



JUDICIAL LIBERALIZATION OF STANDING IN PIL

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INTRODUCTON

The traditional approach to the “standing” is based on Anglo-Indian jurisprudence and traditional adversary system. It arose during an era when private law dominated the legal scene and public law had not yet been born. According to the traditional rule, judicial redress is available only to person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State, a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.¹ This adversarial system of adjudication may enable the judge to come to a proper decision. But the poor litigant is at disadvantage against a rich opponent. This adversarial system which has been given by the Anglo-Saxon jurisprudence is quite unsuitable to the conditions prevailing in India. The traditional adversarial system sees the courts as simply a means of resolving disputes between private parties. The dispute is thus no one else's concern but the parties. The view of the Court's role, however, fails to take into account judicial law-making. Sometimes parties whose rights have been affected, could not come to the court may be because of the poverty, ignorance or any other reason. Justice P.N. Bhagwati's reasons for disapproval of adversarial procedure for Public Interest Litigation matters are that it sometimes leads to injustice where the parties are not evenly balanced in social or economic strength, firstly because of the difficulty in getting competent legal representation and secondly, because of his inability to produce relevant evidence before the Court Public Interest Litigation represents a marked deviation from principles long-standing in the law of procedure of most nations within and without the Common Law countries. The struggle between the maintenance of these traditional rules, concepts and principles and growth of Public Interest Litigation reflects the most heated debate of our country. It is the struggle between solitary individualism and *laissez-faire*, on the one hand, and a social conception of the law, the economy and the State's role, on the other. The adoption of social welfare state politics has ushered in fundamental changes in the Indian constitutional process. Traditionally the courts were considered as places for the rich to vindicate their rights – both personal and proprietary. The poor, who are in their millions, could not afford to approach the courts and justice was a farfetched dream as they suffered a variety of injustices perpetrated by the rich in collaboration with a callous and corrupt executive arm of State. It is the suffering of the poor lot and the failure of the traditional adversarial rules of *locus standi*, among other court encumbrances, to redress the situation which led some public minded judges to institute a liberalized procedure of standing which would enable public minded people to bring the injustice suffered by the poor to the doors of justice for attention and rectification. With the advent of Public Interest Litigation, the downtrodden now have a glimmer of hope as evidenced by the fact that the prisoners are now having their woes dealt with the courts, bonded labourers are freed, employees are beginning to enjoy the sweat of their labour, protected homes for young women are elevated to more humanly acceptable conditions, and pavement dweller who only seek to make living in the only non-violative way available to them achieve some rights Keeping this in view, the present paper deals with the important and cardinal issue relating

to procedure to be adopted by courts in matters of public interest. To make the basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution, the courts innovated a new procedure to exercise new jurisdiction created in Supreme Court for enforcement of fundamental rights.

The Courts, today, are expounding as well as expanding more and more new category of rights and also imposing corresponding obligations on the State, with a view of transmitting socio-economic justice to common and under-privileged human beings. The individual right and duties are giving place to meta-individual, collective, social rights and duties of classes or group of persons. As a consequence of the liberalization of *locus standi* rule and the increasing willingness of the Judiciary in India is to render remedial justice to the weaker sections. The Courts have been quite liberal in granting standing to the persons coming from different fields with the kinds of issues than with the persons bringing those cases to the courts. This liberal trend is all the more apparent from the fact that the Courts, especially the Supreme Court, have admitted the letters, post-cards, telegrams and even newspaper cuttings as writ petitions under Article 32 of the Constitution. The Court has justified such expansion of its judicial power. The Court has reasoned that the Courts must innovate new methods and strategies to remedy injustices by providing access to justice to large masses of people, who are denied basic human rights.

