CHAPTER II

EVOLUTION OF PUBLIC INTEREST LITIGATION

TRADITIONAL METHODS OF ADJUDICATION

As per the traditional method, to approach the Court, one should have ‘locus standi’ that means the legal capacity to challenge an act or decision\(^{47}\). The traditional method of adjudication is anglo-saxon method of adversarial system of jurisprudence. The other popular system is inquisitorial system of jurisprudence followed by France and other countries. In both, the systems to approach the Court of law, for seeking redressal, one must have legal grievance or there must be violation of right against the person, who approaches the court. In other words, ‘locus standi’ or ‘standing’ is the mandatory requirement, which is nothing but the legal right to approach the court. In case of PIL, public interest or the genuine interest on the affected person is sufficient. Therefore, Public Interest Litigations are different from the traditional method of adjudication, for which direct ‘locus standi’ of the party is a pre-requisite. As per the traditional method, under the common law, being followed in India, for adjudication, one has to select the lowest Court having jurisdiction, as per the law prevailing, subject to appeal remedy. In case of PIL in India, the power of judicial review of the Supreme Court under Article 32 and the respective High Court under Article 226 of the Constitution of India is invoked, considering the violation of the Fundamental Rights of any person or class of persons, by any social activist, group of persons or organisation.

THE TRADITIONAL SYSTEM

The traditional system of judicial process, requires to maintain a ‘lis’, through Court of law, that one should have “locus standi”, which is normally known as “standing”, convey the meaning legal right to maintain a lis or litigation before Court. Similar proceedings in U.S.A, the same is stated as standing. As per Black’s Law Dictionary, 7th Edition, 1999, P.952, the ‘Locus Standi’ has been defined as a place of standing. The right to bring a legal action or to be heard in a court of law. In P.Ramanatha Iyer’s Law Lexicon, second edition, P.1145, ‘Locus Standi’ has been defined as a place of standing, a right of appearance in a Court of justice and which signifies a right to be heard. Hence, person or persons having right on account of any legal grievance could alone be entitled to approach the Court, in view of the concept of locus standi. However, the said concept of “locus standi” has been diluted or relaxed and made flexible in case of Public Interest Litigation, to do justice to the poor and the needy.

“LOCUS STANDI” or “STANDING”

The term locus standi is synonymous to “standing”, mostly used in the Courts of United States. “Locus standi” or “standing” conveys a meaning of a person or persons right to maintain a lis in a court of law and that was originally treated as a pre-requisite to maintain a suit or petition or to defend a case by impleading. However, the concept of locus standi or standing has been liberalised or diluted by Courts to render justice to the poor and the common man.

In view of ‘locus standi’ or ‘standing’ to maintain a lis before Court of law, no third party was permitted to maintain a suit or petition earlier. However, the concept of locus standi, has been relaxed, in order to render justice to the poor and
the needy. The importance of rendering justice to common man, the poor and the marginalized sections of the people, especially women and children, who could not approach the court due to various factors and reasons was realised by the Courts in all civilized countries, considering human values.

In India, originally PIL, got recognition only in case of Habeas Corpus Petitions, subsequently, in the case relating to under-trial prisoners kept in prison for more than the maximum period of punishment stipulated in the penal provisions, under which they were facing charges. Subsequently, the dimension of PIL was seen with a broader vision. The matters relating to (1) atrocity against women, case of rape, kidnapping, murder (2) neglected children; (3) child labour; (4) child abuse, bonded labour cases; (5) non-payment of minimum wages to workmen; (6) failure of the employer to provide equal pay for equal work to men and women; (7) complaints against police for refusing to register case in respect of custodial death or harassment by police; (8) inducing women to commit suicide, bride burning; (9) harassment or torture of villagers against downtrodden and economically backward class of people and more particularly women and children, who are not in a position to approach the Court.

Public Interest Litigation has been playing a vital role in safeguarding the rights of common men, especially women and children. The other areas relating to PIL are normally against pollution, disturbance of ecological balance, drugs, abuse of food adulteration, act against maintenance of heritage and safeguarding culture, forest and wild life and other matters of public importance. In fact, in such PIL cases, the Court could render real justice to common men and women. Child labour, child abuse in various forms have been brought to light by way of Public Interest Litigation and suitable orders have been passed by the Courts.
PROBONO PUBLICO

As per Ramanatha Iyer’s Law Lexicon, Probono Publico is defined as a litigation for the public good; for the benefit of the community as a whole. ‘Probono publico’ constitutes a significant place in dispensation of justice in the present judicial system. In India, Public Interest Litigations are dealt with by Supreme Court under Article 32 and the High Courts under Article 226, by way of Judicial Review.

In case of probono publico, rule of ‘locus standi’ has been relaxed by the Courts, to meet the ends of justice. The public cause is the pith and substance of probono publico and strictly speaking, PIL relates to a public cause and not for private vendetta. Hence all probono publico cases should only be Public Interest Litigations, however, the Public Interest Litigation may lead to redressal of the grievance of an individual, who is in disadvantaged position, without any access to the Court of law and therefore, Even if the fundamental right, an individual, who could not approach the Court of law is violated by State or any authority, any other person having interest to safeguard the right of the said person can move court, seeking redressal. However, ‘probono publico’ and ‘Public Interest Litigation’ are synonymous terms, for which courts have diluted the concept of ‘Locus standi’.

The courts intervened in pro bono proceedings when there had been:

(i) Callous neglect as a policy of State;
(ii) a lack of probity in public life;
(iii) abuse of power in control and destruction of environment;
(iv) protected the inmates of persons and homes;

(v) restrained exploitation of labour practices.

In case of women and children, when there is violation of any of their fundamental right or rights given under any statute, as per the enabling provision of Article 15 (3), if they are incapable of approaching the Court, any social activists or persons, having public interest can approach the Supreme Court under Article 32 or the concerned High court under Article 226 of the Constitution, seeking appropriate remedy.

RULE OF LAW AND PUBLIC INTERST LITIGATION

Rule of law is the basis of any Democracy, which excludes arbitrary actions by State and other authorities, as decided in Jai Singh Hany v. Union of India. The meaning of ‘Rule of Law’ is that only law should rule the people and the country and that the decisions should be taken in accordance with the procedure known to law and such decision should be predictable and the citizen should know where he is. In short, only law should rule, in other words, the State or the authority should act only in accordance with law and there should be no arbitrary action, according to the whims and fancy of the ruler or the persons, who are in power.

Constitution of India under Part-III has guaranteed various basic human rights to citizens and in fact, Article 21 is applicable to any person in the territory of India, whereby Constitutional protection of ‘life’ and ‘personal liberty’ is guaranteed, even to a foreigner in the territory of India. Hence, no person shall be

48 AIR 1967 SC 427
deprived of his life of personal liberty, except according to the procedure established by law in India, as per Article 21 of the Constitution.

