

## Public Interest Litigation : Socio Legal Trends

\* Hema Tiwari

### Abstract

PIL has doubtless been a welcome development in India Public law. The courts have taken a goal oriented approach in the interest of justice and played an immense role in making the rights meaningful and reaching justice to the illiterate, impoverished and downtrodden. It has now become an accepted phenomenon which the executive cannot hope to reverse. Social action litigation has not been delegitimized' as it were by its growing internal critique' as the executive and other critics might have expected and is becoming stronger and stronger. But Indian public interest litigation has been open to abuse As observed to Dr. Rajeev Dhavan – Indian public interest litigation soon transcended the self-limitation of considering and enlarging the cause of the disadvantaged. It was appropriated in the service of a range of public causes including the manner in which High Court judges could be transferred and the corruption of politicians and, later, judges themselves.<sup>10</sup> Further he observes, - If it was created to discipline and conscientise' the system of governance, forces in civil and political society have appropriated it in hugely diverse ways (citing cases where investigation into Bofors scandal has been sought to be quashed or to challenge expulsion of politician of politicians from the legislature.

Rajeev Dhavan - Law as Struggle: Public Interest Law in India. 36 JILI 302 (1994) at 310. On the appointment and transfer of judges see S.P. Gupta v. President of India and Ors. AIR 1982 SC 149; Sarwan Singh Lamba v. Union of India (1995) 4 SCC 546; A.D.C. Guruswamy v. Union of India 1995 I MU 655 (the court refused to entertain a PIL seeking a direction to the government to fill up two vacancies of judges in the 111 gb Court and an interim injunction restraining the government from giving effect to the transfer of five judges of the Madras High Court to other High Courts; on judicial accountability see Sub-Committee on Judicial Accountability v. Union of India (1991\_ 4 SCC 699; C. Ramachandran Iyer v. A.M. Bhattacharjee (1995) 5 SCC 457 (PIL seeking direction that the Advocates Association of Western India and other associations should be restrained from coercing the Chief Justice to (resign). On ministerial corruption see R.S. Nayak v. A.R. Antulay AIR 1981 Bom. 422; (1982) 2 SCC 462; (1983) 4 SCC 141; (1984) 2 SCC 183; (1984) 3 SCC 86; (1986) 2 SCC 716; 1986 Supp SCC 510; (1988) 2 SCC 602; Chaitany Kumar v. State of Karnataka (1986) 2 SCC 594; Shivaji Rao Paul v. State of Karnataka (1987) 1 SCC 227 DS Satyanarayan v. NT Rama rao AIR 1988 AP 144; Supra 2. There have also been challenges to appointment of Prime Ministers (Deve Gowda) and Chief Ministers (I Jayalalitha which is still pending).

Ibid, p. 311

Central Bureau of Investigation v. Delhi High Court Cr. Appeal No. 304-11

V.R. Jayaraman v. Rabi Ray WP 1061 of 1991 in Delhi High Court to challenge the expulsion of VC Shukla from Parliament

While it is the duty of this Court to enforce fundamental rights, It is also the duty this court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights from being considered by the Court.

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Moreover it is said that if PIL fails to deliver after promising so much, it would be exposed to discontent and contempt. However, this history of public interest litigation in India does not support this apprehension since the number of public interest litigation petitions still remains very small compared to the total number of cases filed.

In their anxiety to become relevant to the needs of society, there is a real danger of the superior courts in India doing injustice to the ordinary litigants before them and becoming overburdened and ineffective. According to Andhyarujina, we are in danger of becoming the most litigious nation in the world and the Indian scene in the 1990s is reminiscent of the litigation explosion in US in the 1970s This is however a misplaced apprehension since nothing like the sort has happened in India.

Courts may entertain letter petitions but there have to be some objective parameters as to when this could be done. Pathak, J in *Bandhua Mukti Morcha*<sup>6</sup> case emphasized the need to safeguard against dilution of procedural requirements that would result in the abuse of process of the Court, more so as litigation involves expenditure of public time and public money. He observed:

Grace danger is inherent in a practice where a mere letter is entertained as a petition from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can without anything more be attributed to the communication. The Court must be ever vigilant against the abuse of its powers. While this Court has readily acted upon letters and telegrams in the past, there is need to insist now on an appropriate verification of the petition or other communications before acting on.

