CHAPTER V

PUBLIC INTEREST LITIGATION

Judicial activism plays a vital role in bringing in the societal transformation. It is the judicial wing of the state that injects life into law and supplies the missing links in the legislation. Thus, where the legislature falters, the judiciary corrects. Having been armed with this power of review, the judiciary comes to acquire the status of a catalyst of change. In the field of locus standi also, it is again the judiciary which has enlivened the dead law by sharply deviating from the traditional rule of private interest to public interest litigation.

Meaning and Concept of Public Interest Litigation

PIL which is a strategic aim of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief.

1. Dr. Upendra Baxi uses the term 'Social action litigation' (SAL) in preference to the more voguish term Public Interest Litigation' (PIL): Taking suffering seriously: Social Action Litigation in the Supreme Court of India, The Review, December, 1982.
PIL is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government.

Position in U.S.A.

We may begin with the United States and take up *Sierra Club v. Morton*\(^2\) The Sierra Club is a large organisation with a historic commitment to the cause of protecting the nation's natural heritage from man's depredation. The United States Forest Service wanted to build a ski resort in the Mineral King Valley, an area of great national beauty and quasi-wilderness largely uncluttered by the products of civilisation. The club challenged the action of the authority on the ground that it would change the aesthetic and ecology of the area. The Supreme Court denied relief to the club on the ground of lack of standing as it was not shown that its members were using Mineral King for any purpose. The court did not concede the argument of the club that it had a standing because it was a 'Public' action involving question as to the use of national resources, and that the club's long-standing concern with an expertise in which matters were sufficient to give it standing

2. 405 U.S. 727 (1972)
as a 'representative of the public.'

However, the court took a liberal view of locus standi in *United States v. Scrap* (3) Scrap was an incorporated association formed by five law students for the primary purpose of enhancing the quality of the human environment for its members, and for all citizens. It challenged the action of the railroads in increasing freight rates of 1½% as "the rate of structure would discourage the use of recyclable materials, and promote the use of new raw materials that compete with scrap, thereby, adversely affecting the environment by encouraging unwarranted mining and other extractive activities." Though the injury to the environment here was far less direct and perceptible than that in *Sierra Club* yet the court granted standing to 'SCRAP' as the action did harm its members, and it was regarded as immaterial that many people suffered the same injury.

The same approach is depicted in *Duke Power Co. v. Corolina Environment Study Group* (4). Here the Group of 40 individuals living within the close proximity of a nuclear power plant, being constructed by the Duke Power Co., challenged the action of the Congress putting limitations on liability for nuclear accidents resulting from the operation of private nuclear power plants licensed by the Federal Government. The court held that the appellants had standing because of resultant pollution of

3. 412 US: 669 (1973)
the atmosphere and of the two lakes in the vicinity of the disputed power plants, etc.

In a non-environment case, the court again fell on a narrow view of locus standi. In *Simon v. Eastern Ky. Welfare Rights Organisation*, composed of indigents, acting on their own behalf and as representatives of all other persons similarly situated, brought an action against the Internal Revenue Service for issuing a ruling allowing favourable tax treatment to a non-profit hospital that afforded only emergency room service to indigents. Their complaint was that such hospitals were encouraged to deny medical services to indigents. In other words, their argument was that favourable tax treatment should have been allowed to all such non-profit hospitals that served indigents fully. It was held that the plaintiffs had no standing. No hospital had been made the defendant and it was merely speculative whether the hospitals would give the desired services to the plaintiff if the ruling was withdrawn.

The above survey of the American cases shows that a liberal judicial tendency is discernible in the matter standing of consumers or environmentalists to challenge illegal administrative action though it cannot be asserted that the judiciary has completely thrown overboard the traditional rules of standing. What can definitely be asserted is that the courts have shown some flexibility in broadening the rules of standing.