When there is violation of any fundamental right and acts are done against rule of law, any person having public spirit is empowered to safeguard the right of such other person, who could not defend his right by himself and therefore, for maintaining PIL, the concept of ‘locus standi’ has been relaxed. In a democratic set up, PIL also playing an important role in safeguarding the rights of others, who could not approach the Court.

PUBLIC INTEREST LITIGATION RELATING TO CHILDREN

Children are the vulnerable section of the society in the country and they are the next generation and they are going to lead the whole world, therefore, utmost importance should be given for the welfare of the children and they must be brought up properly, in order to mould a civilized Human society. In this regard, various legislations have been made, apart from the Constitutional safeguards given to children. Various international conventions and treaties are emphasising the importance of safeguarding children in all levels. The rights of children have been safeguarded by way of various public interest litigation, especially in enforcing child welfare legislations, implementing The Child labour (prohibition and regulations) Act, preventing child trafficking and abuse, protecting street children, implementing properly the Juvenile Justice Act etc.,

PUBLIC INTEREST LITIGATION IN INDIA

As per the traditional procedure of adversary litigation, any litigant should have some real interest or legal right relating to his grievance to approach or move
the Court. Originally, it was either an interest relating to the property or financial interest. However, after the development in safeguarding Human Rights, it relates to infringement of any fundamental right. The legal right to approach the Court is *locus standi*, the same was called as standing in United States of America and some other western countries. Traditionally it was only a person who has suffered a specific legal injury by a reason of actual or threatened violations of a legal right or legally protected interest who could bring an action for judicial redress through court of law. This traditional rule of *locus standi* is that judicial redress or the judicial remedy to approach court was available only to person who has suffered legal injury. However, this is a rule of ancient vintage and it arose during an era when private law dominated the legal system and public law had not yet been born\(^49\).

In 1976, the Supreme Court of India in *Maharaj Singh v. State of Uttar Pradesh*\(^50\), held thus:

“Where a wrong against community interest is done, ‘no locus standi’ will not always be a plea to non-suit an interested public body chasing the wrong-doer in court…locus standi has larger ambit in current legal semantics than the accepted, individualist jurisprudence of old.”

If there is any violation of fundamental rights, guaranteed under Part-III of the Constitution, one could move the Supreme Court under Article 32 or the concerned High Court having jurisdiction under Article 226 of the Constitution of India. It is the Constitutional guarantee given to any person. If a person has no

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\(^{49}\) *SP Gupta and others vs Union of India & others*, AIR 1976 SC 578  
\(^{50}\) AIR 1976 SC 2602
direct access to Court, on account of his disadvantaged position, any person or group of persons can seek the remedy, for the violation of fundamental right, especially in case of women and children for violation of their fundamental right or other rights, guaranteed by any Statute, if they could not approach the Court, any common man or group of persons can move the concerned High Court under Article 226 and the Supreme Court under Article 32 of the Constitution, seeking appropriate remedy.

Public Interest Litigation was originally aimed at combating inhuman prison conditions and for which, appropriate direction was given by the Supreme Court, by entertaining a letter addressed by an advocate to the Chief Justice of India and in fact, the letter was treated as writ petition in Sunil Batra v. Delhi Administration\textsuperscript{51}.

In Hussainara Khatoon v. Home Secretary, State of Bihar\textsuperscript{52}, it was ruled by the Apex Court of India, in the public interest matter that right to speedy justice is a Fundamental Right, as guaranteed under Article 21. Similarly, the right to legal aid was also recognised by the Supreme Court in various decisions as a Fundamental Right, within the purview of ‘life’ and personal liberty, guaranteed under Article 21.

In Sheela Barse v. State of Maharashtra\textsuperscript{53} and Sukdev v. Union Territory of Arunachal Pradesh\textsuperscript{54}, it was further held by the Supreme Court that right to life and liberty under Article 21 includes, right to live in an unpolluted environmental

\textsuperscript{51} AIR 1978 SC 1675
\textsuperscript{52} AIR 1979 SC 1360
\textsuperscript{53} AIR 1983 SC 378
\textsuperscript{54} (1986) 4 SCC 401
condition. Right to live is not mere existence. In *M.C.Mehta v. Union of India*\(^{55}\), it was held that right to life includes life to live free from industrial hazardous.

In the case of *Upendra Baxi v. State of UP*\(^{56}\), it was ruled that right to life means to lead life with human dignity, that was recognised under Article 21. Dr.Upendra Baxi, a notable Professor and academician filed the Public Interest Litigation before the Supreme Court, wherein it was held that right to life is a fundamental right of every person, man or woman to live with human dignity and not for mere living. It cannot be said that the jurisdiction of the Supreme Court was expanded by the judiciary. In fact, Supreme Court and various High Courts have given wider interpretations for the said fundamental right, guaranteed under Article 21, to safeguard human rights by making the Directive principles of State policy, meaningful to the people, in safeguarding their rights.

**PUBLIC INTEREST LITIGATION IN USA**

United States is said to be the originator of Public Interest Litigation. In view of the decision of *Gideon v. Wainuwright*\(^{57}\), the first legal aid office was established in New York City in the year 1876. Pursuant to the decision of the said case, relating to USA, the basis for the concept of PIL was formed. The short facts of the case is that Clearance Larl Gideon had sent a letter (written scrawl), whereby he informed the Apex Court of U.S, that he was a proper and prayed to the Court to listen and act upon his plea. He further pleaded about the refusal by the Florida Trial Court to appoint a counsel for his defence contrary to the mandate of the Constitution. The said letter was treated as a petition and allowed by the Supreme

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\(^{55}\) (1986) 2 SCC 176  
\(^{56}\) (1986) 4 SCC 106  
\(^{57}\) 372 NS 335
Court of USA by 9 Judges, whereby unanimously relaxed its procedure, considering the disadvantaged position of Gideon. Therefore, Gideon’s decision created a history in respect of public interest litigation in U.S. PIL in United States relates to public interest laws and the same was given effect to provide legal representation to the unrepresented groups of thief interests.

The concept of public interest requires the State to provide legal representation not only to the poor and disadvantaged but also to ordinary citizen, who cannot afford to have lawyers to represent them. In view of the liberal approach of the Supreme Court of United States, the ordinary people could also approach the Court by way of PIL.

CERTAIN IMPORTANT FEATURES OF PIL IN USA

(1) There are certain category of public interest lawyers in U.S, who agitate the causes on behalf of the poor, the minorities and other disadvantaged sections of society, such as the mentally ill, children, workers etc.,

(2) The lawyers co-operate before administrative agencies and legislatures to raise their views to enact various welfare legislations.

