limited to the defense of
'his own' rights. At the same time, the class suitor is subject to limits and controls enforced by the court determined both by the legislature and by a large amount of judicial discretion. So it is for the court to ascertain — whether the class suitor is actually a member of a class?; whether he acts for the general benefit of the class?; and whether he is an 'adequate', albeit self-appointed representative of the class?

Infact, in response to increase in judicial discretion in class actions, Justice Black, in his dissenting view, opposed the adoption of the amendments to Rule 23 in 1966. He was of the view that the said amendments to Rule 23 placed too much power in the hands of the trial judges and that the rules almostly simply provided that class suits could be maintained, either for or against particular groups, whenever in the discretion of the judge, he thought it wise.

Thus, the class action is a unique combination of private initiative and court control. It is an extremely valuable instrument only if accompanied by adequate control, checking abuses on account of statutory limitations and court supervision.

The recent decisions of the United States Supreme Court, which seem to have interrupted the steady progress of American Jurisprudence in class action and public interest actions, are cause of concern. The institutional and procedural difficulties,

problems, and inadequacies which have been faced by the civil law world in assuring effective representation of meta-individual interests have been met in America by class actions, which appeared optimal to all in the world. Therefore, all regarded the American experience with class actions, particularly in civil and welfare rights, and in environmental and consumer protection, as tested model for civil law countries trying to overcome the difficulties and the inadequacies which have remained despite the reforms that have been made.

Indeed, it should be emphasized that this is perhaps the real message for the Common Law world, and particularly, the United States, to draw more from the Civil Law experience with Public Interest Litigation: a retreat from the relatively advanced position taken by the American jurisprudence in the past few years may ultimately mean falling back onto ground which the Civil law world has found, through painful experience, to be insufficient, inadequate, and - as measured by the comparative yardstick - unjust, since it is incapable of providing an effective means of asserting the most of contemporary interests.

At this point, however, it seems fair to add that, notwithstanding the latest developments in the United States, advocating the collective interests may still be easier and have a greater impact in American courts than most courts in Civil Law
nations. In fact, notwithstanding recent American decisions, standing requirements today are not major barriers in most Public Interest Litigation cases in United States, in contrast to Civil Law World.

Three reasons may be given for this. Firstly, Public Interest Law Firms, virtually unknown in other countries, have become increasingly important and respected in the United States. This phenomenon has blossomed to the point that American Bar

29. United States Supreme Court had decided against Public Interest Litigation in *Warth v. Seldin*, 422 US 490 (1975); *Schelesinger v. Reservists Comm. to Stop the War*, 418 US 208 (1974); *United States v. Richardson*, 418 US 166, 177-80 (1974). What is striking in these decisions is not the fact of denial of 'standing to sue' to taxpayers and citizens, but it is the strong language used which indicates that the liberalisation of 'standing' requirements in such previous cases as *United States v. SCRAP*, 412 US 669 (1973), is not a happily, peacefully accepted development. Indeed, such liberalisation is viewed by those later decisions as an unwarranted expansion of judicial power.


Association, in recent years, has switched from a position of hostility to one of affirming a general responsibility of the legal profession to provide Public Interest Legal Services. Despite the United States Supreme Court decision in 1975 in *Alyeska Pipeline*, it may still be easier in America to find a qualified Public Interest Lawyer willing to charge no fee than it is elsewhere in the world. Besides, it is to be noted that a number of Federal laws in United States still permit the awarding of attorney fees to a prevailing plaintiff enforcing the law. There is, of course, still the possibility of further Congressional action to expand the list of areas where the prevailing 'public interest' plaintiff can collect attorney's fees from the defendant. Legislation has been introduced permitting attorney's fees in actions under the Mineral Lands Leasing Act of 1920, actions for injunctive relief under the Clayton Act, civil rights action, actions under the National Environmental Protection Act, suits for the review of Administrative action, and actions generally in the interest of justice.

Secondly, notwithstanding the recent hostility of the Supreme Court and other Federal courts towards Public Interest

Litigation and the institutions of 'private attorney general', a brighter picture is sure on the horizon. The New York Legislation on class actions, which is effective since September 1, 1975, is the best example of an encouraging trend which has begun to appear in state systems. This exceptionally interesting statute deserves to be set out in full herein. The statute lay down following pre-requisites to a class action under section 901 which says:

'Pre-requisites to a class action' -

a. One or more members of a class may sue or be sued as representative parties on behalf of all if:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;

3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;

4. the representative parties will fairly and adequately protect the interests of the class; and

5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

b. Unless a statute creating or imposing a penalty, or a
minimum measure of recovery specifically authorizes the recovery thereof, in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action.

The said statute further says about the 'order allowing class action' in Section 902 as:

Order allowing class action -

Within sixty days after the time to serve a responsive pleading has expired for all persons named as defendants in an action brought as class action, the plaintiff shall move for an order to determine whether it is to be so maintained. An order under this section may be conditional, and may be altered or amended before the decision on merits on the court's own motion or on motion of the parties. The action may be maintained as a class action only if the court finds that the pre-requisites under section 901 have been satisfied. Among the matters which the courts shall consider in determining whether the action may be proceed as a class action are:

1. The interest of members of the class in individually controlling the prosecution or defense of separate actions;

2. The impracticability or inefficiency of prosecuting or defending separate actions;

3. The extent and nature of any litigation concerning the controversy already commenced by or against
members of the class;
4. The desirability or undesirability of concentrating the litigation of the claim in the particular forum;
5. The difficulties likely to be encountered in the management of a class action.

Further, Section 903 of the said statute speaks of the 'description' of the class as:

The order permitting a class action shall describe the class -
When appropriate, the court may limit the class to those members who do not request exclusion from the class within a specified time after notice.

Then Section 904 speaks about - when 'notice' of the class action is to be given - as:

a. In class actions brought primarily for injunctive or declaratory relief, notice of the pendency of the action need not be given to the class unless the court finds that notice is necessary to protect the interests of the represented parties, and that the cost of notice will not prevent the action from going forward.

b. In all other class actions, reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs.

c. The content of the notice shall be subject to court's approval. In determining the method by which notice is to
be given, the court shall consider -

1. The cost of giving notice by each method considered;
2. The resources of the parties; and
3. The stake of each represented member of the class and the likelihood that significant members of the represented members would desire to exclude themselves from the class or to appear individually, which may be determined in the court's discretion.

d. (i). Preliminary determination of expenses of notification.
Unless the court orders otherwise, the plaintiff shall bear the expenses of notification. The court may, if justice requires, require that the defendant bear the expense of notification, or may require each of them to bear a part of the expense in proportion to the likelihood that each will prevail upon the merits. The court may hold a preliminary hearing to determine how the costs of notice should be apportioned.