5. 426 US: 26 (1977)
Position in England:

In England, Lord Denning, the Master of Rolls, is the champion of liberal rules of locus standi. He applied his liberal views to what are known as the Blackburn cases. Blackburn was a former Member of Parliament and Public spirited citizen. He took up before the Court of Appeal several matters of public concern. The Court of Appeal granted him locus standi in number of cases, challenging the right of the Government to join the Common Market, challenging the action of the police in protecting the big gambling club of London for violating the law as the police were failing to prosecute them because of a policy decision issued to them and challenging the action of the police for its failure to enforce the laws against pornography.

However, the House of Lords in Gouriet case took a narrow view of locus standi. In this case, the Post Office Union had announced that the Postal Workers were going to stop all transmission of mail to South Africa for one week. Gouriet asked the Attorney General to give his consent to file a case for

8. R.V.Commissioner of Police of Metropolis, ex-parte Blackburn (1963) 208 118.
The plaintiff then himself approached the court against the Union of Post-Office workers for an injunction. Recognising the standing of the plaintiff the Court of Appeal granted an interim injunction. The House of Lords, however, reversed. It held that a plaintiff without a special interest may not seek a declaration or injunction unless the action is brought in the name of the Attorney General, and the decision of the Attorney General in the matter was not reviewable by the court.

In England, order 53 r. 3(5) of the Rules of the Supreme Court which came into effect on January 11, 1978, by providing the test of 'sufficient interest for locus standi, has replaced the old judicially created rule of 'aggrieved person'. The rule came in for interpretation in R.V.Inland Revenue Commissioners, ex Parte National Federation of Self-employed and Business Ltd; Ex Parte National Federation of Self-employed and Business Ltd.

The men called the 'Fleet Street Casuals', numbering about 6000, did casual work for newspapers. While signing their pay dockets they did not sign their true names. The purpose was to hide their true identity and to defraud the revenue, and so had defrauded the revenue by about 8 million a year. The employers did not know their true names, but the trade unions controlling the newspapers did. When the revenue discovered this fraud, the casuals threatened industrial action if their names were disclosed. Ultimately a settlement was arrived at, according to 11. (1981) 2 W.L.R. 722.
which the casuals were given amnesty for the post, but they were to give their true names in future and pay their future taxes; some self-employed and small shopkeepers, 50,000 in number, through their Federation challenged the action of the revenue authorities in the court asking for a declaration that the action of the revenue authorities was unlawful in granting an amnesty to casual workers and for mandamus asking the revenue authorities to collect the tax from them according to the law. The Court of Appeal in a three to two decision held that the Federation had locus standi as it had a 'sufficient interest' in the matter. Lord Denning stated that the self-employed and small shopkeepers have a genuine grievance because as they see it, the 'Fleet Street Casuals' are getting out of paying their back taxes because of their industrial muscle'.

The House of Lords unanimously reversed. The reasons for reversal varied amongst the judges - majority holding that the Federation had not shown sufficient interest. Lord Diplock holding that he would reverse not on the ground of locus standi but because the Federation failed to show that the action of the revenue authorities was ultra vires or unlawful and Lord Roskill both on the grounds of locus standi and the Federation having no case. Thus, as in Gouriet, the House of Lords took a narrow view of locus standi in the present case.

13. According to Lord Scarman, the Federation had not shown any ground for believing that the revenue had failed to do its statutory duty.
Position in India

The judiciary in India also has travelled a long way after departing from the traditional rule of locus standi to the present-day public interest. It would be interesting to notice with care the judicial march to revolutionising concept of public interest.

The Supreme Court was often accused of being obstructive to social reform. In refreshing contrast to such allegations in the past, we find the apex court during the last few years interviewing boldly in a variety of matters affecting groups of under-privileged people and, in the process, evolving new principles and procedures for public interest advocacy.

