CHAPTER 2

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CHAPTER 2

EVOLUTION OF PUBLIC INTEREST LITIGATION

I. CONCEPT OF PUBLIC INTEREST LITIGATION

The concept of Public Interest Litigation owes much to the American innovation of the dictum “Public Interest Law” whose basic thrust is to ensure that citizens whose lives may be affected by governmental policies have a right to participate in the formulation of those policies. Courts and administrative agencies that shop, implement or enforce policies should be open and accessible to the views of those citizens who may be affected by such actions and decisions. The council for Public Interest Law set up by the Ford Foundation in USA, in its report, has opted for a broad definition:

Public Interest Law is the name that has recently given to efforts to provide legal representation to previously unrepresented groups and interest. such efforts have been undertaken in recognition that the ordinary market place for legal services fails to provide such services to significant sections of the population and to significant interests. Such groups and interest include the poor, environmentalists, consumers, racial and ethnic minorities and others.¹

It is interesting to note that the concept of public interest litigation had its origin in the United States and over the years, it has passed

various vicissitudes. In India, the concept of PIL originated in PUDR vs. Delhi Govt. in Asiad Labour Case (1982). During the construction-boom in Delhi before the Asian Games in 1982, migrant labourers from various parts of the country were brought to Delhi by the Private Contractors and did not pay their basic wages and made to live them in the streets of Delhi, PUDR filed a petition concerning the statutory wages of these migrant labourers in the apex court and subsequently the court made the administration responsible to enforce the minimum wages regulation even in cases of labour employment by private contractors.

The credit for introducing public interest litigation and making the court accessible to the unrecognised, illiterate, poor, have-nots goes to a few activist judges notably V.R. Krishna Iyer, J. and P.N. Bhagwati, J. of the Supreme Court. They not only broadened the rules of locus standi from “traditional individualism” to community orientation of public interest litigation but also relaxed the formalities of judicial process.

In the words of Justice P.N. Bhagwati of the Supreme Court:

‘PIL’ is the strategic arm of the legal aid movement and aims at bringing justice within the reach of the poor vulnerable masses and helpless victims of injustice.

Justice Bhagwati, however, gave the concept a comprehensive exposition in S.P. Gupta V. Union of India (AIR 1982 SC 1497). He has defined the scope of public interest litigation in this manner:
Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of personal is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.¹

In Bandhua Mukti Morcha V. Union of India (AIR 1984, S.C. 802), Bhagwati, J., has observed “the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong. Court would set aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it.”

The broad contours of PIL in India may be summarised thus:

(a) It would comprehend any legal wrong or injury or illegal burden, caused or threatened. (It would not necessarily be confined to the violation of fundamental rights);

(b) The subject may be either a person or a determinate class of persons who by reason of poverty, helplessness or disability or socially or economically disadvantaged position can not themselves claim relief before the courts;

(c) Any member of the public can maintain an application for appropriate direction etc. on behalf of such a person or class of persons;

(d) The High Court can be moved for the interaction of any right; the Supreme Court can be moved for the violation of fundamental rights only;

(e) The court can issue any direction, order or writ for the redressal of grievances (This may include directions for affirmative action and continuous monitoring); and

(f) The court could be moved by a member of the public even by addressing a letter which the court could convert into a writ petition.

Since long the Indian judiciary has been struggling to evolve a new jurisprudence to ensure justice within the reach of the poor masses – unrecognised, weak, helpless and indigent – who constitute, as Justice Bhagwati says, “the low visibility area of humanity”. It has, therefore, devised an effective judicial technique called ‘Public interest litigation’ “to realise the dream set forth in Part III and Part IV of the Indian Constitution”¹, and to set a new doctrine of accountability of the State for constitutional and legal violations which adversely affect the weaker sections of the society. The purpose behind this move is to make the Judicial system more reformative and responsive to the needs of average man and to pave the way for social change. “Its rationale is contained in Article 39A of the Constitution. This Article provides the sketch of judicial

'system which promotes justice on the basis of equal opportunity'\(^1\) and directs the State to provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disability.