(3) The ideological support to Public Interest Law in the U.S comes from the Civil Rights Movement and the Legal Aid Movement and organizations like N.A.A.C.P / L.D.E.F., A.C.L.U., Public Interest Research Group, Public citizen, the Centre for Law and Social Policy (C.L.A.S.P), the Institute for Public Interest Presentation and Citizens’ Communications Centre, Centre for Law in the Public Interest, etc.,
(4) In view of the heavy financial burdens imposed by the Courts, many important cases are settled out of court. These cases even though are not reported, have a great impact on serving public interest, the terra firma of all Public Interest Litigation\textsuperscript{58}.

“STANDING” OR “LOCUS STANDI” IN U.S

As per Article III Section 2 of the American Constitution, judicial power was extended to all cases, in law and equality arising under the Constitution and the laws of the United States and Treaties made under the authority to controversies between citizens of different States, between a State or citizens thereof. However, under the Constitution of U.S, like Article 32, power of the Supreme Court of India and Article 226, power of the High Courts had not been declared expressly. Definition of the term \textit{locus standi} has not been expressly provided neither in Indian Constitution nor in the Constitution of U.S. The term \textit{losus standi} in U.S is practically understood as “Standing”, that is the right of any party to raise a legal plea before the Court of law.

In \textit{Forthothingham v. Mellon}\textsuperscript{59}, the court in U.S held that for ‘locus standi’, the extent and the nature of injury suffered by a person must be direct, distinct and palpable. It must be one suffered to an extent or of a character different from an average member of the public. The said rule was also called the Forthingm Barrier.

DEFINITION OF PIL IN USA

In \textit{Gideon v. Wainwright}, itself it was realised by the Supreme Court of America, on the importance of providing legal assistance to persons in a disadvantaged position. The name of PIL is formed only recently. It was provided

\textsuperscript{58} Dr.B.L Wadehra PIL, Third Edition, 2012, Page 139
\textsuperscript{59} The council for public Interest Law set-up by the Ford Foundation in USA defined “Public Interest Litigation” in its Report of Public Interest Law, USA, 1976, Report by Council for PIL, USA 1976
to give legal representation to previously unrepresented of group and interest. The said efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others.

LIBERALISATION OF *LOCUS STANDI* IN U.S.

Between 1950’s and 1960’s, the traditional view regarding ‘*locus standi*’ was gradually got liberalized in response to changed social, economic and political environment of conditions. The American Supreme Court gradually began to liberalise strict procedural rules in appropriate cases, to meet the ends of justice.

In *Barrows v. Jackson*\(^60\), by applying the liberalized rule of standing, the complainant was permitted standing to assert the constitutional right of others. Subsequently, certain organisations were also granted ‘standing’ to access the right of their members in *N.A.A.C.P v. Alabama*\(^61\).

Similarly in *U.S v. J.G.Raines*\(^62\), it was held that where a person’s legal right has been violated and the person is unable to approach the court due to his socio-economic disadvantaged position, some other person may invoke assistance of the court for the purpose of having access to court and for providing judicial redressal and that justice is meted out to the person in a disadvantaged position. The requirement of legal right of any person to approach the Court was waived and judicial protection was granted to new social, public and diffuse rights and

\(^60\) 346 US 249 (1953)
\(^61\) 357 US 449 (1958)
\(^62\) (1960) 362 US 17; 4 Law Ed 2d 524
interests, as decided in *Association of Data Processing Services Organisations v. Camp*\(^6^3\).

It is clear from the aforesaid decisions that “standing” is liberalised not only in economic matters but also in environmental issues as it also forms part of the quality of life in US society. The Supreme Court of US observed in *US v. S.C.R.A.P*\(^6^4\) that standing is not confined to those who show economic harm. Aesthetic and environmental well-being, like economic well-being, are important ingredients of quality of life in our society and it was held further the fact that particular environmental interests are shared by many rather than a few, does not make them less deserving for the legal protection through the judicial process.

**THE AMERICAN CIVIL LIBERTIES UNION**

The American Civil Liberties Union (A.C.L.U) began to function in 1976 with an object to combat government abuses. In fact, the first public interest legal organisation formed in the said name (A.C.L.U) had taken up many cases relating to Constitutional rights in the period up to middle of 1960’s, apart from the Legal Aid Movement. The legal activities of A.C.L.U, who focussed on important policy matters and issues\(^6^5\).

In 1930’s a policy-oriented public interest organization was formed in United States and N.A.A.C.P / legal defence and education fund was created, as per that the model of a citizens service organisation by adopting a strategic plan for using litigation to carry on specific social objectives. All succeeding public interest organisations followed in some respects. The N.A.A.C.P was originally considered as an educational and lobbying group and not a body of legal action. In several

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\(^{6^3}\) 397 US 150 (1970); 25 Law Ed 2d 184

\(^{6^4}\) 412 US 699 (1973)

important precedent-setting cases, it made its involvement, however, the use of judicial forum was scarce. In fact, it was supported entirely through small donations, however, it received a sizeable grant from American Fund for public service in 1930 to begin a sweeping campaign against the major legal, political and economic disabilities, for which Negro community people suffered in America.

The N.A.A.C.P / L.D.E.F and its lawyers utilized precedents that ran counter to *Plessy v. Ferguson* and *Cumming v. Richmond County Board of Education*, popularly known as a school segregation case to make a chain of decisions that eventually did away with school segregation and all segregation in public facilities.

The origin of PIL is said to be commenced in United States and the requirement of the traditional rule of ‘standing’ for any person to show an immediate danger or sustaining injury and not that he suffers in common with people in general. In United States, there were rapid social and economical changes after 1890 till the beginning of the 20th century, the country was shifting from giving importance for agriculture to urban and industrial form, on account of economic and social need in U.S.

In *Forthingam v. Mellon*, it was held that under the traditional rule of standing in United States, one was required to show that he has sustained or is immediately in danger for sustaining direct injury…And not merely that he suffer in indefinite way in common with people generally.

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66 163 US 537 (1896)  
67 175 US 528 (1899)  
68 (1923) 262 US 447 : 67, Law Ed. 1078
JURISDICTION OF THE FEDERAL COURT

The Supreme Court of United States, enunciated a test that was whether the plaintiff has alleged such a stake in the outcome of the controversy as to warrant his invocation of federal court jurisdictions and to justify exercise of court’s remedial powers on his behalf. A federal court’s jurisdiction can be invoked only if the plaintiff himself has suffered some threatened or actual injury resulting from putatively illegal action\(^{69}\).

JUDICIAL ACTIVISM & SELF-RESTRAINT

As there was an increasing trend against abuse of PIL, with expanding judicial power, the US Supreme Court has rejected the PIL cases, based on certain new footings. In *Watt v. Energy Action Education Foundation*, it was observed that a party must show that there is a fairly traceable casual connection between the injury it claims and the conduct it challenges, so that if the relief sought is granted, the injury will be redressed. The US Supreme Court had to balance judicial self-restraint and activism in the recent past. The decision of the US Supreme Court has been characterised by the exercise of self-restraint.