Public Interest Litigation has two main limbs, locus standi and access to justice. If the rule of locus standi is narrowly interpreted, the obvious consequence of this would be that access to justice would be restricted. If the rule of locus standi is liberally interpreted, it would make access to justice more broad based. This is precisely what Justice Iyer has done. He has used the judicial power in a most constructive and potent manner in this area. Over a decade back, Justice Iyer in the year 1975 dealt with this issue in the case of Dabholkar. It involved professional misconduct on the part of Bombay lawyers. The State Bar Council suo motot issued notice to

the lawyers. The issue before the apex court was whether the Bar Council is the aggrieved party or not. The majority in this case held that the Bar Council is a "person aggrieved" because (i) the words "person aggrieved in the Act are of wide import in the context of the purpose and provisions of the statute and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens on financial interests. In disciplinary proceedings before the Disciplinary Committee, there is no lis and there are no parties. The word 'person' will embrace the Bar Council which represents the Bar of the State; (ii) the Bar Council represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession; (iii) the function of the Bar Council in entertaining complaints against advocates indicates that the Bar Council is interested in the proceedings for the vindication of discipline, dignity and decorum of the profession; (iv) when the Bar Council initiates proceedings by referring cases of misconduct to Disciplinary Committee, the Bar Council, in the performance of its function under the Act, is interested in the task of seeing that the advocates maintain proper standards and etiquette of the profession and (v) the Bar Council is vitally concerned with the decision, in the context of its functions. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.  

15. Id. at 306-307.
Justice V.R. Krishna Iyer, noted for his unconventional approaches and inconoclastic spirit in the cause of social justice had actually initiated the process of public interest litigation in this present case. He observed:

"Traditionally used to the adversary system, we search for individual persons aggrieved. But a new class of litigation - Public interest litigation - where a section or whole of the community is involved (such as consumer's organisations or NAACP—National Association for Advancement of coloured people - in America), emerges. In a developing country like ours, this pattern of public-oriented litigation better fulfils the rule of law if it is to run close to the rule of life. The Bar Council clearly comes within this category of organisations when a lawyer is involved." (16)

Justice Iyer initiated this process of public interest litigation in Babholkar and emphasised its importance time and again in the following cases and his extra judicial writings.

Public Interest Litigation was once again upheld by the Supreme Court in Ratlam Municipality v. Vardichand and others. The Supreme Court upheld the right of residents of a certain locality in Ratlam town to initiate proceedings against the Ratlam Municipality under Section 133 Criminal Procedure Code compelling it to provide sanitary facilities in the area. Krishna Iyer J. observed:

16. Id at 323.
17. AR 1980 SC 1622.
"If the centre of gravity of justice is to shift, as the preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered.... At issue is the coming of age that branch of public law bearing on community action and the court's power to force public bodies under public duties to implement specific plans in response to public grievances." (18)

Responding to the plea of the Municipality of lack of funds to carry out the amenities, Justice Iyer held it as an invalid defence and suggested several alternate schemes one of which could be adopted for phased implementation to bring early relief to the residents of the locality.

Justice Iyer generated a new kind of accountability of the State agencies by saying that:

"the dynamics of judicial process have a new enforcement dimension".... The officer in-charge and even the elected representatives will have to face the penalty of the law if what the court and follow-up legislation direct them to do is defied or denied wrongfully and poor finance will be poor alibi when people in misery cry for justice. (19)

Recently a case (20) came before the Supreme Court where the judgement delivered by Venkataramiah, J. was on the same lines as was delivered by Justice Krishna Iyer in 1980 in

18. Id at 1623.
19. Id at 1631
Ratlam Municipality Case.\(^{(21)}\) In Mehta's case, an active social worker filed a petition for the issue of a Writ/order/direction in the nature of mandamus to the respondents restraining them from letting out the trade effluents into the river Ganga till such time they put up necessary treatment plants for treating the trade effluents in order to arrest the pollution of water in the said river. The respondents pleaded that they do not have sufficient money to do it immediately. Venkataramiah, J. observed:

