Public interest litigation and Production of Consumers
with special reference to the role of Consumer Protection
Associations.

INTRODUCTION

Public interest law movement is perhaps the striking
innovation in the recent past in the delivery of legal services.
It is a strategic arm of the legal aid movement which is intended
to bring justice within the reach of the poor masses, who
constitute the law visibility area of humanity. It may be
contrasted with private litigation where there is only a dispute
between A and B. It is an individual dispute which the court
adjudicates. That is what courts have been doing all these years.
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 either the victims of
exploitation or oppression or who are denied their constitutional
or legal rights. The purpose of such litigation is to provide
protection to those people who are socially and economically
disadvantaged position.

Public interest litigation is essentially a co-operative or
collaborative effort on the part of the petitioner, the State or
public authority and the Court to secure observance of the
constitutional or legal rights, benefits and privileges conferred
upon the vulnerable sections of the society. The Supreme Court
of India has adopted an affirmative approach for vindicating the
rights of the victims of torture, terror and explanations by
State agencies or Public authorities. It has now shed its character
as the upholder of the stabilised order and status quo and is
gradually striving to emerge as an effective agent of social change.

Unlike lawyers representing poor clients under the legal aid scheme, public interest lawyers did not exclude the not-so-poor in as much as their focus was on enabling everyone use the system for his legitimate interest if he is denied access for whatever reason including smallness of the claim, lack of standing or expensiveness of the procedure. Thus, all people concerned with Governmental lawlessness, environmental pollution, public health, product safety, consumer protection, social exploitation etc, whatever their economic status were served by the public interest litigation, public interest lobbying and reform of decision making processes in Government and outside affecting the public at large.

The purpose of inquiry into a trade practice by the Commission is to determine whether it is a restrictive trade practice and whether it should be allowed to continue or condemned as prejudicial to the public interest.
Traditional View of Locus Standi Restrictive

Under the traditional rules of standing only a "person aggrieved" by the administrative action could come to the Court for relief. If a person suffered injury along with other members of the public he had no access. A person could have standing to vindicate a public right or interest if he could show that he had been specially aggrieved by injury to the public. To take a few cases to illustrate the point, a person cannot challenge the action of an administrative authority to grant a cinema licence in the locality a neighbour has no locus standi to challenge an illegal activity or construction on the adjoining land unless this constitutes a nuisance to affects his easement rights, a member of a political party cannot ask the Court for mandamus compelling the Government to appoint a Commission of enquiry to inquire into certain floods.

Now and then the Courts may have shown some flexibility in their narrow approach to locus standi by broadly interpreting the words, "aggrieved person" but if they did so it was without any conscious desire to liberalise the rules.

1 For a survey of the case law on the subject, see M.P. Jain and S.N. Jain: Principles of administrative law, 1979 pp 399 & 408.
Exceptions to the Strict Rules of Locus Standi

Even under the traditional view of the locus standi there were a few important exceptions. Firstly, in the matter of the writ of quo-warranto any member of the public, irrespective of any special injury or damage to him could challenge the appointment of a holder of public office.¹

The second exception is that a ratepayer of a local authority has a standing to challenge its illegal action. Thus a Rate-Payer to a person². Similarly the right of the rate-payer to challenge misuse of funds by a municipality has been recognised by the Court³. The reason for this liberal rule in the case of tax-payer of a municipality was that his interest in the application of the money by the municipality was direct and immediate, he has a close relationship with the municipality.

Thirdly, an application for the writ of habeas corpus can be made not only by the person who is illegally detained but by any other persons as well provided he is not a complete stranger⁴.

Fourthly, the statute may explicitly recognise standing though no special right of a person may have suffered.⁵

¹ Principles of administrative law, 1979 By M.P. Jain and S.N. Jain Page No. 400.
⁴ Principles of administrative law, 1979 By M.P. Jain and S.N. Jain Page No. 400.
It all happened with the socially motivated crusade of few justices of the Supreme Court (Justice Bhagwati, Justice Krishna Iyer, Justice Desai, etc.) who by an activist interpretation of fundamental rights, converted them into "positive rights". They evolved new techniques of justiciating with a view to correcting the bias of the present legal system against the disadvantaged sections of the society including consumers. Using law imaginatively and creatively they liberalised processional jurisprudence in constitutional litigation in order to compel the executive and the legislator to provide necessary conditions for a meaningful exercise of the new social rights.

In this process a new regime of fundamental rights emerged. For example, a right to free legal aid (i) right to access to Court (ii) right to speedy trial (iii) right against torture (iv) right not to be solitarily confined (v) right to human treatment in prison (vi) right to be paid minimum wages and not to be subjected to forced labour (vii) right to human dignity etc., emerged as independent fundamental rights. These new rights have thus emerged with the new assertion of judicial intervention to redress the grievances of the poor and the helpless who on their own are unable to approach the shrines of justice.