(ii). Final determination -
Upon termination of the action by order or judgement, the court may, but shall not be required to, allow to the prevailing party, the expenses of notification as taxable disbursements under Article 83 of the Civil Practice Law and Rules.

Then, Section 905 of the said statute speaks of the 'judgement' as:
The judgement in an action maintained as a class action,
whether or not favourable to the class, shall include and describe those whom the court finds to be members of the class.

Section 906 of the said statute talks of 'actions conducted partially as class actions as:

When appropriate,
1. an action may be brought or maintained as a class action with respect to particular issues, or
2. a class may be divided into sub-classes, and each sub-class can be treated as a class.

The provisions of this article shall then be construed and applied accordingly.

Section 907 of the statute speaks of 'orders in conduct of class actions as:

In the conduct of class actions the court may make appropriate orders -
1. determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
2. requiring, for the protection of the members of the class, or otherwise for the fair conduct of the action, that notice be given in such a manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgement, or of the opportunity of members to
signify whether they consider the representation fair and adequate, or to appear and present claims or defense, or otherwise to come into action;

3. imposing conditions on the the representative parties or on intervenors;

4. requiring that the pleadings be amended to eliminate therefrom allegation as to representation of absent persons, and the action proceed accordingly;

5. directing that a money judgement favourable to the class be paid either in one sum, whether forthwith or within such period as the court may fix, or in such installments as the court may specify;

6. dealing with similar procedural matters.

The orders may be altered or amended as may be desirable from time to time.

Section 908 of the statute says about 'dismissal, discontinuance or compromise' in following words:

A class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs.

Section 909 of the statute provides for 'attorney's fees' in following words:

If a judgement in an action maintained as a class
action is rendered in favor of the class, the court in its discretion may award attorney's fees to the representatives of the class based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount awarded from the opponent of the class.

Even though the California Supreme Court may have retreated from its advanced position relative to class actions, however, it has ruled that at least under California law 'private attorney general' may be awarded attorney's fees for their activities in litigation. And even before the enactment of the new law in New York, in Ray v Marine Midland Grace Trust, the class actions requirements were considerably liberalized.

While preserving the basic features of the Federal class action, Rule 23, the New York Law allows in that state precisely what the holdings of Eisen and Alveska Pipeline took away at the Federal level. With respect to the holding by the Supreme Court in Eisen v Carlisle and Jacquelin, the New York law,

33. 35 N.Y. 2d 147(1974).
firstly, does not require individual notice - in common question actions - to all members who can be identified through reasonable effort. Secondly, it allows notice requirements to be tailored to the plaintiff's resources and the hardships of the costs. And thirdly, in certain instances, it allows costs to be imposed initially on the defendant after a preliminary hearing. Then with respect to the holding in Alyeska Pipeline Serv. Co. v Wilderness Society, it allows the court, in its discretion, to award attorney's fees to the class attorneys.

Indeed, other New York legislation addresses the Supreme Court holdings in United States v Richardson and in Schelesinger v Reservists Comm. to Stop the War as well. This law, in fact, allows citizen tax-payer suits in the state of New York, and even provides for the establishment of a common fund for the payment of attorney's fees to prevailing plaintiff. The catalyst for this law was a New York Court of Appeals decision of July 2, 1975, in the case of Borovsky v Brydges which juridically overruled prior New York law, thus allowing taxpayers to challenge the enactments of state legislatures as contrary to

35. N.Y. CPLR R. 909.
the mandate of State Constitution. Prior to this decision, New
York had been one of the few states failing to recognize the tax-
39 payer’s suits.

H. CONTRIBUTION OF PUBLIC INTEREST LAWYERS — HOW THEY HAVE
CHANGED THE AMERICAN SCENE

The contribution of Public Interest Lawyers in some areas,
such as Civil rights, poverty, environmental law are well known.
But in other areas, such as product safety, women’s rights, and
mental health care, though no less important, are less well
recognized. The greatest contribution that Public Interest
Lawyers have made in demonstrating that ordinary citizens can
influence, and sometimes fight against powerful political and
economic institutions.

i. EMPOWERING THE POWERLESS POOR

In a society, it is not only the disadvantaged and poor
who often feel helpless but millions of middle class citizens,

when faced with government and corporate wrongful conduct feel frustrated and overpowered. When they read in the newspapers about some corporation is paying less or no taxes, or when they know that they are getting impure drinking water, unsafe pharmaceutical drugs, or when they cannot meet the sky-rocketing electric bills and telephone bills, or when they feel against corrupt politicians—and they think they can do nothing about it. They feel helpless, miserable. Therefore, what Public Interest Law has shown that—sometimes it is possible to do something. In other words, citizens can now make their voices heard and help shape the public policy decisions that affect their lives.

For instance in *No Oil, Inc. v City of Los Angeles*, the case of Threatened Neighborhood, citizens in Pacific Palisades, a middle class residential area in Los Angeles, were deeply disturbed to learn that the Occidental Petroleum Corporation had planned for oil in the heart of their suburban neighbourhood. Although, they mounted a vigorous campaign to convince city officials that there were grave potential hazards for the environment, and that Occidental should be denied to go ahead with the drilling, the citizens suspected from the start that they would lose. The drilling permit was granted, and the citizens, feeling that they had been victims of a stacked political process as Occidental officers enjoyed a long and close

40. 13 Cal. 3d. 68(1974).
relationship with the city's mayor, came to the Centre for Law in Public Interest, which was a Los Angeles based Public Interest Law Center, to see if any legal recourse was available to them. The Center brought legal suit contending that the permit was illegal because environmental factors had not been adequately considered as required by California Environmental Quality Act of 1970. The City argued that no environmental impact report was necessary since the drilling was to be temporary and exploratory. After a long battle through the lower courts, the California Supreme Court ruled in the Citizen's favour, asserting that when project causes a serious dispute over its environmental impact, the dispute itself shows that an impact report is needed. Soon after the court's decision, Occidental withdrew its drilling plan.