With the process of liberalization, Public Interest Litigation came as a major breakthrough in the delivery of social justice. As a strategic arm of legal aid movement which intended to bring justice within the reach of poor masses who constitute the low visibility area of humanity, public interest litigation emerged as a challenge to provide an opportunity to the judiciary, government and its officers to examine a large number of issues.³ Truly admitting, the existence of acute inequality in the bargaining power among the people in India has an important bearing on *locus standi*. This has boggled the mind of judiciary for quite a long time. Most importantly, the doctrine of *locus standi* has acquired a new dimension on account of the construction placed by the Supreme Court on the provisions of Article 21 of the Constitution. The Supreme Court in a catena of cases has laid down the place of doctrine of *locus standi vis-à-vis* public interest litigation in Indian jurisprudence.

LIBERALIZATION OF LOCUS STANDI

The origin of Public Interest Litigation lies in the liberalization of *locus standi* by the Supreme Court. The Court was called upon for a liberal interpretation of the rules. The Supreme Court was forced to liberalize the rule of *locus standi* when it founded that the Constitution and the law was being subverted to serve vested interests, that the poor who could not themselves approach the courts were being exploited, that the executive was failing in the discharge of its constitutional and statutory duties and that for millions of Indians the Constitution and the law were becoming an empty joke.

(i) Person Aggrieved

Person aggrieved simply means that person having some grievance. Till the mid of twentieth century the person aggrieved was given a very restrictive meaning by construing that 'person aggrieved' is a person who himself has suffered some loss by which he had been

injuriously affected in his money or property rights. In 1974, the Kerala High Court said that a resident of a locality could not challenge the action of an administrative authority to grant a cinema licence in his locality.⁴ The resident of a society cannot be said to be 'person-aggrieved'. But in 1976, Supreme Court through Justice V.R. Krishna Iyer felt the need to liberalize the strict interpretation of the 'person-aggrieved' and it was for the first time that Bar Council of the State was held to be a 'person-aggrieved'.⁵

(ii) Representative Standing

Viewed as a reform of the traditional model, Public Interest Litigation can be seen as an improvement on the United States doctrine of standing which has muddled together two distinct issues, viz., (i) whether the petitioner is sufficiently motivated to present a good case to the court;⁶ and (ii) whether there is injury that requires judicial redress.⁷ The United States law presumes that only someone with a personal stake can meet the first requirement of motivation. The Supreme Court of India has rejected that presumption by allowing any member of the public to seek judicial redress for a legal wrong caused to a "person or to a determinate class of persons (who) by reason of poverty helplessness or disability or socially or economically disadvantaged position" is unable to approach the court directly.⁸ This modification of traditional locus standi could be termed "representative standing" by assuming that the petitioner is accorded standing as the representative of another person or group of persons.

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(iv) Citizen Standing

Of late, the judiciary has entered into a new era and its new creative period it has entangled itself in bringing socio-economic justice. . The fast changing, revolutionary vision of judiciary is echoed in the "*Judge's Transfer Case*"¹² where the modification of the traditional standing doctrine, has been done. Representative standing can be seen as a creative expansion of the well accepted standing exception which allows standing to the petitioner as a representative of another person or persons. Dimensions of this standing doctrine were further widened when the question regarding the issues of whether the petitioner was injured. Now any member of the public with "sufficient-interest" is allowed to assert "defuse, collective and meta-individual rights". Such standing could be termed as 'citizen standing' and the petitioner under the citizen standing sues not as a representative of others but in his own right as a member of citizenry to whom a public duty is owed.

Justice V.R. Krishna Iyer said:¹³

"We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and mean him from the lawless streets. In simple terms, *locus standi* must be liberalized to meet the challenges of the times. *Ubi jus ibi remedium* must be enlarged to embrace all

the interests of public minded citizens or organizations with serious concern for conservation of public resources, directions and correction of public power so as to promote justice in its triune facet."

Thus, it is explicitly clear that the doctrine of citizen standing marks a significant expansion of the court's role, from the protector of individual rights to guardian of the rule of law wherever threatened by official lawlessness. The import of this innovation is demonstrated by the decision of the Karnataka High Court regarding the bottling of arrack liquor, which led to the short term resignation of Chief Minister Shri R.K. Hegde.¹⁴ Although the litigation was begun by parties with traditional standing unsuccessful applicants for the bottling rights – these parties withdrew their petitions (for reasons not made public). Thus, the allegations of nepotism and impropriety would have remained unadjudicated had not two person filed petitions, claiming only an interest as citizens of Karnataka in seeing that public business was conducted lawfully.