"The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue" \(^{(22)}\)

The enforcement dimension of the judicial process has led the court to issue successive directions and reminders to the state to comply with the judicial guidelines to protect the rights of the tortured and exploited. For instance in Hussainara Khatoon, \(^{(23)}\) the court said that if any accused complained that he had been denied speedy trial, it could direct the State to provide speedy trial to that accused. The court could also direct the state to set up more courts and appoint more judges in order to make speedier trial a reality. In Khatri I \(^{(24)}\) the court asked the state of Bihar whether any legal representation was provided to the blinded prisoners in compliance with the pronouncement in Hussainara Khatoon (IV). \(^{(25)}\)

\(^{21}\) Supra note 17.
\(^{22}\) Supra note 20 at 1045.
\(^{25}\) AIR 1979 C 1819.
Besides broadening the locus standi doctrine, the affirmative action invoked by the court in this case (i.e. Ratlam's case) opened up infinite possibilities for creative approaches in judicial action in the service of large groups of people for whom the court has been a distant dream as an instrument of justice.

The new jurisprudence was given another dimension in the Fertilizer Corporations Case. The question in this case was whether the workers in a factory owned by government could question the legality and/or validity of the sale of certain plants and equipment of the factory by the management. Recognising the worker's standing in this case, Chandrachud CJ. observed:

"If a public property is dissipated, it would require a strong argument to convince the court that representative segments of the public at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations.... We are not too sure if we would have refused relief to the workers if we had found that the sale was unjust, unfair or malafide." (27)

Krishna Iyer J. in his separate judgement took the matter further and stated:

"Public interest litigation is part of the process of participative justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial doorstep.... If a citizen is no more than a way fairer or officious intervenes

27. Id at 569.
without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busy-body, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered." (28)

It is submitted that though the court ultimately did not interfere because it did not find sale to be unjust on the maintainability of the challenge, the court did accept the standing of the workers. Public interest litigation which was initiated by Justice Iyer got meaningful articulation at the hands of Bhagwati J. (as he then was) in *S.P.Gupta's case*. (29)

He has fully legitimised and conceptualised the liberalised rule of *locus standi* in public interest litigation. He observes that "to insist on traditional rule of *locus standi* would, in effect, mean denial of justice to the poor masses. There is an urgent need "to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning." He says, the court would not be willing to countenance "a situation where observance of the law is left to the sweet will of the

28. *Id.* at 570.

authority bound by it without any redress if the law is contravened." The Courts have, therefore, a duty to "utilize the initiative and zeal of public minded persons or organisations by allowing them to move the court and act for general or group interest even though they may not be directly injured in their own right." If "no one can maintain an action for redress or such public wrong or public injury it would be disastrous for rule of law" and it is absolutely essential that the rule of law must wean the people away from the lawless street and with them for court of law."

In *Asiad Projects Case* (31), Justice Bhagwati further developed the theme of *locus standi* in public interest litigation. To the criticism that the new litigation would unnecessarily clutter up the already staggering arrears of cases, Justice Bhagwati responded that this criticism is unfounded and presents a totally a perverse view smacking of elitist and status quoist approach (32).

Professor Upendra Baxi has remarked that "Justice Bhagwati has generalised the technique of liberalised rule of *locus standi*, so radically that it could justly be said that he made


32. Id at 1477.
a momentous social invention namely "epistolary jurisdiction", by accepting even letters from public spirited citizens and converting them into writ petitions. (33)

It is submitted that it is Justice Krishna Iyer who for the first time on the basis of a letter written to him by a convict in Tihar Jail alleging brutality by a head warden on a fellow prisoner, broadened the scope of habeas corpus in Sunil Batra II (34) thus widening the scope of public interest litigation further and it is not Justice Bhagwati as remarked by Prof. Baxi. The letter itself was treated as petition.