As a result of this case, not only was the Pacific Palisades neighbourhood preserved, but an important precedent establishing the necessity of environmental impact reports was set, and the faith of the Palisades citizens in their ability to influence governmental decisions was at least partially restored.

In Goldfarb v Virginia State Bar, popularly known as the case of the Overcharged Home buyer, a man named Goldfarb bought a house in Reston, Virginia, and was looking for a Virginia lawyer to handle the title search for the closing. He called one lawyer but was disappointed by the high fee of the

lawyer, i.e., $522.50. Then he called another lawyer who also quoted the same price. Goldfarb approached still another lawyer, and this way he contacted nearly 20 lawyers, all of whom refused to charge less than $522.50 for the title search. Naturally, Goldfarb became curious to know the reason. He discovered that the state bar association had issued a minimum fee schedule 'suggesting' the lowest prices that lawyers could charge for title searches. Now, outraged by blatant price fixing, Goldfarb filed suit on behalf of himself and 2,000 other Reston homebuyers who had also been victims of the bar association's fee-fixing. As it soon became clear that the litigation was going to be too long and expensive for him to afford, Goldfarb turned to the Public Citizen Litigation Group for help. The Litigation Group took up the case, all the way to Supreme Court, wherein, Supreme Court unanimously ruled that enforced minimum-fee schedules constituted illegal price fixing under Federal anti-trust statutes.

Indeed, it is a landmark decision, wherein, it was held, for the first time, that lawyers — and, by implication, other professionals — are subject to Federal anti-trust laws. Thus, Court opened the way to more competition among doctors, architects, pharmacists, optometrists, and opticians. This could lead to more competitive pricing that could help bring the cost of those important professional services within closer reach of moderate and lower income Americans. For Reston homebuyers, the monetary reward was purely secondary. It was the feeling of
satisfaction that something was done for them which mattered.

In Fuchs v. Bidwill, popularly known as the case of the Outraged taxpayer, Citizens across the state of Illinois were incensed to learn that key members of the state legislature, with influence over race-track policies, had enjoyed some highly questionable wind fall profits. An Illinois race track owner had sold stock in her new harness-racing corporation to the legislators for only $1 a share. Shortly thereafter, she bought the stock back from the legislators at $3 to $7 a share, giving them profits ranging from $20,000 to $30,000 each. One taxpayer was so angered that he wrote to the Illinois Attorney General asking the State to sue to recover those profits from the legislators. When the Attorney General refused to do so, the taxpayer turned to Business men and Professionals in Public Interest (B.P.I.), a Chicago-based Public Interest Law Center. B.P.I. sued, charging the legislators with misuse of their public office, and demanding that the profits made from the transactions be awarded to the state treasury. In August, 1975, the Illinois Appellate Court, in an unprecedented state ruling reversed a lower court dismissal of the suit and held that a citizen can sue public officials who place themselves in a conflict of interest position even though the citizen was not personally aggrieved by the official's misconduct.

This holding established the new doctrine that - when

42. 334 N.E. 2d. 117(1975).
citizens allege that state officials commit a breach of the public trust, citizens of the state have a right to sue for recovery of, to the state treasury.

This case illustrated a major thrust in Public Interest Law by giving the citizens a voice not only by providing them with lawyers, but also by winning new case precedents establishing that ordinary citizens do, as a matter of law, have the right to be heard. Infact, much of Public Interest Law has been a highly successful effort to extend the right to citizens to be heard in matters and forums from which they had been previously excluded.

But it must be emphasized that establishing citizen's right to participate, though essential, is only the first step. That right remains meaningless unless it is actually put to use. It is in the implementation of rights that contribution of Public Interest Law has been especially crucial. Nowhere can this be better seen than in the field of broadcast communications law.

ii. CITIZEN'S PARTICIPATION IN COMMUNICATIONS MEDIA

In 1966, Justice Warren E. Burger ruled in Office of Communication of United Church of Christ v F.C.C. that citizens have the right to participate in Federal Communications Commission (F.C.C.) proceedings, even though they may not have

43. 359 F. 2d. 994(D.C. Cir. 1966).
economic interest in the matter at issue, and even though the F.C.C. purports to represent the public itself. In the words of Justice Berger:

"The theory that the Federal Communication Commission can always effectively represent the listener interest...without the aid and participation of legitimate listener representatives...is no longer a valid assumption which stands up under the realities of actual experience...."

Thus, the decision gave judicial recognition to an important principle that underlies Public Interest Law — that government agencies cannot adequately represent all facets of the public interest, and thus Citizen Groups must be given the opportunity to participate directly in the administrative process.

Justice Berger's unanimous decision has been hailed as the Magna Carta of Citizen participation at the F.C.C.. But the right it established would have remained academic, had a Public Interest Communications Bar not emerged to actually provide representation to citizens before the F.C.C.

Through active participation in F.C.C. licensing and rule making proceedings — particularly through the use of petitions to deny license renewals to television and radio stations that have been unresponsive to community needs — Public Interest

44. Supra note 43, at pp. 1003-1004.
Communications Lawyers and the Community Groups they represented, have had a significant impact on the broadcasting industry. Blacks, Chicanos, and other racial and ethnic minorities — nearly completely absent from the television screen for years — are now visible, both on the aid and behind the scene.

Also, programming by and for minorities and women, once a rarity, is now far more common. As a result of one license renewal challenge, for example, a Southern television station whose programming and staff had totally excluded blacks, now has several black-oriented programs, a black newsman anchoring its evening news show, and 39 percent black employment.

Besides, there is considerable expansion of discussion of local issues. Due to the work of Public Interest Communications Bar, the presentation of controversial issues has become more balanced. For example, in re Radio Station WHAR, the F.C.C. ordered a West Virginia station to begin covering the issue of strip mining, an issue it had never covered despite the fact that it is of great local concern.

Many reforms have come about through negotiated settlements. For example, in one case, the Citizen's Communications Center (CITIZENS) — which has helped hundreds of community groups to file license challenges — agreed to withdraw a petition opposing the acquisition of television station in Philadelphia, New Haven, and Fresno by Capital Cities.

Broadcasting Corporation in return for the company's promise to commit $1 million over a three-year period to programming that serves blacks and Chicanos in those communities. Other cases have been won even without a formal petition ever being filed. Indeed, much of CITIZEN'S effort has gone into training local community groups in how to negotiate with broadcasters themselves.