The first Supreme Court case connected with Public Interest Litigation may be regarded as the case of Bihar Undertrial Prisoners. The case started with an article written by Mr. K.F. Rustomji (Member of the Polic Commission) in the Indian Express he pointed
out how undertrial prisoners were languishing in the Jails in Bihar for years without a trial. He gave the names of seven undertrial prisoners who had been rotting in Jail for periods exceeding five years without their trial having commenced.

On reading this news item, one Mrs. Hingorani, an advocate filed a petition in the Supreme Court under Article 32 of the constitution. She of course, could give the name of only seven undertrial prisoners because those were the only names mentioned in the press report, but it was stated by her that there were a large number of unnamed undertrial prisoners who were languishing in jail, deprived of their liberty for years and years without their trial having commenced.

So on this partition, the Court activised itself and took judicial action. It is issued notice to the State of Bihar and called upon the State of Bihar to file an affidavit giving the name and particulars of undertrial prisoners who were rotting in different prisons in the State for a period of more than 18 months without their trial having commenced. When the State of Bihar files the affidavit, it was found that there were thousand of such undertrial prisoners. The petition which was filed was merely a habeas-corpus petition in the name of seven specified persons. But the Court, on the basis of the petition, gave relief to a large number of undertrial prisoners. This is a typical instance of public interest litigation.

Mr. Justice V.R. Krishna Iyer, noted for his unconventional approaches in the cause of special justice, has initiated the process in Dabholkar's case wherein he advocated liberal interpretation of locus standi in public interest litigation. It was felt
that if poor and illiterate people are unable to redress their grievances through courts of law for no fault of their, it must be possible for some public spirited individuals to seek remedy on their behalf.

In Sunil Batra V. Delhi Administration

The Supreme Court accepted the Habeas corpus petition of a prisoner complaining of a brutal assault by a head worker on another prisoner. The Court broadened the scope of habeas corpus by making it available to a prisoner not only for seeking his liberty but also for the endorsement of some right which he is lawfully entitled to even in his confinement, the deprivation of which makes his right more burdensome.

In P.S.R. Sadhanatham V. Arunachalam.

The Supreme Court held that it would have jurisdiction to entertain a special leave to appeal at the instance of the brother of a murdered person, a private citizen who was neither a complainant nor a first informer against the acquittal of the accused, if "it is convinced that the public interest justifies it, and that the State has refrained from petitioning for special leave for reasons which do not bear on the public interest". Thus in a criminal case, the Court granted locus standi to a private person.

The new jurisprudence of public interest litigation has given another dimension in the fertilizer corporation Kamgar Union Class 1. The question in this case was whether the workers in a factory

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2. 1980 3 S.C.C. 141.
owned by Government could question the legality or validity of the sale of certain plants and equipments of the factory by the management. Recognising the workers' standing in the case, Chandrachud C. J. observed,

"if public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or atleast a section of the public which is directly interested and affected would have no right to complaint of the infraction of public duties and obligations. We are not too sure if we would have refused relief to the works if we had found that the sale was unjust, unfair or malafide".

The Area Protection Home Case.

It reflects on the motive and character of public interest litigation. There were about 70 or 80 girls in the Agra Protection Home. A new item in the Indian Express carried the information that these girls were not being accorded treatment consistent with human dignity. They were denied human conditions of living and working. There was no bathroom for them and there was only one latrine with a half open door.

Justice Bhagwati treated a letter of two law teacher alleging inhuman conditions for inmates of Agra Protection Home for women violating rights under Article 21 as a writ petition and allowed maintainability of a action by them. This case is a beacon lights for other law teachers of the country.

In Asiad Project case the Court treated a letter written by a social action group as writ petition. The letter alleged violation of various laws in respect of workmen engaged in various Asiad Projects. The letter was based upon a report made by a team of three social scientists who made investigations into the conditions under which workmen engaged in various Asiad Projects were working. The Court found that the workmen were not paid the minimum wages and that part of their wages was mis-appropriated by 'Jemadar' through whom the workers were recruited by contractors. Justice Bhagwati, speaking for the Court, ruled that payment of lesser wages to the workers were amounted to forced labour prohibited under Article 23 of the constitution. The Court directed the D.D.A. and Delhi Administration to provide relief to the migrant construction workers.

In this case Justice Bhagwati further developed the concept of public interest litigation. He observed 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". The "Court, he says, would not be willing to countenance a situation where observance of the law is left to the sweet will of the authority bound by it without any redress if the law is contravened". The Courts have therefore a duty to utilise the initiative and zeal of public minded persons or organisations by allowing them to move the Court and act for general or group interest eventhough they may not be directly injured in their own right."
If no one can maintain an action for redress of such public wrong or public injury it would be disastrous for rule of law and it is also lately established that the rule of law must weed the people away from the lawless street and with them for Court of law. In another case one Mrs. Francis Mullen, a foreigner was detained under COFEPOSA. Her young daughter aged 5 wanted to interview her every week. Under the conditions of DETENTION ORDER, it was provided that so far as a detenu under COFEPOSA is concerned, the relatives can interview him or her only once a month, while the detenu's lawyer has to apply for permission for interview to the District Magistrate or Collectorate who in turn, has to get in touch with the Collector of Customs and an officer of the customs has to be present at the interview.