Mr. Justice Frankfurter gave opinion “it is not the business of the court to pronounce policy. The justice are not authorized by the Constitution to sit in judgment on the wisdom of what Congress and the Executive branch do.”

\(^{69}\) *Muskrat v. United States*, 219 US 346 (1911)
LIBERALISATION OF “STANDING” IN U.S.

One of the notable Judges of the United States has said that going into the wisdom of the Congress, the Parliament in U.S and the Executive branch would not be the business of the Court, as it has to be done by the legislature and the popular Government in United States. However, in the late 1960’s in response to changed social, economic and political environment, the American Supreme Court gradually began to liberalise strict procedural rules in appropriate cases. Accordingly, in 1962, in the landmark case, *Gideon v. Wainuwright*\(^70\),

It was also felt that the Courts and the State and Federal Judges over-turned directive labour legislations and statutes designed to regulate the use of industrial property, on the ground that such laws either interfered with the right to contract or involved a taking of property interest by state without just compensation.

**SUBSTANTIVE DUE PROCESS**

In *Penna. Coal Co., v. Mahon*\(^71\), the Pennsylvania statute, limiting coal mining in areas where cave-ins of structures on the land surface might result, was over-turned, as it amounted to taking of property without just compensation. In support, the court relied upon doctrine of “substantive due process” and acted as defender of laissez faire capitalism, albeit. However, those ideas were bring publicly criticised.

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\(^70\) 372 US 335 (1962); 9 Law Ed 2d 799
\(^71\) 260 US 393 (1922)
LOUIS BRANDEIS CONCEPT

In 1897, Louis Brandeis, a prominent lawyer in Boston, started the fight as a public spirited person. He believed that the legislatures and administrative agencies would prove the best means for advancing the public interest and he urged the courts to let them work out their own way of dealing with economic and social problems. Brandeis said that lawyers have a social obligation, as an economic, intellectual and managerial gentry, with exclusive license to engage in their profession, to act independent to their clients. They are also obligated to act as more than the subsidiary of great corporations. This view of Brandeis later became a major theme in Public Interest Law. Most of public interest lawyers today hold same viewpoint as Brandeis. They share the belief that government has an obligation to respond to changing public needs and interest in an effective way and that lawyers have a social obligation to consider the social implications of their professional work.

PUBLIC INTEREST LAWYERS IN U.S.

United States public interest lawyers argue that three quarters of a century of experience with the governmental agencies has proved that without public participation in governmental decision making and without sufficient judicial supervision, the governmental agencies infringes the interests of the people. According to them, the fact is that Legislature also tolerates governmental activities which clearly deny ‘equal protection’ and ‘due process of law’.

N.A.A.C.P / L.D.E.G

The N.A.A.C.P / L.D.E.G had developed an institutionalised model, in order to regularise its activities, perform its work, raise funds and institutionalize victories as follows:
1. Like Legal Aid, it used a full-time salaried staff of highly qualified lawyers as a nucleus group. It did not rely upon counsel hired on an adhoc basis to deal with particular disputes;

2. Like the A.C.L.U, it decided against handling routine ‘service’ cases, in which the matter is primarily of concern only to those who are directly affected by the issues at stake.

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

4. Even though it served a very special, relatively poor interest group, for financial support it primarily depended upon a widespread national membership that give small sums to support the work of the organization;

5. In strategic manner, it rejected simple reservoir of big cases and favoured series of progressive victories which, besides building a favourable legal climate, also promoted a public and legislative atmosphere that converted victories in the courts into changed social behavioural patterns;

6. It worked through a self-created network of private advocates to take follow up actions on victories achieved and convert theoretical statutory rights into practical substantive rights and benefits.

7. In order to convert its work from Public Interest Law into a professional enterprise in which private lawyer could routinely participate, it
institutionized the said infrastructure of private advocates by obtaining legislation authorizing attorney’s fees.

All Public Interest Litigations in United States endeavours the aforesaid aspects of the model, that was developed by the N.A.A.C.P / L.D.E.F, whereby a minority can challenge the constitutionality of individual statutes or policies.

In *N.A.A.C.P v. Button*, the Supreme Court of United States rejected an attempt by the state of Virginia to use its barratry statute which sought to prevent attorneys working with the N.A.A.C.P / L.D.E.F from providing representation on questions with clear political importance where there was no profit to the individual attorney involved. The Button case made it clear that for public interest law organisations, to treat the law strategically and to make known to the promising clients about the availability of their services, apart from the civil rights groups to solicit clients and make use of litigation as part of a broad strategy of reform on behalf of the interests they represented.

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

THE IMPORTANT STAGES AND DEVELOPMENT OF PUBLIC INTEREST LAW IN UNITED STATES

In the development of public interest law, extensive movements and programs that contributed to shape-up and structure the underlying ideology of Public Interest Law considerably in 1960’s, though its origin goes back to 1876,
based on the first legal aid office, established in New York city. The important stages of development of Public Interest Law are:

i. The Legal Aid Movement, which attempted a systematic effort to represent the un-represented and new concept of a salaried staff of attorneys to serve that clientele;

ii. The Progressive Reign as a zenith in the career of Louis Brandeis and his two beliefs that lawyers have an obligation to consider the public interest in their work and that the administrative agencies, in turn should consider the interests of the public in their decision-making;

iii. The American Civil Liberties Union (A.C.L.U) and its involvement in questions of paramount national importance and its supposition that if Government is to serve the public interest than it must be closely screened from outside;

iv. The N.A.A.C.P, Legal Defence and Educational Fund (N.A.A.C.P / L.D.E.F) and its office of salaried attorneys acting as a policy-oriented organization, using law in a strategic way, establishing new precedents, and laying the foundation work for a political agenda of change;

v. The Legal Services Organization to solve the problems of the poor, with its belief that government funding can be used effectively to support a mesh of private Public Interest Law activities acting as independent check on governmental and private activities;
vi. The Lawyer’s Committee for Civil Rights under Law, which asserted that the lawyers in their private practice also can play an important role in representing and legitimising innovative societal interest; and

vii. The more latest one – Public Interest Law, which began in the late 1960s involving activities financed by private foundations and the general public to serve the environmentalists, consumers, old persons, children, women, prisoners, detenues and a diversity of other groups that had so far remained unrepresented in the decision-making processes of the government.

In fact, the vital aspect of the public interest law has made the involvement of various categories of persons of United States in the decision making process of the Government. It is not merely by the Congress or the Executive branch alone.