Public Interest Communications Lawyers have also been active in expanding educationally oriented children's programming and decreasing child-directed advertising, preserving classical music and other unique radio formats, and diversifying monopoly concentration of media control.

### iii. CONSUMER PROTECTION

Before the advent of Public Interest Law Centers, all government agencies charged with the regulation of business rarely heard from consumers with the result consumer's interests suffered a lot because the record on which government agencies based their decisions was often not balanced. However, Public Interest Lawyers have made strides in assuring that consumer interests are taken into consideration in deliberations of Food and Drug Administration, the Civil Aeronautics Board, the Federal Trade Commission, the National Highway Traffic Safety Administration, and the Consumer Product Safety Commission.

Thus, Public Interest Lawyers are playing a key role to ensure that regulation of business by these agencies is as
vigorous as the public health, safety, as welfare requires.

For example American Public Health Association v Veneman was a case involving the Food and Drug Administration (F.D.A.) regulation of the pharmaceutical industry. In 1962, Congress passed a law requiring the F.D.A. to remove all ineffective drugs from the market. Despite the findings of National Academy of Sciences-National Research Council Review Panels that a high percentage of drugs on the market were ineffective, the F.D.A. took little action. F.D.A. would conclude that a drug was ineffective, and then grant the manufacturer additional time to bolster the record on effectiveness, meanwhile allowing the manufacturer to continue selling the drug. Disturbed by this foot-dragging for eight long years, the American Public Health Association and the National Council of Senior Citizens turned to the Centre for Law and Social Policy (C.L.A.S.P.). C.L.A.S.P. filed suit on their behalf to compel the F.D.A. to speed up its enforcement. The court ordered the F.D.A. to act immediately to remove all ineffective drugs from market.

But even before the decision was handed down, the F.D.A., apparently, in response to C.L.A.S.P.'s challenge, had already increased the manpower working on safety and efficiency reviews. Lawyers at C.L.A.S.P., Consumer Union, and the Public Citizen Health Research Group continued to monitor the F.D.A. and other agencies to make sure that other unsafe products are removed from

the market. For instance, in early 1974, the Health Research Group, armed with strong scientific evidence that Vinyl Chloride may cause cancer, petitioned before three Federal agencies for banning the use of that chemical in aerosol products. With the result, more than hundred hair sprays, pesticides, deodorants and other aerosol products in which Vinyl chloride had been used, were withdrawn from the market.

In number of cases, Public Interest Lawyers succeeded, not be challenging an agency in an adversial manner, but rather by providing critical support for an agency when it is under seize from recalcitrant industry interests.

For instance, the Centre for Auto Safety (C.F.A.S.) has sometimes, served as a crucial ally to the National Highway Traffic Safety Administration, which is responsible for setting safety standards for motor vehicles. In one case, the agency had proposed a standard limiting the flammability of vehicle upholstery materials to a burn rate of four inches per minute. The industry asked for a burn rate of upto fifteen inches per minute. C.F.A.S. also helped the agency to overcome industry criticism and stick with its four inch per minute standard.

Public Interest Lawyers have also begun to counter-balance business representation at the state regulatory agency level. The biggest successes have been in the utility-rate area, where groups, like Arizona Centre for Law in the Public Interest, the California Citizen Action Group, Consumer Union, and the Connecticut Citizen Research Group, have effectively brought
citizen voices into the decision-making of State Public Service Commission, often for the first time. For example, in 1975, the Arizona Center, as a result of intensive participation in two months of rate hearing, before the Arizona Corporation Commission, helped convince the commission to deny a local electric company's request for a seven percent increase.

Another important function of Public Interest Law is to serve as a catalyst for governmental action. By breaking ground in new fields, and winning key precedents, Public Interest Lawyers have spurred government officials to move into areas where they had not ventured before. For instance, consumer lawyers have played this catalytic role in recent efforts to open, the professions to greater competition. Their first key action in this action was the Goldfarb case which established that the anti-trust laws were inapplicable to professions. In 1975, Consumer's Union (C.U.) filed a case, Consumer Union v American Bar Association attacking certain American Bar Association restrictions on advertising by lawyers. This case is widely credited with helping to persuade the A.B.A. to begin to ease its advertising rules.

After the Public Interest Lawyers had paved the way - the Federal Trade Commission and Justice Department joined the battle against anti-trust competitive practices in the professions. In 1975, the F.T.C. filed a complaint against the American Medical

47. Civil No. 75-0105-R(E.D.Va. Richmond Div.).
Association accusing it of illegality, restraining competition among doctors by prohibiting its members from advertising their prices and services. Six months later, the Justice Department filed suit against the A.B.A. and Bar Associations in each of 50 states, charging that their remaining prohibitions on advertising by lawyers violated the Federal anti-trust laws.

iv. ENVIRONMENTAL PROTECTION

Another area, where Public Interest Law has played the most crucial role is environmental law. Public Interest Law has tried to make sure that governmental agencies are implementing the statutes as the Congress intended, because many well known laws have remained mere words on the statute books due to ineffective enforcement. Public Interest Lawyers have substantially improved administrative enforcement of Congressionally mandated rights and programs by carefully monitoring the administrative agency's activity - by sometimes working with agency officials to develop strong enforcement regulations, sometimes attacking them for their inadequate action.

In 1972, Congress first passed amendments to the Federal Water Pollution Control Act, making the Act nation's first tough, comprehensive, clean water law. The Act aimed at restoring all the nation's waters to fishable and swimmable quality by 1983, and completely ending water pollution by 1985. These goals were
indeed highly laudable. But, the question was - whether the administrative enforcement would also be vigorous enough to meet these goals? To this end, a Project on Clean Water was set up by the Natural Resources Defense Council (N.R.D.C.) which was to serve as a watchdog of the Environmental Protection Agency (E.P.A.) enforcement of the law, and also to work with interested citizen's groups around the country. In the first few months after the Act was passed, E.P.A. missed 14 rule making deadlines, thus N.R.D.C. brought action in a court. And the court ordered schedule for publishing those regulations. E.P.A. missed its deadline for issuing regulations to set limits for the discharge of industrial pollutants. Again an action was brought against by N.R.D.C.. With the result the regulations were finally promulgated.