These two provisions of the order were challenged in a Habeas Corpus petition by Francis Mullen. The question arose as to how these two provisions could be made human, because it is very unfair that a close relative like a daughter should not be permitted to meet her mother for as soon as a month, and particularly when person is not a convict but a detenu.

The Court again invoked Article 21 and posed the question as to what is the meaning of the word "life".

It said that the word 'life' does not mean more physical or animal existence, but includes all faculties through which life is enjoyed and through which soul communicates with the outer world and also included the right to live with human dignity. So the right to human dignity is comprehended within the word 'life' in Article 21 and the State cannot deprive a person of the right to with human dignity.
Of course, Court can not ask the State positively to confer that right, for that goes with the right to work, which is a directive principle of State policy, but certainly the State can not act in a manner which would offended or violate basic human dignity.

Another fascinating development took place in Maneka Gandhi's case. Article 14 provides for equal protection of the law. For 27 years, Court had identified this Article with doctrine of classifications, namely that law can classify persons or things without violating this Article, if there is an intelligible basis of classification and it has a national nexus with the object of legislation. Court borrowed this doctrine of classification from American cases. But for the first time in Maneka Gandhi's case, Court said that Article 14 is a guarantee against arbitrariness in State action. There can be no equality where there is arbitrariness, equality and arbitrariness are anti-ethical to each other. The doctrine of classification was held to be only a test for deciding whether State action is arbitrary or not.

The case of Maneka Gandhi was re-affirmed in International Airport Authority Case, Court observed:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or intervening into contracts or issuing quota or licences or granting other forms of licences, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant and if the Government departs from such standard or norm
in any particular case or cases. Unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

This rule also flows directly from the doctrines of equality embodied in Article 14, which strikes at arbitrariness in State action and ensures fairness and equality of treatment. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must confirm to some standard or norm which is rational and non-discriminatory. The judgement in the case of transfer of judges case can be regarded a last nail in the coffin of the traditional rule of locus standi.

In this case, there was a general agreement between the judges of the Supreme Court on the question of locus standi of the practising lawyers to challenge validity of transfer of a judge, refusal to re-appoint and additional judge and law Minister's circular letter.

The Court observed "there can be no doubt the practising lawyers have a vital interest in the independence of the judiciary and if any un-constitutional or illegal action is taken by the State or any public authority which has the effect of impairing the independence of the judiciary, they would certainly be interested in challenging the constitutionality or legality of such action. They had clearly a concern deeper that of a busy body and they can not be told-off at the gates."
The Court further observed, "Where a legal wrong or legal injury is caused to a person or to determine 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 or persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, enable to approach the Court for relief, any members of the public can maintain an application for an appropriate direction, order or writ in the High Court under Act 226 and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons".
Municipal Council of Ratlam  
V/s  
Shri Vardichand and others

This case is another landmark on Public interest litigation. New Road, Ratlam, is very important road and so many prosperous and educated persons are living on this road. On the southern side of this road some houses are situated and behind these houses and attached to the college boundary, the municipality has constructed a road and this new road touches the Government college and its boundary. Just in between the said area a dirty nallah is flowing which is just in the middle of the main road i.e. New Road. In this stream (nallah) many a time dirty and filthy water of Alcohol plant having chemical and obnoxious smell, is also released for which the people of that locality and general public have to face most obnoxious smell. This nallah also produces filth which causes a bulk of mosquitoes breeding. On this very southern side of the said road a few days back. Municipality has constructed a drain but left the construction in between and in some of the parts the rain has not all been constructed and because of this the dirty water of half constructed drain and septic tank is flowing on the open land of applicants, where due to insanitation and due to non-renoving the obstructed earth the water is accumulated in the pits and it also creates dirt and bad smell and produces mosquitoes in large quantities. This water also goes to nearby houses and causes harm to them. For this very reason the applicants and the other people of that locality are unable to live and take rest in their respective houses. This is also injurious to health.

1 1980 S.C. 162.
There are more dimensions to the environmental pollution which the Magistrate points out:

A large area of this locality is having slums where no facility of lavatories is supplied by the municipality. Many such people live in these slums who relieve their latrines dirt on the bank of drain or on the adjacent land. This way an open latrine is created by these people. This creates heavy dirt and mosquitoes. The drains constructed in other part of this Mohalla are also not proper, it does not flow the water property and it creates the water obnoxious.

The Malaria Department of the State of M.P. also pays no attention in this direction. The non-applicants have not managed the drains, nallahs and naliyan property and due to incomplete construction the non-applicants have left no outlet for the rainy water. Owing to the above reasons the water is accumulated on the main road, it passes through living houses, sometimes snakes and acropons come out and this obstructs the people to pass through this road. This also causes financial loss to the people of this area. The road constructed by Nagarpalika is on a high level and due to this, this year more water entered the houses of this locality and it caused this year more water entered the houses of this locality and it caused this year more harm and loss to the houses also. This way all works done by the non-applicants i.e. construction of drain, land and road come within the purview of public nuisance. The non-applicants have given no response to the difficulties of the applicants and non-applicants are careless in their dues towards the public, for which without any reason the applicants are facing the intolerable nuisance. In this relation, the people of this locality submitted their returns, notices and given their personal
appearance also to the non-applicants are shirking from their responsibilities.