The thrust of the court in moving forward with the PIL can be analysed on two fronts. First, the approach towards strengthening the moral authority, base and credibility of the judiciary among the Indian masses which was largely eroded during the emergency period (1975-77) by the excessive intervention of the executive in the matters of civil rights of people. Second, the judiciary being the guardian of social revolution seeking its legitimate partnership in the governance of the State with the legislature and the executive.

In the initial years of its functioning, the Indian Supreme Court was a silent spectator of public interest jurisprudence. "Public interest jurisprudence requires that assistance be rendered at two levels. First, various interest groups be given an opportunity to shape public policy by participating in the decision-making process. This requires a sensitive response from administration and in sense of accountability to the public. This is the device to lay a control over bureaucratic fiat. Second, these groups should have an opportunity to agitate the matter in a court of law and seek appropriate remedies from it."\(^2\)

To make the judiciary, however, not to be a silent spectator with

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1 Ibid.

2 Shrishmani Tripathi, op.cit., p.34.
regard to public interest jurisprudence and to be a legitimate partner in the process of the socio-economic progress in the country, it has recognised that public interest of indeterminate class of persons can be represented by public interest groups. That is why, the court has liberalised the rules of *locus standi* providing thereby an opportunity to a large mass of people to be represented by voluntary agencies. These innovations of the courts are also linked to anti-poverty programmes and to the schemes of providing legal aid to the poor. PIL has thus, been an innovative strategy in our judicial system to defend the rights of citizens. It has also opened up the possibility of access to justice for the disadvantaged underprivileged persons in the society.

II. PUBLIC INTEREST LITIGATION AND CIVIL RIGHTS MOVEMENT

The present struggle for civil rights movement in India has its antecedents during the colonial rule but it became intense and full-fledged when national emergency was imposed by Indira Gandhi, the then Prime Minister of India, during 1975-77. During this period the contemporary moral standards of India’s democratic norms stood as particularly amoral due to the increasing weakness in the professional efficiency of the State apparatus – the bureaucracy, political parties, the judiciary and the media. As a result, some of the important events such as the demand for restoration of civil and democratic rights, the demand for regional autonomy, restructuring of the State apparatus and the emergence of
various civil and democratic rights organisation provided the institutional base for this movement.

"The bottomless ocean of economic, social and political oppression and human indignities in contemporary India constitutes the concern of the civil and democratic rights movement".¹ The constitutional remedies against the violation of fundamental rights of citizens, as sharply manifested during the national emergency of 1975-77 found to be inadequate. The emergence of new political leaders, new regional parties, sub-nationalist assertions, the evolution of a vibrant print media, emergence of civil rights groups "like Peoples Union for Democratic Rights (PUDR, Delhi), Committee for the Protection of Democratic Rights (Bombay), Andhra Pradesh Civil Liberties Committees (Hyderabad) or Association for the Protection of Democratic Rights (Punjab)"² led to more passionate and pro-people approach to defend the democratic rights amidst the continuing problems of poverty, illiteracy, injustice and exploitation. With the erosion of consensual model of governance, new thoughts were streamlined to give new directions of social change. The agencies of state could no more be understood as branches of one system of State as there was sharp rift between the different organs – executive, legislature and judiciary, on basic issues including the rights of