These actions have led E.P.A. Deputy Administrator, John Quarles to hold up N.R.D.C.'s Project on Clean Water as an example of an effort that has had an surprisingly effective impact on the conduct of Federal Environmental Programs aimed at pollution.


As action in court of law are a last resort to improve agency performance, Public Interest Lawyers have tried, wherever possible to make their case at the administrative level by participating in agency proceedings and cooperating with agency officials by bringing new ideas or information to their attention, assisting them in analysing scientific data, and aiding them in interpreting in technical aspects of the law.

*Frie* v. *Sierra Club* was one of the most significant victories in the area of aid pollution case. E.P.A. had proposed regulations that would have allowed states, whose air quality was better than minimum Federal standards, to permit substantial deterioration of that 'virgin' air. The Supreme Court forbade E.P.A. to issue regulations that would permit significant deterioration of air quality in areas that were by then not blighted by air pollution. This decision, won by the Sierra Club Legal Defense Fund had a favourable impact on air quality, in upto 80% of the country.

Albeit, in environmental field, much of what Public Interest Law has accomplished has been done by making sure that public officials are properly carrying out statutes, but in some cases it is the work of Environmental Law Centers themselves, that has inspired the passing of anti-pollution legislation.

For instance, in 1974, the Environmental Defense Fund

(E.D.F.) released a study done by its scientists that linked the presence of a number of cancer causing substances in Mississippi River drinking water to higher cancer rates among population using that water. Wide publicity ensued, which included CBS-TV report drawn on E.D.F.'s research, that raised serious questions about the safety of that nation's drinking water. The furor caused by E.D.F.'s findings in the report, coupled with similar findings by E.P.A., forced a previously uninterested Congress to pass the Safe Drinking Water Act in December, 1974.

E.D.F.'s work in that case was just part of a highly successful campaign waged by environmental law centers to reduce the presence of toxic, cancer-causing pesticides in environment. In their petitions, E.D.F. argued that those chemicals posed a serious threat not only to wild life but also to human health. Consequently, E.P.A.'s bans were imposed on DDT, Aldrin, Dieldrin, Heptachlor, and Chlorelane.

Although, for many people environmental law is associated with preservation of virgin beaches and redwood forests, protection of endangered porpoises, and defending historic sites because this has been done very effectively. But few are aware that environmental advocacy has at times merged with interest of the consumers also. For instance, E.D.F. has been engaged in a nation wide effort to reform the rate structure of America's electric utilities. It's goal is to convert electricity rates to peak-load pricing, in which, lower rates are charged for the use of electricity in off-peak hours. Thus, lowering the demand at
peak hours would reduce the need for generating facilities and thereby reduce pollution. And since off-peak periods include evening hours, when residential consumers generally use electricity most heavily, the proposal of E.D.F. would tend to lower the electricity rates for ordinary consumer.

**v. ASSISTANCE TO THE POOR**

Assistance to the poor is yet another area in which Public Interest Law has guaranteed that public agencies are serving the people in the way law makers intended them to serve. For example, in the health area, poverty lawyers have been instrumental in forcing effectuation of programs that were meant for the poor, but in fact were not reaching the poor because of administrative lassitude.

In one case, Congress had enacted Child Health Act, 1967, in which a provision required states to include periodic screening, diagnostic services and treatment programs for poor children in their state Medicaid programs, in order to assure the early identification and treatment of health problems. Now, despite the clear Congressional requirement that such care be included in state Medicaid programs, years passed without H.E.W. issuing the regulations directing the states to begin such services. When attempts to prod H.E.W. at administrative level failed, the Children’s Defense Fund (C.D.F.) decided to resort to the courts. However, in 1972, on behalf of the National Welfare
Rights Organization, C.D.F. won an out-of-court settlement in which H.E.W. finally agreed to issue regulations. C.D.F. and the National Health Law Program then followed up by assisting Legal Services Attorneys in about a dozen states, to file law suits to force states to actually set up screening programs. As a result of these efforts, approximately three million children have been screened through the diagnostic program, about half of whom have required follow-up treatment for health problems, that probably would otherwise have remained neglected.

Again, taking legal action to transform paper programs into real benefits for the poor, poverty lawyers at the Food Research and Action Center (F.R.A.C.) have gone to court several times to force the United States Department of Agriculture (U.S.D.A.) to put into motion a federal child nutrition program authorized by Congress in 1972. The program called Women, Infants, Children (W.I.C.) was designed to provide $25 worth of especially nutritious food each month, and regular medical screenings to low-income pregnant mothers and to children up to the age of five years, in order to stop the severe brain and growth damage that malnutrition was causing in infants and young children. But the W.I.C. program remained only an empty promise because U.S.D.A. officials refused to spend appropriated money, and to draft the regulations which were needed to put program in motion.

Therefore, in 1973, F.R.A.C. sued the U.S.D.A. and won court order regaining the agency to implement the program. When
U.S.D.A. continued to delay the implementation of W.I.C. programs, F.R.A.C. went to court again. Eventually, F.R.A.C. obtained several additional court orders directing the U.S.D.A. to stop delaying the program. With the efforts of F.R.A.C., the W.I.C. program is now in operation, thus, serving up to 550,000 children and mothers each month.

At local level, lawyers from the East Tennessee Research Group (E.T.R.G.) have been combining litigation with imaginative non-legal tactics to help increase county tax revenues so that there are more funds available to pay for social welfare programs. Albeit, state tax laws require all coal company property - including the land on which mines are located, all vehicles, and equipments - to be subject to taxation, but county tax assessors had been very lax in enforcing that requirement. By engaging in dogged investigative research, such as recording license plate numbers on coal trunks, and then informing assessors when that property is not found on the tax rolls, E.T.R.C. and the community groups it represents have succeeded in forcing coal companies to pay a fairer share of taxes.

In the consumer area, poverty lawyers have successfully fought many abuses that had hurt not only poor people but middle class people also.

For instance, in *Sniadach v Family Finance Corporation* Public Interest Lawyers won a Supreme Court ruling declaring a Wisconsin law that permitted an employee's wages to be *garnished* 52. 395 US 337(1969).
by a creditor before any court hearing was held, and that prevented the employees from regaining his or her full wages until he or she won the case on merits, to be unconstitutional. The Supreme Court invalidated all state laws throughout the country that permitted garnishment of wages before an official hearing.