It is procedural rules as this appeal proves which infuse life into substantive rights, which activate them to make them effective.

The truth is that a few profound issues of processed jurisprudence of great strategic significances to our legal system face us and we must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of standing British Indian Vintage. If the centre of granty 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. Certain pragmatic directions were given by the Supreme Court.

Justice Bhagwati treated a letter of two law teachers alleging inhuman conditions for inmates of Agra Protective Home for Women. Women violating rights under Article 21 as a writ petition and allowed maintainability of action by them.

In this case, which is still pending, the court reiterated the sight to live with human dignity (vide Maneka Gandhi Case) as part of Article 21 and gave a series of order to ameliorate the condition of the residents in the Agra Home run by the U.P. Government. The intervention of law teachers and students in bringing justice to the poor people in low visibility areas through public interest litigation is a landmark in the history of legal education in the country and hopefully a beacon light for other teachers elsewhere to follow suit.

In yet another case now awaiting final disposition in the Court, a letter from a journalist alleging violation of rights of pavement dwellers of Bombay was taken as a writ petition and interim relief granted by the Court.

High Courts of the Country are not lagging behind. They are also conscience of the rights of consumers and have expanded the meaning of locus standi whenever occasion demanded it. An important example of what Court can do so that justice may reach to the needy and poor came from Mr. Justice M.P. Thakkar (Now Judge Supreme Court) of the Gujarat High Court where the locus standi and the related procedural hurdles were totally avoided by a suo-moto action.

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by the judge himself. As it is a landmark judgement on public interest litigation revealing what a socially conscious judge can do, the full proceedings of the case are produced.

As it is a classic case of social justice through public interest litigation and a promising example of the role of a public service-spirited judge in our country, I produce in full the proceedings of the Gujarat High Court on that momentous day of 29th September, 1979, High Court of Gujarat.

It appears to be expedient in the interest of justice that the letter dated September, 25, 1979, in the Times of India, Ahmedabad Edition, dated September 29, 1979, written by Mrs. P. K. Kartiyani of Kottayam which reads as under be treated as a petition involving the jurisdiction of this Court under Article 226 of the Constitution of India (the clipping of the said letter is annexed hereto and marked Annexure 'A')

"Sir, I am unfortunate destitute woman of a backward community, My husband, Mr. T. K. Thankappan, died of cancer on April 8, 1977 while he was in the service of Gujarat Refinery, Baroda, as a painter. He left behind me and our three children. Life is a struggle for existence in our case as we have no means of livelihood.

My husband was a member of the Provident Fund Family Pension Scheme under the jurisdiction of the Regional Provident Fund Commissioner, Ahmedabad. His account No. is GJ/4951/55156. Under the Scheme, I am eligible to get from the Regional P.F. Commissioner more than Rs. 7000/- towards the Deposit Link Insurance and amount

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of Rs.150/- per month towards family pension with effect from April, 1974. Ironically, I have not received a single paisa so far from the Regional P.F. Commissioner. The case papers relating to my claim are being tossed about like shuttlecock between the P.F. Commissioner, Ahmedabad and the Gujarat Refinery, Baroda, under one pretext or the other.

I have been eagerly looking forward to receiving the remittance from the P.F. Commissioner for the last 2½ years but to my utter disappointment it has not yet materialised. Somehow or the other, I now fear that I will not get a single paisa till I too take my last breath.

As I am keeping in different health, struggling very hard to make both ends meet, I may have to leave behind my three helpers children sooner or later.

As a last resort, I am writing this letter to you with a request to see whether you can help me to get the dues from the P.F. Commissioner through your good offices. As you know, I am staying thousand of miles away from Ahmedabad. In spite of that I sent my representatives to the P.F. Commissioner's office twice but his pleadings fell on deaf ears. Please help me, God will help you.

The office is therefore, directed to prepare a docket with the cause title showing Mrs. F. K. Kartiyani of Kottayam as the petitioner and the Regional Provident Fund Commissioner, Ahmedabad, as Respondent No. 1, as also the General Manager, Gujarat Refinery, Baroda, as respondent No. 2. It is directed that the aforesaid letter be registered as a Special Civil Application subject to
office objections as regards Court fees and on the docket of the matter an order in the following terms be inscribed.