We can say that this new direction provided by Justice Iyer was refined, extended and fully legitimized by Bhagwati J. In Dr. Upendra Baxi v. State of Uttar Pradesh; (35) Bhagwati J. (as he then was) treated a letter of two law professors of Delhi University addressed to the court as a writ petition. The letter urged an examination of the functioning of protective home for women in Agra where the inmates were living under unhygienic conditions in blatant violation of their right to human dignity implicit in article 21. Again a letter addressed by a journalist

named Olga Tellis claiming relief against the demolition of the hutments of pavement dwellers of Bombay by Bombay Municipal Corporation was treated as a writ petition. It came up before Chandrachud C.J. (as he then was) who passed an interim order protecting the hutment dwellers. This is how after experimenting with PIL for sometime, Bhagwati J. was able to make a momentous social invention namely, the "epistolary jurisdiction" in the Transfer of Judges case.

The practice of treating a letter as a writ petition introduced by Justice Iyer and followed by Bhagwati J. (as he then was) later on became fairly a common practice. There are quite a few cases where a letter was entertained as a writ petition by the courts, of course after making full investigation.

Professor Schwartz and Wade have also spoken in the same voice: "Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away merely because he is not affected personally, that means that some government agency is left free to violate the law and that is contrary to public interest."

Ram Kumar Misra v. State of Bihar AIR 1984 SC 537.
Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802.
However, Justice Tulzepurkar has criticised the development of PIL by observing that in the name of vindicating public interest, the Supreme Court is taking over the administration. It is correct that creeping jurisdiction is directly related to the expansion of judicial power. It is submitted that this expansion is a necessary consequence of a general expansion of the legislative and executive branches of the government in order to maintain harmony and balance among them. It is agreed that PIL also needs control so that it is not misused. Such controls are exercised by the Attorney-General in English and Australian related action, by the ministere public in the actions brought in France, by consumer associations and by the judges in American class-actions. Since in India, PIL is both judge-led and judge-induced, such control will have to be exercised by the judges themselves to prevent abuses of PIL remedy.

Tulzepurkar J's reaction over 'epistolary jurisdiction'


40. The word 'creeping jurisdiction' for PIL has been used by Prof. Upendra Baxi in 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India', Supra note 1 at 107.

41. The traditional institution of relator action has become vital in England and Australia. The relator action consists of a suit brought in public interest by a Public Spirited individual or group with the consent of 'fief' of the attorney of the action. See A. de Smith, Judicial Review of Administrative Action 401 (3rd ed., 1973).

42. Since 1981 in Belgium, since 1913 in France and since 1942 in Italy, the ministere public has been entrusted with general right to sue or intervene in cases involving 'Ordre public' or "public interest. P. M. Cappelletti, 'Vindicating the Public Interest through the Courts: A Comparative Contribution' at 526.
confirms the remark of Prof. Baxi that such jurisdiction affects *inter se* relationships among the judges and also encourages factionalism within the Supreme Court because 'many justices are deprived by this result of epistolary jurisdiction of much needed exposure to SAL; in the process, the learning capacity of the court as an institution is constricted.'

To begin with, the Judge to whom the letter or the telegram was sent used to deal with it himself. This gave birth to an unhealthy practice. One could choose one's own judge before whom one liked to be heard. In order to deal with this unwarranted practice, it was provided that the Judge to whom the communication has been referred would refer the same to the registry which in turn would fix up the same before any bench in the normal process. Like this, it was nobody's prerogative to be heard by any particular judge or the particular bench.