² Ibid., p.1204.
citizens. These had their impact in the concern for citizens rights within the mainstream of political and intellectual discourse in the country. This discourse also encompassed the judiciary. The emergence of new activist judges who were sensitive to the grievances of the oppressed and unprivileged, along with new civil rights groups followed as consequence. The most common grievance of the unprivileged was to get justice at cheaper price on the judicial front, "various committees such as Bhagwati Committee of Gujrat on Legal Aid (1971), Krishna Iyer Committee on Procedural Justice (1973), a High Level Committee consisting of Justices Krishna Iyer and Bhagwati (1976), Law Reforms Commission in Rajasthan (1975), Committee on Juridicare Government of India (1976) were constituted which bear testimony to the intentions of the Government to help the poor. Quite significant in this regard is to note that the Supreme Court itself indulged in judicial populism during the National Emergency (1975-77). Legal-Aid Camps were organised; even there was Padyatras by Justices; Lok Adalats (People's Court) were introduced to realise access to justice or what Justice Lodha has described as 'Chaupal Par Nyay'. ¹ So the apex court brought out a system of free legal aid to the poor and also became more sensitive to the cause of poor and the depressed. According to Prof. Upendra Baxi "the judicial populism was partly an aspect of post-emergency catharsis. Partly, it was an attempt to

¹ Shrishmani Tripathi, op.cit., p.32.
refurbish the image of the court tarnished by emergency and also attempt to seek new, historical bases of legitimisation of judicial power".1

Giving new interpretation to Articles 14, 19 and 21 for affirmative action, Justice P.N. Bhagwati viewed Constitution as a tool of social revolution. The Asiad Labour case delineated the evolution of PIL in India during the construction-boom in Delhi before the Asian Games in 1982, migrant labour from various parts of the country were denied the statutory minimum wages, and made to live in the streets of Delhi, by contractors. The PUDR's *locus standing* on the question, against which the court granted the right of PIL. Subsequently the administration questioned the veracity of the report. After the court appointed investigations corroborated the PUDR report, the court made the administration responsible to enforce the minimum wages regulation even in cases of labour employed by Private Contractors. Since then, till the construction was completed the labourers were specially watched by the contractors and officials to ensure that they did not come in contact with civil rights activist.

Justice Bhagwati's judgements in the case of Judges Transfer (1982), *Asiad Labour* (1982)2 and *Bandhua Mukti Morcha V. Union of India* (AIR 1984 SC802) delineated a line of constitutional development that earmarked the evolution of new dimensions of law and justice in the country. All these events and trends that emerged in the Indian judicial

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system paved the way for the introduction of PIL - “a system”, as Justice V.R. Krishna Iyer, describes “of judicial remedies for peoples maladies”.1

Besides a number of other factors also account for the introduction of PIL in our judicial system. They can be discussed in the following way.

(a) In the decades since independence there set in a sharp decline of values in our public life. As a consequence politics of manipulation gathered momentum. The aim of this kind of politics is to consolidate power and use the agencies of the State for private purpose. This was abetted by the absence of effective and significant opposition and lack of vigilant public opinion and watchful press. All these initiated a process in which politicians tinkered with the rules of the game in their ruthless pursuit of power. The upshot of the whole thing was the manipulation of politics for their personal interest. This trend is quite discernible in the third world countries where standards of public life are in a fluid state. Since there are no effective controls on rulers, they feel that they can get away almost with anything. That means there is no effective accountability, formal and technical procedures notwithstanding. This widens the credibility gap between people and managers of political system.

(b) Governmental lawlessness is another major factor in delegitimating our system. It may appear strange that the government which is the custodian of law and order itself happens to be a major law-breaker in the country. We cannot resist the temptation of quoting Prof. Upendra Baxi on forms of governmental lawlessness:

1 Shrishmani Tripathi, op.cit., p.47.
- keeping hundreds of thousands of people in prison for long years awaiting trial;
- castration of young persons and their sale as eunuchs in brothels;
- buying and selling of women across state frontiers;
- violent atrocities, unredressed against untouchables;
- continuance of wages of disability (giving of toxic pulses as wages in kind) to bonded labourers;
- brutal and barbaric conditions including excesses of custodial power and paramilitary forces without any accountability;
- extra-judicial executions of "suspects" in encounters by police and paramilitary forces without any accountability;
- degrading and dehumanising exploitation of unorganised, migrant and contract labour, not just by private employers but also by State agencies.
- reckless genocidal decisions involving location of polluting industries of which Bhopal is only the supreme current manifestation.
- abuse of police and criminal process against social activists and action groups whose only mistake is to make the Fundamental Duties of citizens and the Constitution of India seriously.