"Notice pending admission calling upon respondent No.1 to show cause why an appropriate writ or order should not be issued directing him to make payment of the provident fund amount of Rs.7000/- alongwith interest etc; in connection with Account No.GJ/4951/55166 in the name of petitioner's deceased husband T. I. Thankaphan and the family pension amount of Rs.150/- per month with effect from April, 1977 to the petitioner. Respondent No.1 shall also show cause why an interim direction or order should not be issued requiring him to make payment of the provident fund amount and the family pension amount to the petitioner forthwith and notice pending admission shall also issue to respondent No.2, General Manager, Gujarat Refinery, Baroda, calling upon him to show cause why he should not be required to take the necessary steps to complete the formalities in connection with the aforesaid payments. The notice will be made returnable on October 12, 1979 at 11.00 am".

The office will issue the notice as a notice by Court without waiting for the payment of process fee etc. The office shall prepare copies of this order for being sent to the respondents. The learned Government pleader is appointed as amicus curiae to appear on behalf of the petitioner. A copy of this order is directed to treat this as an urgent matter and ensure that the notices are issued before the close of the working hours today.

Order accordingly.

Another leading judgement of the Gujarat High Court taking broad view of locus standi is Consumer Education and Research Centre v. State of Gujarat. Here the Court granted locus standi to the Centre, a private trust devoted to the cause of Consumer Protection, when it challenged, the action of the order of the Government to wind up the Machhu - II Dam Enquiry Commission set by the Government under the Commissions of Inquiry Act, 1952 to investigate into the collapse of the Machhu Dam resulting in serious disaster to the community.

A division bench of the Gujarat High Court in a significant judgement directed the State Labour Commissioner to identify firms and contractors employing contract labourers without licence and to take appropriate action against the defaulters.

The bench, comprising Mr. Justice P. S. Potti Chief Justice and Mr. Justice S. B. Majumdar, also instructed the labour commissioner to periodically prepare a list of such defaulters and inform the court about the cases of non-compliance of the existing laws.

Delivering the judgement in the light of facts that came up in the Court about 300 bounded labourers in the Indian Farmers Fertiliser Co-operative Factory at Kalol near here. Mr. Justice Potti said the management or the contractor of the plant should hereafter notify the dates of payment of wages to working and make the payment in case of disputes, in the pressure of the representatives of the trade union and Labour Commissioner. Mr. Justice Potti, pointed out that the existing Acts on the regulation as abolition

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1 Decided on June 23, 1981.
of bounded labour and inter-state migrant workers had elaborate provisions for compliance by contractors. But, he observed, the efficacy of laws depended on the will and alertness of the inspecting and implementing officers for which he asked the Labour Commissioner to make surprise checks himself or by high-ranking officers to assess whether or not the inspecting staff performed their duties.

Commenting on the practice of bounded labour followed at the IFFCO Plant, Mr. Justice Potti said, it was beyond the Court's jurisdiction to indict either the management or the contractor but then it would like to highlight the condition of workers for the benefit of those concerned.

The case came up before the division bench when the IFFCO Karmachari Sangh filed a petition in the form of a public litigation case on October, 3. The Court sent a commissioner of inquiry Mr. Mahesh C. Bhatt, an advocate, to see the factory premises and to find out whether workers were forced to work against their will. The commissioner was also asked to furnish his report by 2.45 p.m. the next day. Subsequently, the contractor also filed an affidavit explaining his position.

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Go-Slow Tactics

Referring to "facts which were more or less agreed upon by both the parties", Mr. Justice Potti said that there was the need for employing outside labour for a temporary period as the regular workers had resorted to go-slow tactics to press their demands which resulted in accumulation of urea in silos, immobilising the factory. He said the workers were induced into the factory on September 14, for which the contractor ought to have applied for a licence but he did so on October 6, only after the case came up before the division bench of the High Court.

He said the workers had no freedom of movement as their gate passes had either not been issued or not ready.

They had gunny bags under a kutchha pandal as bed-sheets and covars, while the Act, provides for rest rooms, one lavatory for 25 males and the like. The workers were not paid wages regularly and they were paid Rs. 11-50 per day till the case came up before the High Court. Moreover, the workers were forced to work for more than one shift.

Of course, Mr. Justice Potti said that when about 105 of the total 300 such workers left the premises after October 5, they were paid back wages at the rate of over Rs. 25/- per day. Sixty five other workers also expressed their desire to leave the job in view of the exploitation. Then, he said, the nature of job demanded handling of urea by working gloves and shoes as through contact with chemicals one could get burns. The workers were provided only pieces of gunny bags for the purpose.
Mr. Justice Petti also ruled that the Court was no more interested to pursue the matter as the respondents, the IFFCO management and the labour contractor, now agreed to comply with the provisions under the two concerned Acts of the State.

He pointed out that in a similar case earlier, the Chief Justice of Gujarat, Mr. Justice M.P. Thakkar had asked the authorities to exercise greater care to see such cases did not recur. But unfortunately, they persisted in some form or the other and often being categorised under white-collar crime, he said.

Mr. Justice Potti also wished that the labour inspectors looked at the special problem in the larger interest of the Country and as their duty towards fellow-beings. Ultimately, he said, it was the primary duty of the labour commissioner to ensure proper implementation of labour laws, including the ones for the bonded labour.