Bhagwati J (as he then was) agreeing with Justice Krishna Iyer observed that where a member of the public acting *bonafide* moves the court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantageous position cannot approach the court for relief, even by writing a letter, it would not be right or fair to expect him to incur expenses out of his own pocket for going to a lawyer and preparing a regular

43. *Supra* note 40, at 170.
writ petition for being filed in the court. But Pathak J. sounding a cautionary note, noted that a practice had developed of invoking the jurisdiction of the Supreme Court by a simple letter, complaining of a legal injury to the author, or to some other person or group of persons and the court has treated such letters as petitions under article 32 and entertained the proceedings without anything more. Pathak J. (as he then was) observed that grave danger is inherent in a practice where a mere letter is entertained as a petition from a person whose antecedent and status are unknown, or so uncertain that no sense of responsibility can, without anything more, be attributed to the communication. He was further of the view that there is a good reason for the insistence on a document being set out in a proper form or accompanied by evidence indicating that the allegations made in it are made with a sense of responsibility by a person who has taken due care and caution to verify as to their accuracy. A.N. Sen J. also agreed with Pathak J. in this regard.

It is submitted that Justice Krishna Iyer has also taken notice of this when he warned that access to justice must be liberal but not flippant and that full investigations should be made before any action is taken. The point that Justice

45. Id at 840.
46. Id at 848.
Iyer made was that the court is not to blindly accept what is alleged in a letter or any other communication. It has to be subjected to full investigation. Only on the basis of full information, the matter is to be adjudicated.

Introduction of the concept of public interest litigation by Justice Iyer has led to the emergence of many social action groups, which bring to the notice of the courts, the cases of governmental lawlessness and repression thus fulfilling Justice Iyer's dreams. According to an estimate by Professor Upendra Baxi, out of seventy-five petitions filed between 1980-82, "a preponderant number have been filed by social activists rather than by individual lawyers or lawyer groups."

The Supreme Court has been gradually regulating the process of PIL. The effort has been to ensure that this new jurisdictional

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48. e.g. Citizen for Democracy, was allowed to intervene in Sunil Batra I; Hindustan Andolan was allowed to intervene in R.K. Garg v. Union of India, AIR 1981 SC 2138.

On a writ petition filed by the Secretary, Peoples Union for Civil Liberties, the Patna High Court on 27 November 1982 directed the Distt. Judge, Arrah to undertake an enquiry into the alleged pitiable condition of two undertrial prisoners languishing in Arrah Jail for 11 years. The Times of India, 28 Nov., 1982, I.

Besides the above organisations, the following social action groups are initiating PIL petitions:

- Peoples Union for Democratic Right (led by a Senior advocate Supreme Court; Association for Social Action and Legal Thought (comprising mainly of law teachers and social researchers); the consumer Education and Research Centre, Ahmedabad, Quoted in Parmanand Singh's 'Access to Justice' 10 & 11 Del. L.Rev. 166 (1981-82).

jurisprudence be not allowed to be misused. This effort is fully illustrated by some of the recent cases which have come before the Supreme Court. In *State of West Bengal v. Sampat Lal*\(^{(50)}\), the apex court disagree with Calcutta High Court's initiative. The Supreme Court tried to supply the guidelines to the High Court in entertaining PIL petitions especially when its epistolary jurisdiction is invoked. Slowly and slowly and case by case the court is attempting to place PIL to adequate judicial control to prevent the new strategy being used as a tool of blackmail or political game. In this case it was observed that if the police investigations into the commission of an offence was in process, creating a new channel of enquiry or investigation was likely to create an impression that everything was not well with the statutory agency and it was likely to cast a permanent stigma on the regular police hierarchy.\(^{(51)}\)

It is submitted that this approach of Supreme Court is justified. PIL does not necessarily mean that every petition must always be entertained and relief be given without full probe into the matter. The possibility of frivolous PIL cannot as such be ruled out. There can be different factors which may

\(^{(50)}\) AIR 1985 SC 195. In this case epistolary jurisdiction of the High Court was invoked to interfere in police-investigations regarding the mysterious death of two teen-aged boys and further requested that investigations should be made by an independent machinery such as CBI. Acting on the letter the High Court quickly directed the government to appoint a special officer to enquire into the matter.