During proceedings in public interest litigation, facts of above mentioned violation of law by the government have been presented before the court. Surely the citizen will lose his trust and confidence in government and in its assurances if he finds that the Government itself has made a mockery of law and its regulations.
(c) The political system is responsive to person having capacity for mischief. In such a state of affairs law bindingness is at a discount. To cite just one instance: Bearer Bonds Scheme. Did not the scheme provide the tax-evader an edge over an honest tax-payer? The issue was brought before the Supreme Court but the Court in the words of Prof. Upendra Baxi "repelled the challenge to Bearer Bonds Act" and delivered a judgement which in the words of Prof. H.M. Seervai "Puts a premium on tax evasion, dishonesty, fraud and crime." Obviously the average citizens' enthusiasms for the polity is dampened. He is quite right in concluding that the executive is impotent and powerless in the face of illegal challenges to its authority. The only way it chooses to deal with certain forms of organised illegality is to confer legality on it to regularise it. And all this tells adversely upon the credibility of the system.

(d) The apathy of the administration towards the countless vulnerable millions living in poverty and squalor places a big question mark before our system. In what respect is the system useful to these people? What are they to gain from it? Periodic elections, promises by national leaders, countless schemes for the poor and the numerous welfare laws – these are just paper schemes. At the practical level the administration is either slothful or obstructionist or apathetic or even revengeful. In the British days Bureaucracy in India was described as 'the steel frame of the British Empire'. We would not be exaggerating if we describe bureaucracy in free India as the steel frame of elitism. Democratic temper goes ill with elitist officialdom. That is why, the common citizen is compelled to question the efficiency and even the intentions of bureaucrats. Their accountability is a mystique.
II. PUBLIC INTEREST LITIGATION AND PRIVATE INTEREST LITIGATION

Public interest litigation may be contrasted with private interest litigation where there is a dispute between the two parties only. But public interest litigation is litigation which is initiated not for the benefit of one individual but for the benefit of a class or group of persons – those who are denied their constitutional or legal rights. Public interest litigation recognised the right of a person to sue in the "Public interest", though he himself might have no individual grievance.¹

In Janata Dal v. H.S. Chowdhry, while defining the public interest litigation, distinguished it from Private litigation, Supreme Court upholds:

In a private action, the litigation is bipolar; two opposed parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. In contrast, the strict rule of locus standi applicable to private litigation is relaxed in Public Interest Litigation (PIL) and a broad rule is evolved which gives the right of locus to any member of the public acting bonafide and having sufficient interest in instituting an action for redressal of public wrong or public injury but who is not a mere busy body or a meddle – some interloper, since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the cause of community or disadvantaged groups and individuals or

public interest by permitting any person, having no personal
gain or private motivation or any other oblique sufficient
interest in maintaining an action for judicial redress for
public injury to put the judicial machinery in motion.¹

V. SHORTCOMINGS OF PUBLIC INTEREST LITIGATION

(i) Critics argue that the liberal "rule of locus standi" which has given
birth to the concept of PIL will encourage vexatious litigants to file
unmeritorious charges in a large number, thus allowing them to abuse the
process of the court, and also cause further delay in the administration of
Justice. This would open a "flood gate of litigation".²

In Bar Council of Maharashtra v. M.V. Dabholker (AIR 1975 SC
2092), V.R. Krishna Iyer J. replacing this criticism observed:

The possible apprehension that widening legal standing with
a public connotation may unloose a flood of litigation which
may overwhelm the judges is misplaced because public
resort to court to suppress public mischief is a tribute to the
justice system.

In Fertilizer Corporation Kamgar Union (Regd.) v. Union of India,
(AIR 1981 SC 844), Krishna Iyer, J., pointed out that law is a social
auditor and this audit function can be put into action only when someone
with real public interest ignites the jurisdiction. He further pointed out
that all and sundry will be litigation happy and waste their time and
money and the time of the court through false and frivolous cases. In the

² See M.J. Antony, "Court as Watch-dog of Citizen's Rights", Indian Express, 13
August, 1981.