\section*{Principles Evolved}

The principle thus evolved may be stated as follows:

1) "Where a legal wrong or legal injury is caused or threatened to a person or to a determinate class of persons and such persons, or determinate class of persons is by reason of poverty, helplessness or disability or social or economically dis-advantaged position unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such persons, or determinate class of persons, in this Court under Article 32 seeking judicial
redress for the legal wrong or injury cause to such persons or determinate class of persons.

2) "The individual who so act must, of course be acting bonafide and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court must reject his application at the threshold, whether it be in the form of regular writ petition."

3) "If no special legal injury is caused to a person or to a determinate class or group of persons by the Act, or omission of the State or any public authority and injury is caused only to public interest, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of public wrong."

4) "What is sufficient interest to give standing to a member of the public would have to be determined by the court in each individual case."

5) "The Court has to bear in mind that there is a vital distinction between locus-standi and justiciability. It is not every default on the past of the State or a public authority that is justiciable. The Court must take care to see that it does not over-stop the limits of its judicial functions and trespass into areas which are reserved to the Executive and the legislature by the constitution" (Per Bhagwati J.)

This does not mean that liberal rules of standing have no pitfalls. It has its own weakness and drawbacks as several arguments have been made against doing away with the rules of standing. Now
we shall consider those objections and try to work out a balanced solution.

Shri Krishna Mahajan, legal correspondent to Hindustan Times has observed three serious legal problems plaguing public interest litigation.

(6) Some Problems Plaguing Public Interest Litigation

There are at least three serious problems plaguing Public Interest Litigation (PIL) in the Supreme Court today. If these problems are not resolved great damage may ensure to the Court and the PIL movement itself.

The first problem is the disappearance of the subjects for whom relief is sought and into whose condition the Court orders an inquiry. This happens especially in cases of custodial violence by the State authorities. In the Agra Home cases the women inmates who were to be interviewed and examined under Court order were found to have suddenly been released.

The petitioner Prof. Upendra Baxi, came complaining to the Court but nothing could be done in tracing out the women. In the Kanpur Jail-children case, the district judge reported that when he reached the jail to interview the children under Court orders he found all them had been released or somewhere else. Another report by an additional district judge managed to find only some of the children. Recently, in Haryana, bounded labourers in a transit camp were "released" and the Court has ordered their tracing out to rehabilitate them.
This points to the necessity for the Court to move with speed in all such matters. Certified copies of orders must be made available immediately to those who have to go and make an inquiry. In spite of Justice V.D. Tuljapurkar and P. N. Bhagwati sharply pulling up the registry officials and asking for their explanation on long delay in the delivery of orders, no improvement has taken place on this order of the Registrar depriving the Court masters of typists on all days except Monday and Friday when the Court is flooded with miscellaneous work. There is a need for separate cells having the necessary back-up facilities in the registry, based on the time within which orders have to be issued.

For the purpose of communicating the orders urgently to those outside Delhi the Court needs to have separate telephone lines like the defence and home secretaries as also a telex system with the high courts. In case the distance from Delhi is only a few hours drive, arrangements should be made for immediate use of the Court staff cars. Sadly lawyers do not make such requests to mobilise the bar for these facilities and even judges presiding over official legal aid do not direct the use of the legal aid staff car for such purposes.

Secondly, there is the more fundamental problem of the manner of entertaining public interest litigation cases. Most of these cases are based on letters written by individuals to one particular judge of the Supreme Court, Mr. Justice P. N. Bhagwati in his capacity as Chairman of the National Committee for the implementation of legal Aid. A basic threshold problem is as to which letters should be treated as falling in the FIL category. No one knows today as to which letters have been rejected by the Committee
Chairman, to be put before the Court and for what reasons.

In the absence of an institutional approach to PIL through letters, there is already a serious danger of abuse of the epistolary jurisdiction. Lawyers have now started advising their clients to write letters to the committee. They charge for this advice which gets their clients a hearing at a lower cost before the judge of their choice. Clients save on costs because no petitions have to be filed and no fees paid to the Court. This sets up the later's jurisdiction as a rival to those poor clients who made the mistake of adopting the normal course of filing petition and waiting for their turn in the line of arrears for a hearing before an unknown bench of judges. This discrimination between the poor and poor must end.

Where lawyers have become petitioners by writing letters to the committee, the Court should insist on strict standards of research. Much of PIL is being handled in the Courts today by lawyers having more of emotion than legal competence.

Arguments proceed on an emotional appeal in the name of the poor and thereby burden the judges to search for legal categories of relief and interim orders. Hence no commercial demand is created for legal literature concerning the poor and no bound of trained lawyers emerges. PIL remains peripheral to the bar except in so far as it brings media benefits to certain lawyers who become the favoured recipients of PIL cases from the court.
Finally, those who bring PIL cases to Courts should also be fastened with the responsibility of follow-up implementations and searching for positive reliefs for the poor.

Professor Madhav Manon in his article has also raised issue connection with PIL cases.