(v) Social Workers and Locus Standi

With the passage of time, the court liberalized the rule of locus standi to an extent which could ed up the grievances of the public. In Public Interest Litigation locus standi was granted to any public spirited person, individual, citizen or to a social worker. In 1982, *Jyoti Prakash v. State of Madhya Pradesh*,¹⁵ a Public Interest Litigation writ petition was filed by the social workers of Gandhi Peace Foundation. Court allowed the writ petition and directed the State government of Madhya Pradesh to pay wages to the bound Laborers again in 1990 the Social Workers highlighted the miserable conditions of the people in Orissa. The extreme poverty conditions in certain areas of Orissa led to selling of their children in order to save themselves from starvation. Court recognized such kind of social organizations who have voluntarily took the initiative through Public Interest Litigation to curb the grievances of these poor people. Court directed the State government to nominate five persons from recognized voluntary organizations in district level committees to look into cases of starvation deaths.¹⁶

Supreme Court felt the importance of the organization of social workers to curb the grievances of the society and encouraged such social workers in 1990.¹⁷ The social workers organization who were working against the exploitation of local farmers and tribal people, they were arrested, abused and beaten up and charges of obstructing public servants were made on them. They were handcuffed and were taken to the magistrate. The Court held that the prisoner can be handcuffed only n the absence of any doubt of escape after the directions of the court. In the above case court had directed the State government to take appropriate action against the escort party for having unreasonably and unjustly handcuffed the prisoners.

(vi) Unrecognized Association

A number of registered/recognized bodies or associations are engaged in the Public Interest Litigation. These bodies or associations are Public Welfare Societies registered under the Societies Registration Act, 1870. Some such associations are People's Union for Civil Liberties (PUCL), Bandhua Mazdoor Morcha (BMM), People's Union for Democratic Rights (PUDR). These associations have emerged with the aim of confronting the problem of enormous and growing social inequalities, and in particular working for promotion of laudable social interests.

But, there are certain associations of public spirited persons which are not registered. These associations are moving to the courts with the matters of grave public importance. Before 1981, they were not accorded locus standi, as they were unrecognized/unregistered associations. In *Akhil Bhartiya Soshit Karamchari Sangh v. Union of India*,¹⁸ a technical point was taken in the counter-affidavit that the first petitioner was in the counter-affidavit that the first petitioner was an unrecognized association and that, therefore, the

petition to that extent was not maintainable. Over ruling the contention court observed that the petitioner may belong to an unrecognized association, the fact still remains that large body of persons with a common grievance exists and therefore, they have approached the Court under Article 32 of the Constitution.

In **R & M Trust v. Koramangala Residents Vigilance Group and Others**,⁴³ it was contended that the appellant had no *locus standi* to file petition as the present association is neither representative association nor a registered body. Therefore, the Court should not entertain the public interest litigation of such unregistered and unrecognized body. It is true that locus in such public interest litigations is very relevant factor and court should always enquire into the locus of person before entertaining such petitions. The Court has categorically observed that Public Interest Litigation should be entertained in very rare cases.

(vii) Proper Person and Locus Standi

In Public Interest Litigation the grievance is mainly about the violation of constitutional or legal rights by the governmental action or inaction. However, the strict rule of *locus standi* is not applicable to public interest litigations. However, there is some limitation that applicant in a public interest litigation it appears to be that some person/plaintiff/applicant or petitioner should have some common interest with others for whom the relief is being sought, just on the principle of representative suit under Section 92 of the Code of Civil Procedure. In **Videowala v. Union of India and Ors.**,¹⁹ Madras High Court while considering the petition challenging vires of legislation, held that private parties cannot be impleaded as respondents, however, much interested they may be in the outcome of the proceedings. They cannot seek party of status or treatment with the government in such matters. They can, however, be accorded status of 'proper person' to be heard. To be true, they can only be interveners or observers and they can render assistance to the Court in determining the question where the provisions of an Act, which is impugned on the ground of the vires, are vitiated in any manner.