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same manner, “Schwarth and Wade also express the view that “Litigants are unlikely to expend their time and money unless they have real interest at stake. In the rare cases where they wish to sue merely out of public spirit why should they should be discouraged.”

(ii) Another criticism hurled against PIL is that it can lead to a confrontation between the judiciary on one hand, and executive and the legislature, on the other. The effect of such confrontation may undermine the prestige of judiciary and will impair its ability to discharge its traditional function.

It is submitted that the socio-economic policies enshrined in the various Directive Principles of State Policy impose a duty on all the three organs – legislature, executive and judiciary, to apply them in making laws. Where one of the organ fails to discharge its assigned role, it becomes the duty of other organs to fulfill the constitutional mandate, otherwise, all constitutional promises will become “dead letter”. In PIL system, the judiciary acts anywhere the administration had failed to discharge its assigned function. In *Bandhua Mukti Morcha v. Union of India*, (AIR 1984 SC 8027), the role of the Court in PIL matter has rightly been explained where it was observed “when the court entertains public interest litigation, it does not do so in a caviling spirit or in a

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1 See Supra note 195, see also I. Zamir, *The Dictionary of Judgement*, 272(1962).
confrontational mood or with a view to tilting at executive authoring or seeking to usurp it, but its attempt is only to ensure observance of social and economic programmes for the poor and have-nots”. Thus, entertaining of public interest litigation will not undermine the prestige of the court but it will raise the image of the judiciary, for, it will protect the rights of those people for want of one or the other reason could not come to the court of law for justice”.

(iii) Last but not the least in public interest litigation the court lacks the expertise to deal with some specific question of complex nature or for ascertaining certain facts, or making legal investigations.

In response to such draw back the court has developed a technical system of appointing commissions or committees consisting of a district judge, a Professor of Law, a journalist, an officer of the court, and some times a social scientist for the purpose of carrying out an enquiry or investigation and making report to the court. This has already been approved by the court in its various decisions.

In *Rakesh Chandra v. State of Bihar*, (AIR 1989 SC 348), the Supreme Court in a public interest litigation, after not being satisfied with the scheme furnished to it for improving conditions of mental hospitals, decided to monitor its management and a committee was set up for this purpose.
Similarly, in *Kesben v. State of Orissa*, (AIR 1989 SC 677) the Supreme Court treated the letter of the petitioner as public interest litigation wherein it was alleged that there was starvation deaths of the inhabitants of the districts of Koraput and Kalahandi of the State of Orissa due to utter negligence and callousness of the administration and Government of Orissa. The Supreme Court pointed out that it is the duty of the Government to prevent such deaths and directions were issued to reconstitute a committee to keep a watch on the measures taken and which may be taken in future to prevent deaths due to hunger, poverty and starvation.

**VI. JUDICIAL ROLE AND SOME GUIDELINES FOR PUBLIC INTEREST LITIGATION**

Public interest litigation as a judicial mechanism to redress violation of people's rights "has many challenges to face, many questions to answer and many strategies to develop before it can get institutionalised in the judicial process. Judiciary is always cautious of this fact and while entertaining public interest litigation it has evolved some principles and has laid down certain guidelines which will definitely prevent the abuse of misuse of this new potent weapon in the judicial armoury for the protection of socio-economic rights of the masses of India."¹

While explaining the object of Public Interest Litigation, the Supreme Court of India in *Bihar Legal support Society, New Delhi v. Chief Justice of India* maintained: "The strategy of public interest litigation has been evolved by this court with a view to bringing justice within the easy reach of the poor and disadvantaged section of the community. The reason is that the weaker sections of Indian humanity have been deprived of access to justice for a long time because of their poverty, ignorance and illiteracy. Thus, the underlying purpose of the public interest litigation is to bring justice within the reach of every man and at the doorstep of every needy person.