"If no special legal injury is caused to a person or to a determinate class or group of persons by the Act or omission of the State or any public authority and the injury is caused only to public interest, any member of the Public acting bonafide and having sufficient interest can maintain an action for redressal of public wrong."

"What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case." No hard and fast rule can be laid down in this regard.

"The Court has to bear in mind that there is a vital distinction between locus standi and justiciability. It is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to be Executive and Legislature by the constitution". (For Bhagwati J.)

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1 "Public Interest Litigation" A major break through in the Delivery of Social Justice, volume IX journal of Bar Council of India.
Issues and Challenges

(1) "A complicated issue which arises in Public Interest Litigation is the extent of securing or privilege permissible in Government or Private operations and the right of citizens to know. It is apparent that without vital information, Public interest matters can seldom be successfully litigated and such information is often not available to the ordinary citizen without huge expenses. It may be necessary for the Courts to take the initiative and commission independent investigation and field surveys together information on the nature and extent of public injuries as wars done by the Supreme Court recently in the case involving "Chamars" of Kanpur. (The Court in this case sent a journalist to Kanpur to study the grievances of the petitions (Chamars) by personal interviews and submit a factual report on the problems and issues involved). In respect of Government privilege, the judges case judgement has made some new propositions helpful to public interest advocates."

(2) "Closely related to the above is relevance and probative value of socio-economic data which may form-up as evidence in support of public interest disputes. Traditional rules of evidence may not allow much value to be attached to such data and advocates themselves may not be equipped to use such data intelligently. The increasing association of social scientists in the judicial process in as certaining public injuries may compel the re-examination of evidence law in the context of what is scientifically taken as evidence in social sciences."
(3). "A reorganisation of legal profession will become inevitable as public interest law may not yield to traditional, individualised, rule-based legal practice. Specialisation, division labour, corporate-style comprehensive legal services based on extensive research and use of multidimensional tools of advocacy will become a dominant pattern of litigation. Lawyers in public interest law practice will be looking after an infinite number of clients, seeking long-range reliefs not only judicial but also administrative and legislative involving the support of trade unions, media, social action groups etc."

(4). "The new style of practice will necessitate the lawyers themselves indentifying the client group and organising them for seeking justice under law. Professional norms relating to soliciting work and prohibiting acceptance of briefs under contingent fee may have to be changed to suit the requirements of the new modes of delivery of justice to whole classes of people."

(5). "In public interest litigation, judges have to take an activist role contrary to the accepted common law model of an empire. In fact, the initiatives of few judges of the apex Court have been largely responsible for public interest law coming to limelight in the last two years. Will this new sense of purpose illuminate the judges down the judicial hierarchy and mobilise the lawyers out of their conventional would?"

(6). "Public interest advocacy demands much more money than traditional legal practice. Where does this money come from? Now, obviously from the poor and not-so-poor beneficiaries of the scheme can a substantial portion of the legal aid funds be
diverted for public interest litigation? If so, should it go to the private bar, bar associations, bar councils or legal aid clinics? How can the founding be organised, regulated and audited to that it may yield maximum returns consistent with the norms of the profession and the interests of the other group involved? Should the money come from corporate interests or other sources as well? Is it not necessary to dispense with Court fee in public interest matters?"

It is said that if the Court's give up traditional rules of standing it would generate a flood of litigation putting a pressure on the already over burdened Court system. This is not correct. It has been stated in an American case; "our experience with public section confirms the view that the expense and vexation of legal proceedings is not lightly undertaken."

Davis, says that the Court of Appeals for the District of Columbia has come out with the convincing statement that when State Courts have relaxed the requirement for standing" the dockets have not increased appreciably as a result of new cases in which standing would have previously been denied". In India, as in other common law countries, rules of standing do not apply to quo-warranto action against a Municipality. There is no evidence that this has led to a spate of litigation in these areas. The time, money and other inconvenience involved in litigation case are sufficient deterrents for most of us to take recourse to legal action.

1 S.R. Jain, "Standing & Public Interest Litigation".
2 Scenie Hudson Preservation Conference F.F.C. 354 F. 2d.
3 This Liberalised Law of Standing 37, University of Chicago R.R. 450.
It is also said that rules of locus standi are meant to ensure that the it will bring out fully the merits of his case and in a way helpful to the Court. This argument has also hardly any merit, Davis meets the objection forcefully in the following way:-

The idea (that the law of standing can be used to assure the competent presentation of his case) deserved a burial.

Standing should depend only upon the question whether the plaintiff should be entitled to judicial assistance in order that justice may be done. The law of standing can not assure that questions will be contested with "adverseness" or that litigation will be pursued with "vigour".