LEGAL SERVICES IN UNITED STATES

In legal service programs run by Governmental financing, it was a fact that there was governmental domination and control, though the beneficiaries of legal assistance is to the poor or politically weaker section of the people and that there could be possibility for politically abused. It was also believed that if the law officers and the staff are not Government employees, there may not be that must of governmental domination or control. It was the fact that if legal service programmes are under the administrative of local government, then in that case, it is apprehended that an adequate and effective legal representation may be prevented. Considering various aspects, the legal service program and its structure
was shaped, which has sought to avoid governmental control and domination, both at federal and state level.

A series of experimental programs in legal service to the poor were taken up in the early 1960’s and the experiments created a similar effect and the future of public interest law. However, in 1974, a legislation creating an independent Public Corporation to manage the legal service program was passed, hence, legal service program at present is firmly based, institutionalized part and parcel of the cosmos of Public Interest Law and the program is involved in a great deal of strategic, policy-oriented work before the courts, administrative agencies, legislatures and executive branches. It is also pertinent to note that as per the public interest law, there is a co-operation between public interest lawyers and the organized bar, in respect of cases relating to Public Interest Litigation.

**THE LAWYER’S COMMITTEE FOR CIVIL RIGHTS IN UNITED STATES**

Private Bar has been a supplementary asset in United States, where it is Legal Aid Movement or the A.C.L.U or N.A.A.C.P / L.D.E.F of the Legal Service Programs in all the organisations. Volunteer lawyers handing major policy-related cases in an important area of Public Interest Law, named as Lawyer’s Committee for Civil Rights and the law was established. It was also an expectation from all the advocates engaged in practice of law and are having lucrative practise that they would dedicate a portion of their time and wealth to give representation in policy-related matters for those who would otherwise be unable to obtain adequate legal service.
PUBLIC INTEREST LAW IN UNITED STATES

The Public Interest Law is concerned mainly with the blacks, poor people and social and political sufferers and their major tool was litigation in law courts. Though the seed for Public Interest Law were shown in United States nearly 100 years back in *Gideon v. Wainuright*\(^\text{72}\). Actually it blossomed in a full-fledged manner with proper growth in 1960’s on account of the efforts taken by American Civil Liberties Union (A.C.L.U), Lawyer’s Committee for Civil Rights, N.A.A.C.P / L.D.E.F etc., and by the end of 1975, the cosmos of public interest law was inflated.

It encompasses wide range of issues such as Consumer Protection, Environmental Protection, Land and Energy use, Tax Reform, Occupational Health and Safety, Health Care, Media Access, Corporate Responsibility, Education Reform, Employment Benefits and Manpower Training. The beneficiaries in the development of public interest law are women and children, elderly, prisoners, labourers and other people, who cannot directly approach the Court of law. The tool used under the public interest law, included administrative agency actions, investigate research reports, arbitration and negotiation, public education campaign. The Public Interest Law has grown in to various dimensions, which is highly introspective and independent for the organisations operating over the wider amplitude.

PUBLIC INTEREST LITIGATION PROTECTING WOMEN’S RIGHT

The Supreme Court of United States ruled in *Roe v. Wade*\(^\text{73}\) and *Doe v. Bolton*\(^\text{74}\) that choice to abort during the first trimester of pregnancy rested with the

\(^{72}\) 372 US 335 (1962); 9 Law Ed 2d 799
\(^{73}\) 410 US 113 (1983)
\(^{74}\) 410 US 179 (1973)
women and her physician. However, after the first three months had passed that states could regulate abortions to protect maternal health. Women’s Right Law Centre in United States have been of recent origin but they have had a large impact on the right and status of women. Their contribution is paramount, especially in two areas, namely Employment rights and Abortion reforms. It is a fact that there was a continuing battle in the courts to prevent erosion of the Roe and Doe decisions by Public Interest Lawyers and the American Civil Liberties Union’s Women’s Right. They successfully challenged the refusal of some public hospitals to permit on performing abortions.

In *Doe v. Poelker*\(^{75}\), a Federal Court held that public hospitals have a legal duty to provide facilities and equipments for physicians and nurses willing to perform abortions. In *Klein v. Nassau County Medical Centre*\(^{76}\), the court outlawed a law passed by the State of New York which would have forbidden Medicaid payments for effective abortions.

In *Planned Parenthood v. Danforth*\(^{77}\), is an important abortion reform ruling by the Supreme Court ruling that states may neither require a woman to get the consent of her husband in order to have an abortion, nor impose blanket restrictions required all single women under the age of eighteen years to get parental consent for abortions.

**EMPLOYMENT OPPORTUNITIES**

Women lawyers professing public interest in relating to employment rights have been instrumental for more employment opportunities to benefit women. They have been successful in removing discrimination in benefit and leave

\(^{75}\) 515 f. 2d 541 (8th Cir, 1975)  
\(^{76}\) 412 US 925 (1973)  
\(^{77}\) 44 US L.W. 5197 (U.S. June 29, 1976)
policies. In *Lafleur v. Cleveland Board of Education*, a junior high school teacher in Cleveland public school system was informed that she had to leave her job midway through her pregnancy and remain on unpaid leave of absence until the beginning of the school term following the three-month of birthday of her child. That is she had to leave her job in March and could not return to work until January in the following year. However, she filed a suit and the Supreme Court ruled in her favour, striking down mandatory maternity leave as a violation of ‘equal protection’ under the law. In this case, gender justice was rendered by the Court, on the ground that her right for seeking maternity leave cannot be rejected by the school management.

The Federal Court of America in *Gilbert v. General Electric Co.*\(^7\), rendered in a landmark decision in favour of women. It is a Judgment of far reaching implications that women must be given benefits by the employers for pregnancy-related disabilities, whereby gender justice was given prominence to the broader outlook of the Federal Court of United States. Number of cases subsequently have been brought by Women’s Law Centres concentrating on elimination of gender-based criteria and classifications in employments. Earlier, it was a presumption that man is a primary bread-winner of any family and thus, women’s employment was less valuable than man’s and that was reflected in many decisions.

However, in *Weinberger v. Weisenfeld*\(^8\), the aforesaid presumption was virtually reversed in the decision. The facts relating to case was that Stephan Wiesenfeld’s wife died in child birth, leaving on him the sole responsibility for the care of their infant child. His wife was a teacher and her salary had been the principal source of the couple’s income during the marriage. Weisenfeld applied

\(^7\) 375 F.Supp. 367 (E.D va 1974)
\(^8\) 420 US 636 (1975)
for social security survivor’s benefits, he was able to obtain them for his son but not for himself, since the statute entitled ‘Mother’s Insurance Benefits’ specifically authorized payments to female spouses only. The Supreme Court ruled that the Statute was unconstitutional in giving survivor’s benefits to women but not to men and thus gender equality was maintained and in fact, thus beneficial to the infant child under the custody of the father, after the demise of his mother.

EMPOWERMENT OF WOMEN

Public interest lawyers have significantly increased the empowerment and also employment opportunities for women in a wide range of jobs, that had previously been available to men alone. The public interest lawyers achieved this by opening the job opportunities that had been previously classed for women, often they made negotiations but backing it up where necessary with legal action.