However, for the better functioning of public interest litigation, the Supreme Court has laid down the following guidelines:

(i) In public interest litigation there is no justification to the resort to freedom and privilege of criticising the proceedings of the court during their pendency by persons who are parties and participants therein:

(ii) In public interest litigation, the petitioner has a right to maintain his/her dignity before the court, but the court can point out the functional impropriety committed by the petitioner and that would not impair the dignity of the petitioner.
(iii) Once the proceedings are initiated, parties can not be allowed to address the letters directly to judges.

(iv) The petitioner appearing in person is not entitled as of right to withdraw. The petitioners can be allowed to withdraw himself/herself from the proceedings but that would not result in the withdrawal of the petition itself: only a private litigant can abandon his claims. The status of *dominus litis* can not be conferred on a person who brings a public interest litigation, as that would render the proceedings in public interest litigation vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by persons by personal ends resulting in prejudice to the public weal.

(v) No litigant can be permitted to stipulate conditions with court by the continuance of his or her participation in any public interest litigation.

(vi) Frivolous or vexatious writ petition in the name of public interest litigation, filed *mala fide* and arising out of enmity between the parties can not be allowed. The court has to protect the society from the so called protectors.
(vii) Mere objection based on religious belief or personal philosophy cannot be treated as legal disability entitling third party as "next friend" to file public interest litigation.

(viii) Public interest litigation espousing cause of an individual is permissible only if it falls within the purview of policy decision of general application. It cannot be used to remove distress of any particular individual or satisfy that individual's whims, however pious that may be.

(ix) Converting individual dispute into public interest litigation should be discouraged.

From the perusal of above-mentioned guidelines laid down by the courts in public interest litigation, it has been observed that one need not be an unconditional enthusiastic of public interest litigation. It required adequate public checks and controls to prevent its possible abuse. Since in India, public interest litigation is both judge led and judge induced, such control will have to be exercised by the judges themselves to prevent abuse of public interest remedy.

VII. CONCLUDING REMARKS

Public interest litigation is a device enunciated by the Indian Judiciary to broaden judicial remedies. Its purpose is to bring a quick and cheap relief to poor and helpless class of people. It is also a device
through which quick relief has been provided to victims of arbitrariness. It is populist in character no doubt. But this populism is effective for the sake of justice. In an age in which the responsibilities of administration are increasing day by day, there is growing need of judicial review of administrative action. The growth of public interest law in USA has promoted many nations to follow this technique to reform their respective judicial process. Public interest litigation in India is closely linked with this phenomenon that excesses, great or small, committed by administrative officers, arbitrary exercise of authority without due care or caution, inordinate delays in responding to the just claims of citizens, gross negligence in the discharge of specific duties and obligations – there are thousand and one ways in which the administration browbeats the average man. These are subtle forms of arbitrariness. These have become an off shoot of an ever expanding administrative network in a developing society like India.

India is a democratic welfare State. Its constitutional provision – Articles 14, 21 and 22(1) in Part III and Articles 37, 38 and 39A in Part IV – and preambular promise to secure socio-economic justice for all on the basis of equal opportunity constitute the basis for the introduction of legal aid movement in the judicial system of our country. Legal aid, however, is no longer a charity or benevolence of the Government. It is a constitutional right and an essential requirement of every citizen and of
administration of Justice.

The proclamation of National emergency (1975-77) by Mrs. Indira Gandhi, the then Prime Minister of India and its far reaching consequences in terms of the demand for restoration of civil and democratic rights, restructuring of the State apparatus and the emergence of various civil and democratic rights groups provided the institutional root for the adoption of PIL in the Apex Court of India. The civil rights movement in the country led to a more passionate and pro-people approach to defend the democratic rights of the people. The emergence of new activist judges like V.R. Krishna Iyer and P.N. Bhagwati who were sensitive enough to the grievances of the oppressed and unprivileged started a new movement called legal aid movement which aimed at providing justice to the poor at a cheaper price. Besides, various committees such as Bhagwati Committee of Gujrat on Legal Aid (1971), Krishna Iyer Committee on Procedural Justice (1973), a High Level Committee consisting of Justice Krishna Iyer and Bhagwati (1976), Law Reforms Commission in Rajasthan (1975), Committee on Jusidicare Government of India (1976) were constituted to bear the testimony of the intentions of the Government to help the poor. Decline of values in public life, Governmental lawlessness and apathy of administration towards the needs and grievances of citizens in the country also necessitated to the evolution of PIL in our Apex Court. These are some of the sketches
against which the Supreme Court has introduced innovations in the legal system.