\(^{(51)}\) Id at 201.
motivate different people to take various matters of public interest to the courts. Justice Krishna Iyer who was the initiator and continues to be the campaigned for PIL is not a votary for unchannelised and unregulated inflow of PIL. He has warned that access to justice must be liberal but not flippant and the full investigations should be made before any action is taken. The point that Justice Iyer made was that the Court is not to blindly accept what is alleged in a letter or any other communication. It has to be subjected to full investigation. Only on the basis of full information the matter is to be adjudicated.

In another recent matter, the Supreme Court has taken a serious view regarding the role which the petitioner is expected to play in initiating and pursuing the PIL issues. In Children's Case (52) the Supreme Court took exception to the "unconcealed, cynical scorn" exhibited by Ms. Sheela Barse (a freelance journalist) towards the process of the court and refused permission for withdrawal of public interest litigation filed by her to highlight the gross violation of constitutional and statutory rights of juveniles lodged in various jails. Ms. Barse had made exceptional submissions saying that the court had become 'dysfunctional' in relation to and in the context of the gravity of the violations of the rights of children. It was also averred that the court had not been able to exact prompt compliance of its own order and directions issued from time to time.

time to the respondents. The judges observed that instead of sustaining and strengthening the process of this court in what is clearly a sensitive and difficult task of some importance and magnitude, the applicant has chosen to give herself the role of a self-appointed invigilator and has made a generous use of that position by her barbed quips and trenchant comments against the court. Delinking her from the array of parties in the proceedings, the division bench observed that the proceedings would now proceed with the help of Supreme Court legal aid committee and with the assistance of such persons or agencies as the court might permit. Any recognition of any vested right in the persons who initiate such proceedings is to introduce a new and potentially harmful element in the judicial administration of this form of public law remedy.

It is submitted that the above mentioned approach of the Supreme Court is desirable and understandable. PIL jurisdiction does not mean open to all and free for all. The major focus is on the public interest involved in a particular situation and not that on an individual or a group who brings the matter to the court. If the effort of the individual or the group is to have the central focus not on the issue but on the petitioner, it is a paramount duty of the court to check and to eliminate such effort. The liberal approach of the court in regard to the jurisdiction does not mean that under the garb of a social-worker, he or she gets an absolute right to say anything or do anything even with regard to the Supreme Court. If such a practice is
allowed to go on in due course of time it would emerge as a big factor which would jeopardise the PIL remedy itself. The whole idea behind the PIL is not the person who brings the matter to the notice of the court but the matter itself. If the agent who brings the matter to the court assumes himself or herself a position even above the court and not subject to the discipline of the court, the court would have every justification to stop such a situation. The fundamental right of speech and expression cannot be allowed to be used in the absolute form. This is because the Constitution itself does not permit its use in the absolute form. Reasonable restrictions are inherent in the right itself. The right and the limitations should be resorted to in a balanced form: Even Justice Krishna would not have tolerated or permitted persons bringing public interest matter to the courts to misuse their position by casting reflection on the court and the court actions. No doubt Justice Iyer was liberal in his approach but at the same time he was not liberal with regard to judicial indiscipline. Therefore, he would have never permitted or condoned the kind of role that has been played by Ms. Sheela Barse in Children's Case.

Justice Iyer observed that public interest litigation, as a process, is a nascent yet phenomenal, arrival on the Indian adjudicatory pantheon, and, as a novel heterodoxy, has been hated and heralded, doubted and debated and in the bargain, the heated exchange has driven a bitter wedge of heritage versus
heresy among the higher judicial brotherhood, with the result that practicidal trends are threatening to wreck the pharmacopial hopes of this burgeoning democracy of forensic remedies. (53)

Justice Iyer regards PIL and companion movements as linked to the historic liberative process of remedial jurisprudence at the service of 'the eternal tenants of an extortionate system'. He cautions that this new PIL missile has its own potential for menace and mischief and may prove counter-productive when the buttons are pressed by untrained fingers or unimaginative minds or by wolf's in sheep clothing. So he suggested that a course on PIL law is useful for judges and lawyers, right now, when the new processual jurisprudence, necessitous for Third world disabilities, is dawning. He further suggested that the constitutional concern and compassionate culture enwombed in Art 39A is alien to judicialese and must be injected into the process and personnel.