In **Poola Bhaskara Vijayakumar v. State of Andhra Pradesh**,²⁰ the Andhra Pradesh High Court, while maintaining the right of prisoners under rigorous imprisonment to be paid minimum wages for their work held that the status of a 'proper person' can be accorded even to a person from general public. The objection that the petitioner was not an aggrieved person was over-ruled and court categorically held that in public law unlike in private law many more are welcomed and accepted as aggrieved persons.

CONCLUSION

The researcher find few preliminary objections namely, where fundamental right of petitioners were not infringed,²¹ petitioner has no *locus standi*; and vital distinction between *locus standi* and justiciability. Justice P.N. Bhagwati in **Bandhua Mukti Morcha case** has opined that the preliminary objection was futile and to the court it was indeed surprising that the State Government, which is, under constitutional scheme charged with the mission of bringing socio-economic order, should raise such a preliminary objection with a view to stifling at the threshold an enquiry into conditions of inhuman, unlawful and illegal bondage. Court expected the State Government to welcome the petitioner's attempt to assist the implementation of anti-bonded labour legislation. Further, the preliminary objections were raised by the non-petitioners and respondents in Public Interest Litigation proceedings on the ground of no *locus standi* or standing. The Court in a catena of cases rejected this objection. Justice P.N. Bhagwati opined that the strict rule of *locus standi* would not apply in cases wherein there was a violation of constitutional and legal rights of a set of persons or a determinate class of citizens who by reason of their socially and educationally disadvantaged position were unable to approach the Court for judicial redress. The Supreme Court in **S.P. Gupta v. Union of India**²² has observed that "the Court has to bear in mind that there is 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 the Executive and the Legislature by the Constitution."

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2. Supra n. 5 at 814-816; para 13.
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4. Peer Mohd. v. D.F.O., AIR 1974 Ker. 192.
5. Bar Council of Maharashtra v. M.V. Dhabolkar, (1976) SCR 306.
6. Baker v. Carr, 369 US 186, 204 (1962); Gladstone Reators v. Village of Bellwood, 441 US 91, 99 (1979), Warth, Id., at 498-499; Sierra Club, Id., at 732.
7. Abram Chayes, Foreword: Public Law Litigation and the Burger Court, 96 Harv. L. Rev. 4 at 16 (1982).
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12. Supra n. 27.
13. Fertilizer Corporation Kamagar Union v. Union of India, (1981) 1 SCC 568 at p.584.
14. Raju v. State of Karnataka, 1986 KLR (1) 164 on 31 January 1986 the Supreme Court granted special leave *Subnom Winery and Distiller Pvt. Ltd., v. Raju*, SLP Nos. 2095-96; 2097-98, 2293-94; 2299, 2300, 2364-65, 2366-67 of 1986.
15. Judgment pronounced in May 1982 as quoted by Sampat Jain, Public Interest Litigation, 276 (2003).
16. Kishen Pattanayak v. State of Orissa, 1989 (Supp.) 1 SCC 258: AIR 1989 SC 677.
17. Sunil Gupta v. State of Madhya Pradesh, (1990) 3 SCC 119.
18. AIR 1981 SC 317.
- 43A AIR 2004 SC 894: 2005 (3) SCC 91.
19. AIR 1987 Madras 512.
20. AIR 1988 Andhra Pradesh 295.
21. In *Bandhua Mukti Morcha* case, the petitioner was an organization dedicated to the cause of release of bonded labourers in the country. A few preliminary objections were urged on behalf of the respondents. The contention of the State was that letter petition cannot be maintained because no fundamental right of the workman was infringed.
22. AIR 1982 SC 182 at 195.