*Cheetriya Pradushan Mukti Sangharsh Samiti v. State of Uttar Pradesh and Other AIR*

1990 SC 2060 at 2062, para 8

Supra 16

Social Action Litigation has protested a vandalistic expropriation of India's resources by a corporate few whether by challenging rapacious tree felling or indiscriminate dam-building. PIL has enabled the Supreme Court to exercise affirmative action to vindicate those socio economic rights traditionally considered unenforceable by the Courts and has thus enlarged the scope of Article

According to Prof. Baxi, SAL has achieved many things.

- Social Action Litigation marked the advent of judicial populism that is, The Supreme Court (in the memorable phrase of Justice Goswami) began to imagine itself as the – last resort of the bewildered and oppressed Indians.
- It marketed a moment of judicial catharsis: apex Indian adjudicators began performing a judicial penance for their outrageous emergency decision. It is no accident that Justice Bhagwati who offered a most articulate defence of suspension of all fundamental rights during the emergency became the founder the Social Action Litigation.
- The Court democratized access to judiciary as a collective right of the people's epistolary jurisdiction, innovating new practices of fact finding.
- The Supreme Court recognized and created new Fundamental Rights resulting in a gradual erosion of the distinction between Part III and Part IV / S
- The Supreme Court assumed the role of a custodian of political morality such as to prevent runaway reservation quotas, which served more political convenience than constitutional conviction.

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Prof. Upendra Baxi, - Judicial Activism : Usurpation or Re-democratization. SCALE PIL.

The 90's witnessed, in full retreat from the Antulay decision, Judicial Activism enunciating the most fundamental of all fundamental rights of the India people: the right of all citizens of India to immunity from acts of corruption by people in high places<sup>8</sup> manifesting in Supreme Court virtually divesting the supreme executive of its powers to control the operations of the Central Bureau of Investigation and has taken over its day to day investigation of charges of corruption in high places, even to the point of now requiring approval of the Court to transfer the head of the agency.

The judiciary has thus become a prime instrumentality of re-democratizing the processes of governance and practice of politics. The contemporary patterns of judicial behaviour of the judiciary have transformed it from a mere apparatus of governance into an institutionalized social movement. However there can be no doubt that the Court's object of taking up public interest litigation will be best served if the legislature and execution are induced by these decisions to come forward and the vacuum created in implementing the socio-economic rights is filled by endeavouring to make the basic human rights meaningful and thereby reduce the burden of the judiciary.

Vineet Narain v. Union of India 1996 (2) SCALE SP 42, 1996 (2) SCALE 84, (1996) 2 SCC 199; 1996 (3) SCALE SI 12, 15, 1996 (4) SCALE SP 3 U 56 1996 (5) SCALE SI 24; 1996 (6) SCALE SP 24 (illicit foreign transactions and bribery); Anukul Chandra Pradhan v. Union of India 1996 (3) SCALE SP Y7 35 1996 (4) SCALE SI 13, 71; 1996 (5) SCALE SP 10, 23; 1996 (6) SCALE SI 23; (1996) 6SCC 354 (hawala transactions involving public men); State of Bihar v. Brishan Patel 31 1996 (3) SC 751 (misuse of programmic funds); Union of India v. Jain Associates (1994) 4 SCC 665, CBI v. Shukla (1998) 3 SCC 410; Common Cause, A Regd Society v. Union of India (1996) 2 SCC 752 (donation of political parties); Shiv Sagar Tiwari V. Union of India (1996) SCC 558; 599 and 1996 (9) SCALE 680 (perverse allotment of government accommodation); Common Cause, A Regd Society (Petrol Pumps matter) v. Union of India (1996) 6 SCC 530 and 593 (perverse allotment of retail outlets for petroleum products), The last two have however been overruled on the ground that award of damages at the instance of a public-spirited body or organization or forum is improper where it was neither an applicant nor was directly affected by the alleged tortuous act of misfeasance in public office and exemplary damages cannot be awarded to the State for violation of fundamental rights or its citizens or for arbitrary action of its own officers : Common Cause, A Regd Society (Petrol Pumps matter) v. Union of India (1999) 6 SCC 667: AIR 1999 SC 2979. Vineet Narain v. Union of India AIR 1998 SC 889

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