In Smith v. Troyan80, it was held that employment discrimination against women by police and fire departments was unconstitutional and the same was challenged. As per the Federal appeal court decision, struck down the earlier rule providing job opportunities to men alone and that the same was extended to women, so as to maintain gender equality.

DEVELOPMENT IN THE CONCEPT OF PIL

Originally as per the traditional system, to approach any Court, one should have ‘locus standi’ or ‘standing’, based on his right to approach the Court and a third party, had no locus standi, for seeking remedy. However, the concept of locus standi has been diluted by Courts, in order to render justice to the poor, more

80 520 F. 2d 492 (6th Cir. 1975)
particularly for women and children, if they are in a disadvantaged position, to approach the Court by any common man or group of persons. Such relief relates to various aspects relating to Fundamental rights or recognised human rights, in case of violation of their rights.

HUMAN RIGHTS DECLARATION TOWARDS CHILDREN

Article 25 of the Universal Declaration of Human Rights, 1948 emphasize upon the rights of children to special care and assistance through protect child rights protection and through mother-hood protection.

Article 26 of the Declaration emphasize on access and aim to education. Similarly, European Convention on Human Rights, 1950 is a valuable instrument for protecting child rights, which reads thus:

Children and young persons have the right to special protection against the physical and moral hazard to which they are exposed.

Being the signatory of various International Treaties and Conventions relating to women and children, India, United States, UK and other countries are duty bound to protect the rights of the children. The same is also safeguarded by way of public interest laws, like safeguarding the rights of women.

DIFFERENCE BETWEEN PIL IN INDIA & PUBLIC INTEREST LAWS IN UNITED STATES

Though Public Interest Litigation has been recognised in India, as well as in United States and other civilized nations, protection is basically different in India and United States. In India, any member of the public or group of persons having genuine interest is entitled to approach the Supreme Court under Article 32 or under Article 226 of the Constitution before the concerned High Court, challenging
the order passed by any authority or the law passed by the legislature or to seek
direction towards redressal. Therefore, it is a judicial process invoking the power
of judicial review of Constitutional Courts but in United States, public interest law
has been enacted. There are public interest lawyers, organizations in various names
to defend the public cause or initiating the social access. Considering the facts and
circumstances, apart from the Supreme Court of United States, Federal Courts and
appellate courts are empowered to pass appropriate orders. They also approach the
authorities and the law-makers, seeking the enactment of appropriate laws.

THE OBJECT OF PUBLIC INTEREST IN U.S.

In United States, public interest is mostly confined to consumer grievance,
which may affect the poor and rich alike. Environmental issue which may affect
the disadvantaged groups to align together advocating the cause of disadvantaged
often involves contesting for ‘diffuse’ interest. Hence, public interest law is not
just concerned with obtaining beneficial results for the disadvantaged sections only
but it seeks to involve the disadvantages class in their struggle. In fact, law and
legal Institutions should be an arena of struggle for all alike whether advantaged or
disadvantaged. In fact, public interest law espouses ‘diffuse’ interests, which affect
both advantaged and disadvantaged alike and various institutions and processes
claim to espouse public interest, still the interest of disadvantaged is often
overlooked and ignored.

Similarly, public interest laws contributed a lot for the welfare of the
children in United States through care and protection and implementing various
international treaties relating to child welfare. Public Interest Law has created
awareness to give importance in protecting the rights of children.
Public Interest law will undoubtedly lead to court cases resulting in tremendous pressure on the traditional adjudicative system’s capacity to cope up with the explosion of newer kinds of rights and to provide judicial redress to whole new range of grievances. Public Interest Law will have to display increased awareness of the need to reduce the level of activity in courts in order to get fast results, as well as to save those traditional institutions from overloading and resultant incapacity to discharge the workload.

PUBLIC INTEREST LAWYERS IN U.S

There are public interest lawyers, who have enjoyed victories but they have heard their share of failures as well. In certain cases, the Supreme Court of America has imposed restrictions on the class action device and make it more difficult for the plaintiffs with small individual claims to club together to seek redressal of a common grievance.

The Court has restricted the concept of “standing” by reasoning that constitutional and prudent considerations mandate that certain cases should not be heard, even though serious charges by citizens against governmental lawlessness were thus not adjudicated. It cannot be disputed that in United States, public interest lawyers have contributed to have cumulative impact in getting legal redressal, that has left United States, social, economical and political systems significantly improved, especially there is a commendable achievement in respect of safeguarding women’s right, empowerment of women, getting employment for women and to maintain gender equality and gender justice.

PUBLIC INTEREST LITIGATION IN UK
Originally the Doctrine of *locus standi* was a strict rule, being followed in England, being the progenitor of Anglo-Saxon jurisprudence. Though India also followed the same, during British Rule and after independence, the adversary system of jurisprudence, we have developed a lot in public interest litigations, on account of multifarious culture, socio-economic condition and other aspects. Though UK followed the strict doctrine of *locus standi*, in 1970’s it liberalised the doctrine of locus standi. A Judge, who was single handedly responsible for the liberalisation is Lord Denning.

**LIBERALISATION OF *LOCUS STANDI***

Lord Denning in *R v. Thomas Magistrate’s Court, ex parte Greenbaum*\(^8^1\), departed from the old test of strict *locus standi*. The case involved a pitch in a street market, which was awarded to a seller of jellied eels on the ground that he was a newspaper seller. As he was a newspaper seller, by strict application of doctrine of *locus standi*, he had no legal right to the pitch, hence, he was barred, on the ground of *locus standi*. Lord Denning held that he had *locus standi* and quash the order of Magistrate, awarding the pitch.

In *R v. Paddington Valuation Officer, ex parte Peacheys Property Corpn., Ltd.*\(^8^2\), a rate payer alleged that the property valuation list of the whole area had not been properly prepared. However, he was not able to show that his own property was rated wrongly. In spite of the said fact, Lord Denning interpreted *locus standi* thus:

“The question is whether the Peacheys Property Corporation are “person aggrieved” so as to be entitled to ask for certiorari or

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\(^{8^1}\) (1957) 5 LGR 129  
\(^{8^2}\) (1966) 1 QB 380 (400) : (1965) 2 All ER 836
mandamus. Mr. Blain contended that they are not persons aggrieved because, even if they succeeded in increasing all the gross values of other people in the Paddington area, it would not make a pennyworth of difference to them....But I do not think grievances are to be measures in pounds, shillings and pence. If a ratepayer or other person finds his name included in a valuation list which is invalid, he is entitled to come to the court and apply to have it quashed. He is not to be put off by the plea that he was suffered no damage, any more than the voters were in Ashby v. White, (1703) 2 Ld Raym 938 : 1 ER 417 : 6 Mod Rep 45. The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done....So here it will listen to any ratepayer who complains that the list is invalid.”

