ORIGINAL RESEARCH PAPER

Law

# PUBLIC INTEREST LITIGATION, MANDAMUS & CONTINUING MANDAMUS: A BIRD'S EYE VIEW

**KEY WORDS:** public interest litigation, mandamus, continuing mandamus, apathy.

**Shreemanshu Kumar Dash** Research Scholar, Department of Law Sambalpur University, Sambalpur, Odisha, INDIA.

**ABSTRACT**

We live in an era when Parliament has placed statutory duties on government 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 either by commission or by omission 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 ? P.N. Bhagawati J. is of the 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, then a member of the public, who has sufficient interest, can himself apply to the court itself. The gradually increasing judicial action is commendable from a narrower perspective while the escalating apathy of the other wings is condemnable from a broader perspective.

**Introduction:** Public interest litigation, in fact, is not defined in any statute or in any Act. It has been interpreted by judges to consider the interest of the public at large. Although the main and only focus of such litigation is only "Public Interest" there is various areas where a public interest litigation can be filed.

We often must understand the denotation or the literal meaning of a word in order to understand its connotation. Denotation of a term is static, confined to letters. Connotation on the other hand, is dynamic, having the elasticity to be stretchable towards its spirit.

Public Interest Litigation as found in Black's Law Dictionary means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.

Mandamus is a Latin word which means "We Command". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs. The writ is issued to oblige an authority to do his duties or exercise his powers in accordance with the mandate of law. The authority may also be prevented from doing an act which he is not entitled to do. The authority against whom the writ be issued, may be governmental or semi governmental, or judicial bodies. Its function in Indian Administrative Law is as a general writ of justice, whenever justice is denied, for delayed and the aggrieved person has no other suitable remedy. The writ is in the character of civil proceeding and intended to supply the defects of justice. It is within the scope of mandamus to direct statutory corporations to perform their duties. The writ is issued to restore individual to public offices, which is the normal function of quo warranto and prevents the violation of natural justice by tribunals, the normal province of certiorari and prohibition. Thus mandamus overlaps all the other writs except, habeas corpus. The Supreme Court has held that mandamus will not lie where the rights are purely of private character or if the management of the college is purely a private body with no public duty. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. Mandamus is very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of conceding that relief under Article 226.

Continuing Mandamus is a writ of Mandamus issued to a lower authority by the higher authority in general public interest asking the officer or the authority to perform its task expeditiously for an unstipulated period of time for preventing miscarriage of justice.

The concept of Continuing Mandamus has been discussed and dealt with in the respective cases of Vineet Narain v. Union of India and Bandhua Mukti Morcha v. Union of India & Ors. When a petition is filed under Article 32 or Article 226 of the Constitution of India in the Supreme Court or the High Court respectively, the court can issue the writ of Mandamus in the interest of general public welfare. The facts and circumstances of the cases were of utmost public importance, and the increasing need for preservation of democracy and equality in this society. The Courts, in these cases did not concern themselves with the accusations on a meritorious basis, but only by the due performance of the duties and obligations on the part of the government agencies to fairly, fully and properly investigate into every such accusation against every person, and to take the logical final action in accordance with the law.

The court ruled that as great public interest was involved in this matter, the CBI and other revenue agencies of the government should perform their tasks properly and expeditiously to prevent unnecessary delays in investigation. The writ issued by the court was continuous, and for an unstipulated period of time. The National agencies and authorities would be obliged to perform their tasks diligently and dutifully, taking into consideration, national and public interest.

A special reference as to the initiation of inquisitorial proceedings was also made by the Supreme Court, to facilitate this epistolary proceedings (suo moto cognizance), a Public interest litigation cell has been opened in the Supreme Court to which letters addressed to the Court or individual judges are forwarded which are placed before the Chief Justice after scrutiny by the staff attached to the cell. This implies that the court is not bound by the Civil Procedure Code and the Evidence Act and can devise inquisitorial or other suitable procedure to achieve the object and purpose of Article 32 of the Constitution of India.

The concept of public interest litigation or Social Interest Litigation has its origin in the United States and over the years it has passed through various vicissitudes in the country of its origin. Whereas in UK there have been remarkable developments in this field in 1970s due to dynamic activism of Lord Denning.