Even a bench, known for its pro-PIL slant, agreed about the need for judicial caution and recently uttered a warning. (54)

"Public Interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution." If the executive is not carrying out

54. Indian Express, 22nd April, 1985.
any duty laid upon it by the constitution or the law, the court can certainly require the executive to carry out such duty and this is precisely what the court does when it entertains public interest litigation. The judgement added that, if the poor and the underprivileged were deprived of their social and economic entitlements, the Court "certainly can and must intervene" to stop the exploitation or injustice. "When the Court passes any orders in PIL, it does so not with a view to mocking at legislative or executive authority or constitution and the law. But at the same time, the court cannot usurp the functions assigned to the executive and the legislative", the judgement clarified.

"It also stressed the role of letter petitions. This is an "innovative strategy" evolved by the court for providing easy access to justice to the weaker sections and it is a powerful tool in the hands of public spirited individuals and social action groups."

Justice Iyer observes that informality per se is not violative of fair procedure. He cautions that broad guidelines are required to be observed by the court lest it should be derailed into unwitting error or injustice. An anonymous letter on a pseudonymous communication, if a hoax or howler may bring the court into ridicule unless its jurisdictional exercise is

55. Supra note 53 at 142.
56. Ibid.
preceded by some preliminary verification about the veracity of the grievances. Access to justice must be liberal but not frivolous, easy but not irresponsible. Therefore, some cautionary rules are necessary before action follows upon informal communications. Those in dire distress and extreme disability may reach the Court without restrictive formalities. Once the court cognises the grievance, there must be some machinery which may not be fail-safe but must give prima facie assurance that the litany of woes is not a pack of lies, not tremendous trifles painted as horrendous crimes nor blackmailing tactics by motivated PIL professionals." (57)

He suggested that: It is essential that the fundamentals enshrined in Arts. 14, 21 and 39A should not be frustrated by judicial imbeciles nor blazently ignored by arrogant or orthodox judges. If the jurisprudence of public interest law were codified, all judges will obey. The law governs judges too, otherwise the court must be saved from the judges. He further suggests that to ascertain whether a prima facie case for action exists, it may be worthwhile to have referral bodies viz. social action groups with credentials of other approved organisations which may be asked to verify facts on the court's authority so that officious busy body may not walk into court and waste its time.

Justice Iyer states that when the country clamours for abolition of court-fee which is a kind of state business in

57. Id. at 143.
justice, nothing is lost by non-insistence on payment of court fee in PIL cases. Similarly, when litigants are suffocated by formalism and legalism, exotic and expensive, nothing is lost by relaxing rigid rules and accepting informal communications.\(^{(58)}\)

He went to the extent of saying that procedural asphyxiation is anathema for people's remedies. When fundamental rights are in peril procedural literalism is unconstitutional. Even so, some norms, some forms, some minimal scrutiny, some preliminary investigation by a social action body may be appropriate, taking care to see that justice is not stifled in the process. Justice Iyer very aptly remarked that the judges should keep themselves within constitutional bounds but act without fear or favour and with commitment to the people when injustice plays havoc with their rights even if the Executive and the Legislature sanction them. He says that in short PIL jurisprudence and the correlative compassionate jurisdiction are a judicial dimension of social justice and a forensic expression of the nation's promise 'to wipe every fear from every eye.'\(^{(59)}\)

In the end he says that what is needed is more research in the field of PIL jurisprudence and courses for judges even of the highest court in these developing branches.\(^{(60)}\)

\(^{58}\) Ibid.

\(^{59}\) Id. at 143-144.

\(^{60}\) Id. at 148.