THE BLACKBURN CASES

Number of cases were brought to the Court by Raymond Blackburn, a public-spirited person in England. In that case, Lord Denning accorded him standing and through these cases, there was a substantial development in the concept of Public Interest Litigation and realisation in respect of locus standi in England.

In *R v. Commissioner of Police of the Metropolis, ex parte Blackburn*[^83] Mr. Blackburn came to the Court alleging that the big gambling clubs in London were openly breaking the law. That he had complained to the Metropolitan Police,

[^83]: (1968) 2 QB 118 : (1968) 1 All ER 763
but they had refused to act on the complaint because of a ‘policy decision’, which had been issued to them. That the said ‘policy decision’ was illegal and that a mandamus be issued to compel the Commissioner of Police. It is the duty under the law, wherein Lord Denning held thus:

“I hold it to be the duty of the Commissioner of Police of the Metropolis, as it is of every Chief Constable, to enforce the law of the land. He must take steps so as to post his men that crimes may be detected, and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and if need be, bring the prosecution or see that it is brought.

A question may be raised as to the machinery by which he could be compelled to do his duty. On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced, I think, either by action at the suit of the Attorney-General or by the prerogative writ of mandamus… No doubt the party who applied for mandamus must show that he has sufficient interest to be protected and that there is no other equally convenient remedy. But once this is shown, the remedy of mandamus is available, in case of need, even against the Commissioner of Police of the Metropolis…Can Mr.Blackburn invoke the remedy of mandamus here? It is I think an open question whether Mr.Blackburn has a sufficient interest to be protected. No doubt any person who was adversely affected by the action of the
Commissioner in making a mistaken policy decision would have such an interest.

This case has shown a deplorable state of affairs. The law has not been enforced as it should. The lawyers themselves are at least partly responsible. The niceties of drafting and the refinements of interpretation have led to uncertainties in the law itself. This has discouraged the police from keeping observation and taking action. But it does not, I think, exempt them also from their share of the responsibility. The proprietors of gaming houses have taken advantage of the situation. By one device after another they have kept ahead of the law. As soon as one device has been held unlawful, they have started another. But the day of reckoning is at hand. No longer will we tolerate these devices. The law must be sensibly interpreted so as to give effect to the intentions of Parliament; and the police must see that it is enforced. The rule of law must prevail.”

DEVELOPMENT IN PUBLIC INTEREST LITIGATION

In Blackburn v. Attorney General84, Mr. Raymond Blackburn came to the Court and contended that the British Government was about to join the European Common Market and that it had no right to do so for it would amount to surrendering in part the sovereignty of the Crown in Parliament. The court rejected his argument, however, on the question of locus standi to claim such a declaration, Lord Denning held as follows:

84 (1971) 1 WLR 1037
“A point was raised as to whether Mr. Blackburn has any standing to come before the court. That is not a matter on which we need rule today. He says that he feels strongly and that is a matter in which many people in the country are concerned. I would not myself rule him out the ground that he has no standing. But I do rule him out the ground that these courts will not impugn the treaty-making power of Her Majesty.”

In *R v. Police Commissioner, ex parte Blackburn*85, Mr. Blackburn again came to the court, alleging that the laws against pornography were not being enforced. He had no interest except that his children might see the publications, just as anyone else’s children. On the facts and circumstances, Lord Denning held thus:

Nearly five years ago Mr. Blackburn came before us saying that the Commissioner of Police was not doing his duty in regard to gambling clubs. He comes again today, but this time it is in regard to obscene publications. He comes with his wife out of concern, he says, for their five children. He draws our attention to the shops in Soho which sell “hard” pornography. We have been shown examples of it. The court below declined to look at them. We felt it our duty to do so, distasteful as it is. They are disgusting in the extreme. Prominent are the pictures. As examples of the art of coloured photography, they would earn the highest praise. As examples of the sordid side of life, they are deplorable…Mr. Blackburn’s principal point was a legal one. He

85 (1973) QB 241: (1973) 1 All ER 324 (CA)
said that there was no legal justification for the police referring all cases to the Director of Public Prosecutions. It causes delay. They can and should act at once without his advice. I have therefore looked into the law; and I find that Mr. Blackburn has a point worthy of serious consideration.

The plain fact however, that the efforts of the police have hitherto been largely ineffective. Mr. Blackburn amply demonstrated it going out from this court and buying these pornographic magazines – hard and soft – at shops all over the place. I do not accede to the suggestion that the police turn a blind eye to pornography or that shops get a “tip off” before the police arrive. The cause of the ineffectiveness lies with the system and the framework in which the police have to operate…If the people of this country want pornography to be stamped out, the Legislature must amend the Obscene Publication Act, 1959 so as to make it strike unmistakably at pornography; and it must define the powers and duties of the police, so as to enable them to take effective measures for the purpose. The police may well say to Parliament; “Give us the tools and we will finish the job”. But, without efficient tools, they cannot be expected to stamp it out. Mr. Blackburn has served a useful purpose in drawing the matter to our attention; but I do not think it is a case for mandamus.”
THE COURT IN ENGLAND ON PRONOGRAPHIC FILMS

In *R v. GLC, ex parte Blackburn*\(^\text{86}\), Mr.Blackburn came to the Court again and alleged that pornographic films were being exhibited in London and nothing to stop them. He applied for a writ of prohibition. Lord Denning, while issuing the writ held as follows:

“It was suggested that Mr.Blackburn has no sufficient interest to bring these proceedings against the GLC. On this point, I would ask: who then can bring proceedings when a public authority is guilty of a misuse of power? Mr.Blackburn is a citizen of London. His wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. I think he comes within the principle which I stated in McWhirter’s case [*1973*] QB 629 (649), which I would recast today so as to read—

I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of her Majesty’s subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate.

\(^{86}\) (1976) 3 All ER 184 : (1976) 1 WLR 550
One remedy which is always open, by leave of the court, is to apply for a prerogative writ, such as certiorari, mandamus or prohibition. These provide a discretionary remedy and the discretion of the court extends to permitting an application to be made by any member of the public…though it will refuse it to a mere busybody who is interfering in things which do not concern him… Another remedy open likewise is by asking for a declaration…. Also by injunction…. 

In my opinion, therefore, Mr. Blackburn has made out his case. He has shown that GLC have been exercising their censorship powers in a manner which is unlawful because they have been applying a test which is bad in law. If they continue with their present wrong test and in consequence give their consent to films which are grossly indecent, they may be said to be aiding and abetting a criminal offence. In these circumstances, this court can and should issue an order of prohibition to stop them. “

Lord Denning enunciated the principle that if an ordinary citizen had *locus standi*, for one set of remedies, he ought to have *locus standi* for the others too but the law did not develop that way, in McWhiter’s case that was reported as *Attorney General v. Independent Broadcasting Authority*\(^87\).