Another most congenial argument against public actions are that they strain the judicial function and distort the political process. To this, Jaffe, while favouring liberal rules of standing gives the reply in these words:

"I have argued elsewhere that judicial review at least of administrative action is an important and creative feature of our system of public law. But it shares the common fate of all human devices. It has its virtue and its risks. It has its greater and its lesser uses. I would assert that there is no substitute for judicial review of a private wrong. On the other hand, the work done by public actions could in my opinion, be better performed in most though possibly not in all cases by political and

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1 This liberalised law of standing, 37, University of Chicago. L.R. 450 (1970)

2 Judicial Review of Administrative Action by Jaffe - p.98 1.400.
administrative controls. The prime argument, thus for the
dpublic action would be the absence of these controls".

In Short, Jaffe’s propositions are:-

Where the individual has suffered a special injury, judicial
review is must, but in the case of public interest litigation the
court should have discretion to entertain the case or not. This
appears to be an extremely sound approach.

Besides, some scholars are of the view that certain matters
should remain withdrawn from the arena of the Courts.

Justice Deshpande makes this point very aptly when he makes
a distinction between standing (this applicant) and justiciability
(any applicant). According to him:

These two requirements, however, react on each other. If an
issue is eminently justiciable the requirement of standing would
be construed liberally and the petitioner would be regarded as having
a locus standing with the minimum interest or grievance. Similarly,
if the grievance is such as to call for justice and the standing
is clear, then justiciable will be extended to cover the issue.

Standing and justiciable are like the entrance to and the
exist from justice. Standing is need to get on entry for hearing
by a Court. Justiciable is required if the petition is not to
be thrown out as not suitable for adjudication.

Handing of public interest litigation is bound to lead to
confrontation between the executive and the judiciary. In this
confrontation, it is the prestige and power of the Court which would
suffer. But at the same time, the advantage of the Court entertaining
public interest litigation would be that it may create public consciousness against the mis-doings of the administration\(^1\).

Public Interest Litigation may raise complex economic, social and technological issues for which the Courts may not possess enough expertise to decide.

\(^1\) S. M. Jain: - "Standing and Public Interest Litigation" article published in the book "Consumer and Legal Control".
Public interest litigation is not a new phenomenon. In U.S.A. it had been resorted to in a large way for the purpose of improving the life conditions of the blades and ensuring human rights to them. It has also been utilised for eliminating environmental pollution, meeting consumer grievances and similar ills. But in India, we have not utilised this technique on a large scale until very recently.

Justice Bhagwati and Justice Krishna Iyer deserves compliments for starting a movement that has opened up a vast field of public interest litigation, brought a new meaning to the concept of legal aid for indigent litigant and transformed the Supreme Court from "an area of legal guibbling for men with long passes" into a dynamic champion of India's under privileged poor.

While answering those - who are hostile to such kind of litigation, Justice Krishna Iyer said: -

"I am shocked that even after Article 39(A) any judge should oppose or be little public interest litigation and people oriented simplification of procedure. Access to justice is the first among human rights especially when it affects the weakest sector of society. Therefore, the niceties and formalities and the sophisticated technicalities which themselves operate to deny access to justice vis-a-vis the poor, the illiterate and the backward must be relaxed. No iron curtain or rigid procedure can stand between public justice and the Court."
Wukhoty, a leading Civil right activist himself feels "public interest litigation is doing a lot of a good".

Broaderening the rules of locus standi has a strong instalification. It helps in controlling many administrative wrongs and illegalities which may otherwise remain unchecked. Lord Diplock has rightly said:

"It would in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited tax-payers, were prevented by out-dated technical rates of locus standi bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped".

The substance of all views is that the Courts should have discretion in entertaining class action or public interest litigation. It is significant that section 91 of the Civil Procedure Code, as amended in 1976, gives a discretion to the Courts to entertain suits, at the instance of two or more persons against public authorities for public nuisance or other public wrongs.

Order 1 Rule 8 of the Civil Procedure Code also provides for filing a representative suit subject to the conditions, namely that this could be done by one or more persons on behalf of numerous persons having the same interest with the permission of the Court and that notice of the suit shall be served at the plaintiff's expense to all such persons interested, either by personal service or by public advertisement when the number of persons in very large.
Section 18-A of the Civil Procedure Code enacted in 1976 makes another happy provision. It empowers the Court to permit a person or a body of persons to present opinion on a question of law or to take part in the proceedings, if it consider it necessary in the public interest.

The broad view of Locus Standi which has now been accepted by the Supreme Court and High Court is being used by various consumer protection organisation to safe-guard the interest of consumers. There stand to challenge the ease is now being recognised by Courts, e.g. Machhu dam case, Fare Hilsa by Indian Air Lines and Gujarat State Transport.

Aristotal said we should have a Government of laws and not of men, because law is reason free from desire and passion prevents rules though they be the best of men. Plato, on the contrary, believed in the rule of the philosopher-king, who should give justice to every men according to his need. We have preferred the Aristolian view and given to ourselves a Government of laws and not of men. But even this, you cannot eliminate man from the law, because laws on account of the imperfections of human language, have to be interpreted and they have to applied to a combination of facts and circumstances which arise in a complex society. Therefore, you have to bring in the philosopher-king of Plato to interest and apply the law and that philosopher king is the judge in a democracy Government by the rule of law.