Then, in *Serrano v Priest*, Public Interest lawyers have won a ruling that could revolutionize the financing of public school education in that country.

In 1968, Public Advocates and the Western Center on Law and Poverty, filed a suit in California alleging that state's system of financing secondary school education through local property taxes was illegal under the state constitution. Their clients were students living in low-income districts in which the local property tax generated little revenue for school financing. As a result, the schools in these districts were of poorer quality than the schools in districts where higher-income people were generating far more revenues. The California Supreme Court declared that the state's property tax school-financing system was unconstitutional, if it discriminated against the poor because it makes the quality of the child's education a function of the wealth of his parents and his neighbors.

*Serrano case* established a precedent that had nationwide impact. In a number of states, courts have used its reasoning to

In 1962, the case of Baker v Carr is an example of the important role that Public Interest lawyers have played in efforts to reform the political process. The American Civil Liberties Union's victory in this case led to the re-appointment of legislative districts on a 'one person - one vote' basis. The decision in Baker v Carr alone has had an enormous impact on the nation's electoral system.

After Baker v Carr, ten years later, Public Interest lawyers played a key role in another matter of far-reaching political importance - the Watergate scandals. Public Interest lawyers helped uncover the full story of improper White House activities by using litigation to pry information loose from the Nixon re-election Committee. In Common Cause v Finance Committee to Re-elect the President, the Litigation Department of Common Cause used, the almost forgotten, the Federal Corrupt Practices Act, 1925, to force the Republican Presidential Campaign Committee to reveal its hidden 1972 campaign finance activities. This case brought to light the information which was

54. 369 US 186(1962).
critical to the Watergate investigation: the history of cash contributions to CREEP, Rosemary Woods' Secret list of big contributors, and the names of illegal corporate contributors.

In yet another case, Tax Analysts and Advocates v Shultz involving the Nixon Administration. Tax Advocates successfully challenged an Internal Revenue Service (I.R.S.). This ruling gave substantial tax relief to wealthy donors to the former President's re-election campaign. By bringing this suit Tax Advocates not only shed further light on political machinations of the Nixon White House, but also saved the United States Treasury from substantial future tax losses.

In addition to giving help in disclosing official misconduct, Public Interest Lawyers have also helped to open government generally to far greater public scrutiny. This is done largely through their vigorous use of the Freedom of Information Act. The Public Interest Bar's experience with the Act as it was originally passed, also helped to identify the loop holes, that demonstrated to Congress the need for strengthening amendments which it passed in 1974.

vii. MENTAL HEALTH AND PRISON REFORM

Another major role of Public Interest Law has been to assert new constitutional theories in order to achieve reforms of

public institutions where previous attempts at reform had failed. The areas of 'mental health' and 'prison reform', there are excellent cases on this point.

The case of *O'Connor v Donaldson*, that partially affects more than 200,000 persons, who are involuntarily confined in mental institutions, arose in 1956 when Kenneth Donaldson, at the age of 48, was involuntarily committed to Florida State Mental Hospital because he purportedly suffered from harmless delusions. The judge had told to put him there for only a few weeks, but he remained in locked wards, against his will and received no treatment whatsoever for almost fifteen long years. Finally, his Public Interest lawyers from Mental Health Law Project (M.H.L.P.) and the American Civil Liberties Union obtained his discharge, and subsequently won Supreme Court ruling. The Public Interest lawyers asserted that the Constitution gives involuntarily confined mental patients - a right to treatment. Supreme Court ruled that a state cannot, under the Constitution, continue to confine against their will mentally ill persons who are not dangerous to themselves or others, and who are receiving only custodial care.

By forcing the treatment or release of non-dangerous mental patients the M.H.L.P. lawyers hope to provide, mental health professionals, with the leverage to convince localities to set up community-based treatment centers to give those patients

the care they need.

In *Mill v Board of Education of the District of Columbia* it was found that District of Columbia Board of Education had illegally failed to provide access to formal education for as many as 80 percent of the children who were retarded, emotionally disturbed, blind, deaf, or who have speech or learning disabilities. Court decided that local school systems should give suitable educational opportunities to mentally impaired school-age children.

Another area of persistent social concern is 'prison reform'. Public Interest Lawyers in this area won the most sweeping court order ever aimed at a state prison system. They achieved it by convincing an Alabama Federal District court that inhuman living conditions in Alabama's prisons - including severe over-crowding, regularly over-flowing toilets, pervasive filth, and rampant rats, cockroaches, and mosquitoes - constituted cruel and unusual punishment, and were therefore illegal under the Constitution. The court declared that the entire Alabama prison system was unconstitutional and ordered state officials to upgrade Alabama's prison immediately.

viii. CIVIL RIGHTS

Of course, the most traditional role of Public Interest Law

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has been to assure that the rights and interests of disadvantaged minorities in society are not abused or neglected. The Civil Rights lawyers have made invaluable contribution to the struggle to end discrimination in education, employment, housing, voting and public accomodations by seeking vigorous implementation of anti-discriminatory laws, by monitoring law enforcement officials, to make sure that they are applying the statutes fairly, and by carefully analysing laws themselves in order to make sure that they are equitable.

For instance, in education, Public Interest Lawyers at the N.A.A.C.P./L.D.E.F. won the historic school desegregation decision in Brown v Board of Education. This decision overturned the separate but equal doctrine. There after N.A.A.C.P./L.D.E.F. lawyers employed and expanded the Brown doctrine to bring hundreds of cases aimed at integrating the nation's schools. For instance, in 1969, in Alexander v Holmes County Board of Education the N.A.A.C.P./L.D.E.F., and the Lawyer's Committee for Civil Rights Under Law succeeded in replacing Brown's 'at deliberate speed' order with a requirement that segregated school districts terminate dual school systems 'at once'. And in 1976, in Runyon v MacCrary, the Lawyer's

Committee and the N.A.A.C.P./L.D.E.F. won another landmark Supreme Court decision prohibiting private schools, such as 'segregation academics' set up to evade Brown, from adopting a policy of denying admission to blacks.