In PIL any member of the public having sufficient interest can maintain an action for enforcing a public duty against a statutory or public authority.

PIL is different from adversary litigation in traditional model. Furthermore PIL is brought before the court not for the purpose of enforcing the right of an individual against another as happens in the case of everyday litigation, but is intended to promote and vindicate public interest which demands that violation of constitutional or legal rights of large number of people who are poor, ignorant or in a socially and economically disadvantaged position should not go unnoticed and unreddressed. That would

be destructive of Rules of Law which forms an essential element of public interest in any democratic form of Government. The rule of law doesn't mean that the protection of law must be available only to the fortunate few or that the law should be allowed to be prostituted by the vested interest for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also. Though today, it exists on paper, as paper tiger, and not in reality. If the rich, big industrialists have the fundamental rights to carry on their business so do have the artisan, mazdoor and rickshaw pullers. The former can approach the court with distinguished lawyers whereas not the later due to poverty and helplessness. The fundamental rights of a poor and helpless victim of injustice is sought to be enforced by PIL.

Under the situation, it is the Judiciary, rather enlightened judicial mind may come forward to see that violations are punished with deterrent effect so that persons responsible to implement such schemes may not dare to commit the breach of law meant for the benefit of poor person who are to become victims of injustice and are unable to approach courts due to the costly, cumbersome and lengthy process of justice delivery system.

Thus it is conspicuous that PIL in India is rather a strategy for bringing about the change in the system. Accepting the simple letters as Writ petition, the court itself shoulders the burden of establishing the facts through commissions appointed for the purpose and wherever possible the case will move swiftly to the issue of remedy bypassing the time consuming and costly process of determining liability for past acts.

**CONCLUSION/SUGGESTION:** Like the US is known for their businesses and Japan is for technology, India is known for Spirituality which is different from religion. Only in India can one find a calm mix of all religions living together in unity. India has been truly represented by Swami Vivekanand, Mother Teresa, Goutam Buddha, Dr.A.P.J.Abdul Kalam, Mahatma Gandhi, and innumerable such legendary personalities who have enriched the nation by virtue of their simple living and high thinking. In Indian culture, giving is valued more than taking and duty is valued more than right. Gentility and generosity have been of great value whereas self-sacrifice has been the epitome of ultimate duty of care for the sake of humanity. The foregoing values are the ethos enshrined in our constitution as well. But with the advancement of time simplicity has been mistaken as stupidity. Brain has vanquished conscience. People have become conscious of right sans regard to duty. The way a hungry cat waits for a rat, persons in public posts wait for opportunities for gratification of their selfish interests. Honesty in theory has been in practice the other name of lack of opportunity. The great thinkers of humanity in the world scenario with their strong far sight, at the time of framing of the constitutions of their respective countries, had perhaps foreseen and hence postulated the provisions of public interest litigation. Idea was to see that any issue involving public interest resulted out of governmental or bureaucratic lethargy may not go unaddressed because "salus populi suprema lex" meaning welfare of the people is the supreme law. No doubt pedantically it is true but pragmatically it is truer than that that there is not anything in the world more abused than this sentence. In a democratic set up that believes in separation of power, the judiciary should always have the last say. But if the judiciary is circumstanced to say first, the very fact that all is not well in the system is out in the open. The politicians and the bureaucrats should have a holy mind and spirit while rendering their official functions for the sake of the great nation. After all, they are supposed to be the role models. It is not desirable that the nation heads towards a revolution. Solution within the system is cheaper than solution outside the system. It is not hyperbolical to decry that if the parliamentary system has not functioned satisfactorily, it is not due to any defect in the system but due to the incompetence or inefficiency of those who have been running the system.

**REFERENCES:**

1. AIR 1984 SC, 802.
2. (1998) 1 SCC 226
3. 1982 SC 1437
4. AIR 1989 SC 1607
5. http://www.google.com
6. https://www.wikipedia.org
7. http://www.LiveLaw.in
8. http://SuperLawyer.in
9. http://www.indiankanoon.org
10. http://www.legalserviceindia.com