The Directive Principles of State policy enshrined in Article 39A dealing with equal justice and free legal aid was interpreted by the Supreme Court as a part of fundamental right to life, liberty enshrined in Article 21 of the Constitution. "The courts have emerged" as Justice Goswami points out, "as the last recourse for the oppressed and the bewildered". It is through courts only that injustices and errors committed by administrations can be corrected. It is also the only forum where a citizen may agitate his view points against any kind of oppression, repression or suppression of his basic rights as enshrined in the Constitution.

The introduction of PIL in the Supreme Court has been subject to criticism on many grounds. 'Flood gate of litigation', confrontation of Judiciary on one hand, and the legislature and executive, on the other, on certain basic issues including protection of citizens rights and the lack of expertise knowledge to deal with peculiar PIL cases are the main. Unnecessary investment of time, money and resources on unmertitious petition on PIL cases is not expected from a member of the public unless it has a real public interest, socio-economic policies as enshrined in the Directive Principles impose a duty on each of the three organs - legislature, executive and judiciary, to apply them in making laws. In this
case, the judiciary is assigned a duty to correct the legislative and administrative flaws as per the constitutional mandate, thus, there should be no contradiction among the three organs of the government as far as protection and promotion of human rights of people is concerned. As far as the third and important criticism of PIL is concerned, it is submitted that appointments of committees and commissions consisting of legal expert, Law Professor, Social Scientist and Journalist in certain peculiar PIL cases could be able to deal with some specific questions of complex nature of PIL cases is withered away the criticism on its part.

Since PIL in India is ‘Judge-made and judge-led’, it is upto the Judges to make further development in its proper perspective. From this point of view, there are five ingredients of a humane and democratic judicial system. Justice Krishna Iyer has described it as the Panchsheel of democratic judicial system.

First, we should have a system of justice, civil, criminal and other, in which the average citizen has access without hindrances.

Second, we should have simple, non technical, inexpensive, informal, flexible, compassionate and realistic procedure. This procedure would not tell off the citizen but would admit him and other social-action group. This is a way to broaden judicial relief.

Third, there should be institutional diversity and plurality of
remedies. All these should be adjusted with various forms of litigation and with various structure of people. There should be mobility, dynamism and ability to use such resources and materials as are necessary for bringing out truth. No technicalities should be done keeping in view the broad frame of justice, equity and good conscience. The court should award “socially just relief.”

Fourth, a new kind of ‘judicial engineering’ is required in our judicial system. This processual justice should be based on equal justice, local trails and fair facilities to all disputants irrespective of their disabilities, economic and non-economic. We should have a clear policy on public interest, law, social action jurisprudence and lawyers for the people.

Fifth, preventive justice, legal literacy, negotiated settlements, cooperative adjustment, reconciliation, arbitration and other non-formal methods must be found out. There is need of Para-judicial bodies and voluntary social organisations to work in this field. These bodies should be given statutory powers to work in the field of social justice.

This panchsheel of legal reforms intends to make the judge accountable to the nation. It changes him from being an anaemic umpire into an affirmative actor. These would assure decentralisation of state process, a revolution in civil rights and socialistic pattern of society.
CHAPTER 3
PUBLIC INTEREST LITIGATION AS JUDICIAL RESPONSE TO HUMAN RIGHTS VIOLATION
(Child Labour, Bonded Labour, Woman and Environment)

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III. Effectiveness of PIL in the Protection of Human Rights