As a result of lawsuit brought by the Mexican American Legal Defense and Education Fund (M.A.L.D.E.P.) and the Puerto Rican Legal Defense and Education Fund (P.R.L.D.E.F.), school districts across the nation are now providing bilingual education programs for Spanish speaking students. In Aspira of New York v Board of Education of the City of New York the P.R.L.D.E.F. obtained a consent decree mandating a bilingual school program for New York City Hispanic students, that is the most far reaching bilingual education program yet attempted in a major United States city. The said program promises to provide over 85,000 Puerto Rican and other Hispanic school children, who have English language problems, with a meaningful opportunity to learn. In a similar case, Serna v Portales Municipal Schools M.A.L.D.E.F. won a court order directing a New Mexico school district to provide both bilingual and bicultural education for Spanish-surnamed students, who comprised one-third of the district's elementary school students.

By making extensive use of the Title VII of the Civil Rights Act of 1964, Civil Rights lawyers have worked effectively

64. 499 F.2d 1147(10th Cir. 1974).
in reducing employment discrimination. They have filed suits against private companies as well as government agencies that were denying equal employment opportunities to racial and ethnic minorities. As a result, millions of dollars in compensatory backpay have been awarded to victims of past discrimination, and also thousands of minority workers have been able to win jobs and promotions that were previously closed to them.

Three precedent-setting cases won by Public Interest Lawyers in this area are Albemarle Paper Co. v Moody, in which the Supreme Court sustaining the concept of class-wide backpay awards for past-discrimination; Griggs v Duke Power Company, which held that under Title VII, tests for employment or promotion must be job-related, if they have a differential impact that discriminates against minorities; and Quarles v Philip Morris, Inc. which held that previously segregated employees within a plant are entitled to use total plant seniority to reach their rightful place on seniority lists.

Efforts by Public Interest lawyers to open up the political process to minorities goes back to 1940s, when in Smith v Allwright N.A.A.C.P./L.D.E.F. persuaded the Supreme Court to outlaw whites-only primaries in Texas. Since the enactment of

the Voting Rights Act of 1965, Public Interest Lawyers have worked to ensure the newly created voting strength of blacks and other minorities is not diluted by political devices such as gerrymandering. For instance, in 1969, in *Fairley v. Patterson* the Lawyer's Committee won a Supreme Court ruling that effectively blocked attempts by Mississippi counties to dilute black voting strength by changing to at-large election districts.

Law suits by the P.R.L.D.E.F. and others have been instrumental in winning the right of bilingual voting materials for Spanish-speaking voters - a right critical to their informed participation in a political process.

Through their efforts to assert and protect Indian rights, the Native American Rights Fund (N.A.R.F.) has virtually created a whole new area of law. As a result of their activities, critical Indian Treaty rights have been re-affirmed, and Indian control has been regained over tribal land and water resources that had been bargained away or expropriated by government agencies or private interests. For instance, in *Pyramid Lake Paiute Tribe of Indians v. Morton*, N.A.R.F. won a court order halting excessive diversion of water from Pyramid Lake in Nevada (the largest desert lake in the nation), which the Private

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69. In the Supreme Court, the case was reversed and remanded under the name of *Allen v. State Board of Education*, 393 US 544(1969).

Indians fish for a living, and therefore need for economic survival.

ix. WOMEN'S RIGHTS

The Women's Rights Law Centers, albeit only a few years old, have had a large impact on the right and status of women in United States. This has been true, especially in two areas, viz., Employment rights, and Abortion reform.

In employment area, women's rights lawyers have not only opened more employment opportunities to women, but also eliminated discrimination in benefit and leave policies. In LaFleur v Cleveland Board of Education, Jo Carol La Fleur, a junior high school teacher in the Cleveland public school system was told that she had to leave her job midway through her pregnancy and remain on unpaid leave of absence until the beginning of the school term following the three-month of birthday of her child. This meant that La Fleur would have to leave her job in March and could not return to work until January of the following year. La Fleur sued, and the Supreme Court ruled in her favour, striking down mandatory maternity leave as a violation of 'equal protection' under the law.

In Gilbert v General Electric Co., the Federal court

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gave far-reaching ruling that women must be given benefits by the employers for pregnancy-related disabilities.

In recent years, a number of cases have been brought by Women's Law Centers focusing on elimination of gender-based criteria, and classifications in employments. Now many laws contain a presumption that the man is primary bread-winner, and that a woman's employment is less valuable than a man's. However, Weinberger v. Wiesenfeld successfully challenged that presumption. Stephan Wiesenfeld's wife died in child birth, leaving on him the sole responsibility for the care of their infant child. His wife was a teacher and her salary had been the principal source of the couple's income during the marriage. When Weisenfeld applied for social security survivor's benefits, he was able to obtain them for his son but not for himself, since the statute entitled 'Mother's Insurance Benefits' specifically authorized payments to female spouses only. The Supreme Court ruled that the Statute was unconstitutional in giving survivor's benefits to women but not to men.

Public Interest Lawyers have significantly increased employment opportunities for women in a wide range of jobs that had previously been closed to them. They achieved this, often using negotiation, but backing it up where necessary, with legal

73. 420 US 636(1975).
action. For instance, *Smith v Trovan*, challenged employment discrimination against women by police and fire departments resulting in a Federal appeal court decision invalidating police weight requirements that had eliminated 99% of all women from hiring eligibility.

The Supreme Court ruled in *Roe v Wade* and *Doe v Bolton* that the decision to abort during the first trimester of pregnancy rested with the women and her physician. And it was only after the first three months that states could regulate abortions to protect maternal health.

Since then, a continuing battle is waged in the courts to prevent erosion of the *Roe* and *Doe decisions* by Public Interest Lawyers at the American Civil Liberties Union's Women's Rights Project, and the Centre for Constitutional Rights. They have successfully challenged the refusal of some public hospitals to permit on performing abortions. In *Doe v Poelker*, a Federal Court held that public hospitals have a legal duty to provide facilities and equipments for physicians and nurses willing to perform abortions. In *Klein v Nassau County Medical Centre*

74. 520 F.2d 492(6th Cir. 1975).
75. 410 US 113(1973).
77. 515 F. 2d. 541(8th Cir. 1975).
the court enjoined a law passed by the State of New York that would have forbidden Medicaid payments for effective abortions. Planned Parenthood v Danforth is an important abortion reform ruling by the Supreme Court laying down that states may neither require a woman to get the consent of her husband in order to have an abortion, nor impose 'blanket' restrictions requiring all single women under the age of eighteen years to get parental consent for abortions.

III. CONCLUDING OBSERVATIONS

Public Interest Law is the product of a contemporary interlude in recent American history. Public Interest Law is a phrase coined to name cluster of movements seeking to mobilize law and legal services on behalf of disadvantaged sections in society.