In England, the remedies of declaration and injunction lies with the Court of Chancery. If an ordinary citizen seeks to assert a public right, his only remedy is to

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\(^{87}\) (1973) QB 629 : (1973) 1 All ER 689
apply to the Attorney-General for his consent to bring a ‘relator’ action and if the Attorney-General did not consent, that person could do nothing in the matter.

Mr. Ross McWhirter came to the Court alleging that the television was going to show a film that evening about an actor called Andy Warhol and from the reports of newspaper reporters, who had seen it was an outrageous film and was likely to offend public feelings. The court granted an injunction to stop the film being show. The Attorney-General contended that the court could not hear Mr. McWhirter, without his consent. However, Lord Denning held as follows:

“The first point is whether Mr. McWhirter had any locus standi to come to the court at all... This is a point of constitutional significance. We live in departments and public authorities – for the benefit of the public – but has provided no remedy for the breach of them. If a government department or a public authority transgresses the law laid down by Parliament, or threatens to transgress it, can a member of the public come to the court and draw the matter to its attention? He may himself be injuriously affected by the breach. So may thousands of others like him. Is each and every one of them debarred from access to the courts? In such a situation I am of opinion and I state it as a matter of principle – that the citizen who is aggrieved has a locus standi to come to the courts. He can at least seek a declaration.

I am of opinion that, in the last resort, if the Attorney-General refuses leave in a proper case, or improperly or unreasonably delays in giving leave, or his machinery works too slowly a
member of the public who has a sufficient interest can himself apply to the court itself. He can apply for a declaration and, in a proper case, for an injunction, joining the Attorney-General, if need be, as defendant. In these days when government departments and public authorities have such great powers and influence, this is the most important safeguard for the ordinary citizens of this country; so that they can see that those great powers and influence are exercised in accordance with law. I would not restrict the circumstances in which an individual may be held to have a sufficient interest.

I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty’s subjects, then in the last resort any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced. But this, I would emphasise, is only in the last resort when there is no other remedy reasonably available to secure that the law is obeyed.”
In *Gouriet v. Union of Post Office Workers*\(^8^8\), however, the House of Lords, disapproved this doctrine with respect to the remedies of declaration and injunction.

Latest position in UK in Public Interest Litigation: The New Rules of Court introduced in January 1978 under Order 53, enabled an application to cover, under one umbrella, all the remedies of certiorari, mandamus and prohibition and also a declaration and injunction and for all these remedies, it lays down one simple test of *locus standi*. The *locus standi*, as per rules is that the applicant must have a sufficient interest in the matter, to which the application relates. Thus a view taken by Lord Denning in McWhirter’s case has been resurrected.

In *Attorney-General v. Independent Broadcasting Authority*\(^8^9\), Lord Denning observed as follows:

“……..If the Attorney-General refuses leave in proper case or improperly or unreasonably delays in giving leave or his machinery works too slowly, then a member of the public who has sufficient interest, can himself apply to the Court itself….In these days when Government Departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizens of this country, so that they can see that those great powers and influence are exercised in accordance with law.”

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\(^8^8\) (1977) 3 All ER 70 HL : (1978) AC 435
\(^8^9\) (1973) 1 All ER 689
JUDICIAL PROCESS IN UK

In early 17th century, Sir James Bacon expressed “Judges ought to remember that their office is to interpret law and not to make law”. The view is the extension of the judicial tradition established by Jeremy Bentham, who had deep distrust for Judge made law considered it undemocratic for the non-elected judiciary to act as elected members in Parliament. The Judiciary adopted the rule of literal interpretation of the plain and unambiguous language of statutes, disregarding the fact that, in real life, words rarely are plain and unambiguous90.

PURPOSIVE INTERPRETATION

It is crystal clear that the English Judges of new generation, Lord Reid, Lord Denning and Lord Wilberforce have developed the doctrine of ‘purposive interpretation’, since the early 1960’s in England.

Lord Reid in 1972, in his famous lecture on Judge as law-maker observed thus:

“There was a time when it was thought almost indecent to suggest that judges make law / they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdin’s cave there is a hidden, the common law in all its splendour and that on a Judge’s appointment there descends on him the knowledge of the magic words Open Sesame. Bad decisions are given when the Judge muddles the passwords and the wrong door opens. But we do not believe in fairy tales any more”. This new role of the English Judges was, predictably met with fierce criticism and, inevitably, there

90 (1977) 3 All ER 70 HL :
were cases where the judiciary seemed to have overextended itself. However, efforts were undertaken by the judiciary itself to restrain its action. Lord Reid also observed that when judges act as a law makers, they should “have regard to commonsense, legal principle and public policy in that order.”

The earlier view of English Judges was not to make law but only to declare it. However, the new role of English Judges is of purposive interpretation and not liberal interpretation. There were cases where judiciary overextended and met with criticism. Efforts were also taken by the judiciary itself to restrain its action. Lord Reid had observed about the restraint upon judiciary by stating that judges to act as law makers, they should “have regard to commonsense, legal principle and public policy in that order.

In fact, due to unitary form of Government, in the absence of written Constitution and a Bill of Rights, the scope of the power of judicial review remains limited in England.

POSITION OF PIL IN ENGLAND AFTER 1982

After 1982, a uniform rule of standing is applied for all remedies and the rule is whether the applicant has sufficient interest. The question of what is “sufficient interest” in the matter to which the application relates appears to be a mixed question of fact and law. The present position has emerged from a consideration of cases 91.

The *locus standi* requirement at present is that anybody may apply, for example a member of the public who has been inconvenienced, or a particular

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party or person who has a particular grievance of his own and if the application is made by a stranger (third party), the remedy is purely discretionary. However, it is made by person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies \textit{ex debito justitiae}. It is made clear by the Queens Bench that only a busybody is excluded from obtaining relief\textsuperscript{92}.

**PURPOSIVE INTERPRETATION IN U.K.**

In the 17\textsuperscript{th} Century, the Judges of UK use to interpret law and not make law and the tradition was established by Jeremy Bentham, who inclined to accept judge-made law. The rule of literal interpretation of the plain and unambiguous was adopted by the Judiciary, however, that lead to number of absurd and inequitable results. In fact, the aforesaid stand taken in the 17\textsuperscript{th} Century could not meet the ends of justice, needed for the common public.

Lord Denning, Lord Reid, Lord Wilberforce have contributed a lot in England, by way of purposive interpretation, in order to liberalise the concept of \textit{locus standi} in Public Interest Litigation. In fact, they gave a new life to English Administrative law, revived and extended ancient principles of natural justice and fairness. However, in the absence of written constitution and a Bill of Rights, in the unitary form of Government, the scope of the power of judicial review of English courts are only limited.