The lines defining the interests of disadvantaged from those of the advantaged are often inexact and blurred. For instance, the 'consumer' interest may affect the poor and the rich alike even though in different ways and with different results. Protection of the 'environment' may cause advantaged and the disadvantaged groups to align together. Advancing the cause

of the disadvantaged often entails advancing and rationalizing 'diffuse' interests. Public Interest Law is not just concerned with obtaining beneficial results for the disadvantaged sections of the society, but it seeks to involve the disadvantaged class in their struggle. This phenomenon is, thus, described as Public Interest Law.

Accordingly, law and legal institutions should be an arena of struggle for all alike - advantaged and disadvantaged. Albeit, Public Interest law espouses 'diffuse' interests which affect both advantaged and disadvantaged alike, and various institutions and processes claim to espouse public interest, still the interests of disadvantaged is often overlooked. Thus, in its handling of such 'diffused' interests, the present researcher's version of Public Interest Law strives for an opportunity in which the interest of the least advantaged is given an over-riding priority. Perhaps, the bias towards the least advantaged is governing idea towards which the society should work.

There are two distinctly different aspects of the institutional crisis of adjudication system, which needs proper balancing. On the one hand, Public Interest Law predictably will lead to court cases resulting in intensifying pressure on the traditional adjudicative system's capacity to cope up with the explosion of newer kinds of rights, and to provide judicial redress to whole new range of grievances.

On the other hand, Public Interest Law will have to manifest increased awareness of the necessity to reduce the level
of activity in traditional forums of redress - most notably the courts - in order to get swift results, as well as to save those traditional institutions from complete inundation and ultimate paralysis.

Although, Public Interest lawyers have enjoyed many successes, they have had their share of failures as well. Unfortunately, some recent losses seem to reflect judicial attitudes, especially on the present Supreme Court, that may severely restrict the ordinary citizen's access to justice. The court has imposed restrictions on the class action device, that make it more difficult for plaintiffs with small individual claims to band together to redress a common grievance. The court has limited the concept of 'standing' by finding that constitutional and 'prudential' considerations dictate that certain cases not be heard, even though serious charges by citizens of government lawlessness were thus not adjudicated. And the court has expanded judicial doctrines of abstention and comity to restrict access to the Federal courts for many victims of Federal constitutional violations, making it harder for citizens to obtain legal redress to enforce their rights. The judicial trend reflected in these decisions should be reversed.

But even in those cases wherein they have lost, Public Interest Lawyers have served legal system well by at least attempting to assure that all interests are heard. And in those cases wherein they have won, Public Interest Lawyers have, as present researcher has shown above, had a cumulative impact that
has left United States social, economic, and political systems significantly improved.

In United States, the Court recognizes the right to enforce the Constitutional Rights of Third Parties. As a general rule, a litigant has not 'standing' to assert the constitutional rights and may not be associated vicariously. The litigant may assert his own constitutional rights and immunities. These rules however emerge out of the rule of self-restraint exercised by courts and are not the constitutional principles and can be deviated from if there are weighty countervailing policies. In the following cases the United States Supreme Court has normally deviated from the general rule:

1. When there is close relationship between rights of the

80. Broadwick v Oklahoma 413 US 601(1973);

litigants and rights of Third party.

81. For example in *Eisenstedt v Baird* 405 US 438(1971), a person convicted under Massachusetts statute for exhibiting contraceptive articles in the course of delivering a lecture on contraception to a group of college students and for giving a young woman a package of contraceptive foam, was held to have standing to assert the right of unmarried persons denied access to contraceptives, because the relationship between the accused and the unmarried persons was that of an advocate of rights of persons to obtain contraceptives and those desirous of doing so. In *Singleton v Wulf* 428 US 106(1976), physicians were held to have standing to assert the rights of their women patients in an attack on the constitutionality of a Missuri abortion statute because of the close relationship between the physician and patients.

In *Craig v Boren* 429 US 190(1976), a licensed vendor of 3.2% beer was held to have standing to assert equal protection objections of males 18-20 years of age, to establish the unconstitutionality of the Oklahoma statute prohibiting the sale of 3.2% beet to males under age of 21 years and to females under the age of 18 years. The court held that the vendor was entitled to assert those concomitment rights of third parties that would be diluted or adversely affected, should her constitutional challenge fail and the statute remain in force.
2. When the Third party is unable to assert its own rights.

3. Where first Amendment rights are involved.

4. An association in certain circumstances will have standing to assert the constitutional rights of its members, for instance, when the challenged infraction adversely affects its members associational ties. Even in the absence of an injury to itself, an

82. In Eisenstadt v Baird, one of the reasons for granting standing to Baird was that the unmarried persons had no forum in which to assert their own rights.

In Broadwick v Oklahoma 413 US 601(1973), the court stated that the litigations are permitted to challenge a statute not because their own rights of free expression are violated, but because of judicial prediction or assumption that the very existence of statute may cause others not before the court to refrain from constitutionally protected free speech or expression.

In Bagelow v Virginia 421 US 809 the court declared that defendant’s 'standing' to challenge a statute of first amendment as factually overbroad, does not depend upon whether his own activity is shown to be constitutionally privileged.

In Young v American Mini Theatres 427 US 50, a defendant whose own speech was unprotected was held to have standing to challenge the constitutionality of statute which proposed to prohibit protected speech.
association may have standing solely as the representative of its members. The association must allege that its members or any of them are suffering immediately or threatened injury as a result of the challenged action.

5. Vendors and those in like position shall in certain circumstances have standing to assert the rights of third parties who seek access to their market of function.

Thus, when devices for representing public and group interests in civil litigation proved insufficient, the most conservative approach - which would deny in toto access to judicial protection of diffuse interests - was gradually abandoned. The standing was given either to any of those individuals who were either 'personally interested' or to the state. In the first case, however, the private individual was allowed to sue merely to vindicate his own interest - in particular to recover his personal damages - rather than to vindicate the interest of the entire group, community, or the class involved. In the second case, standing to sue was attributed to the traditional representative of the state in litigation - as to the governmental attorney general. But when neither of these two solutions proved adequate, there came 'third party' intervention by liberalising the 'standing' doctrine.

84. Warth v Seldin 422 US 490(1975).