'PUBLIC INTEREST LITIGATION IN INDIA: A RISORGIMENTO IN SOCIAL JUSTICE

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ABSTRACT

The methodology adopted in this study is historical and analytical. The examination of judgments given by the Supreme Court in the light of the changes in social, economic and political sphere has been helpful in understanding the effectiveness of the PIL in the protection of human rights.

The basic purpose of this study is to study the meaning, origin and growth of the concept of human rights in different phases of human history and to study how the enunciation of Public Interest Litigation by the Indian Judiciary has become an important mechanism of welfare state. Further, the study is aimed at evaluating the role of Public Interest Litigation in the context of human rights protection and to specially deal with the judicial response to important PIL cases viz-a-viz rights of the accused.

Herein, a modest attempt has been made to study the rights of the accused under the constitution of India and the Criminal Procedure Code, 1973, which is the only procedural criminal law in India and how the supreme court has conferred the new fundamental rights on the accused in the interpretation of Article 21 in the light of international covenant on human rights.

INTRODUCTION

Public interest litigation appeared in the Indian judicial scene in the mid-seventies when the inflexible concept of standing proved to be an obstacle in achieving the great ideals of soc-economic justice. To disarm the strong and arm the weak was indispensable to change the social order. The judiciary under such circumstances had to devise new schemes and devices, new strategies for providing access to justice to a large section of society which was deprived vulnerable. The need for a special bench to ensure social Justice to citizens which is the solemn promise in the constitutions preamble had been felt for sometimes by the Judges**.**

Consequently, The Chief Justice of India H.L Dattu decided to setup a social justice bench comprising Justice Madan Mohan Lokur and U.V Lalit, which from Dec 2, 2014 will exclusively deal with issues that have been coming up before the night shelter for the homeless rampant corruption in distribution of food grains to the poor through PDS and mid day meal in govt schools.

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In addition, an important use of public interest litigation is to make public and scrutinize hidden or obfuscatory information, including cost of potential social programs, which the state and corporate entities on occasion have reasons to exaggerate or hide. In India, PIL during droughts in Rajasthan and Orissa in 2001 disclosed the extent of unreleased government grain stocks, and

subsequent PIL disclosed that state governments could in fact afford to widen several statutory food and nutrition programs, including the midday meals scheme in schools, despite official protests to the contrary

'Public Interest Litigation' in literal sense

As per Black's Law Dictionary, "*Public interest is something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government……"*[1].

In UK according to Access to Justice Act, 1999[2], which gives the Legal Service Commission power to grant funding for cases, public interest litigation is where there is a 'significant wider public interest' at stake beyond that of the individual litigant.

ORIGIN AND DEVELOPMENT OF PUBLIC INTEREST IITIGATION

History of Public Interest Litigation

The history of public interest litigation can be traced from the Roman law *actio populari* which permitted anyone in the society to initiate an action for a public depict in the Court of law or to bring an action of restitution or injunction for the protection of public property or a religious charitable property.

[1] Bryan E Garner (ed), *Black's Law Dictionary* (4th Ed, West Thomson reuters, 2009), p 1305

[2]Access to Justice Act, 1999, S 8(2)(g)

Later the concept of public interest law was developed by the classical United States jurisprudence. Public interest litigations in the modern sense originated in the United States in the 1960s, when amid challenges to many social systems in the wake of drastic social changes such as Civil Rights Movement and the Vietnam War, many public interest groups were formed, which, represented by lawyers and jurists consults avid for social reforms, worked to protect the environment and safeguard rights of consumers, women, the colored people and minors, as well as many other public interests, and called for new and fairer social systems.

According to Louis Brandeis[3], a prominent public spirited person, lawyers have a social obligation, as an economic intellectual and managerial gentry, with exclusive license to engage in their profession, to act independent of their clients and they are also obligated to act as more than the subsidiaries of great corporations. In addition, the United States has a so-called 'private attorney general' system, under which the United States Congress has passed laws authorizing an individual or group to bring a lawsuit that is in the public interest, and to sue law-breaking or non-performing officials.

The Roman and US public interest litigation systems share the similarities such as (a) a wide variety of suits, (b) diverse background of litigants, who can be taxpayers, consumers, environment consumers, environmental protection organizations and groups, alongside minister of justice and chief procurator (c) litigation can be filed against an action that has already caused damages or one with potential harm (d) the litigation when proves legal and wins support, can be awarded, (e) the role of public interest litigation is to supplement, rather than replace, law enforcement of state organs.

[3] Louis Brandeis was a Supreme Court Justice from 1916 to 1939 and famous as 'People's Lawyer', See www.fjc.gov/servlet/nGetInfo?jid=802&cid=999&ctype=na&instate=na (visited on 26 February 2013)

In UK, the public interest litigation has been considered as one of the element of public interest law which is most effective when done in tandem with the other key elements. Public Interest Litigation can be used to help secure social reform either by winning cases which lead to changes in the law or by using Court challenges to highlight anomalies and injustices which then lead to public pressure for change.

In Australia, public interest litigation is majorly used to protect environment and in that context diluted the principle of 'aggrieved person. The High Court of Australia held that '*the basis for challenge in Public Interest Litigation should be arguable, raising serious and significant issues resulting in important interpretation of new provisions relating to the protection of endangered fauna.*[4]

U.S.A

United States can be said to be the originator of the concept of Pubic Interest Litigation. In 1876, the first legal aid office was established in New York City in connection with the famous *Gideon's* case of USA[5].

Moreover, Article III Section 2 of the American Constitution lays down that judicial power shall extend to all the cases, in law and equity, arising under this constitution, the laws of the United States and treatises made under their authority to controversies between citizens of different states and between a state and citizens thereof.

Definition of PIL- Ford Foundation USA

[4] *Oshlack v Richmond River Council* (1998) 193 CLR 72

[5] *Gideon v. Wainwright* [1963] 372 U.S. 335.

The Council for Public Interest Law set up by the Ford Foundation in USA defined the public interest litigation- in its report of public of interest law, USA, 1976.28 As, *"public interest litigation is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interest, such efforts have been undertaken in the recognition that ordinary market place for legal services to significant segments of the population and to significant interests include the proper environmentalists consumers, racial and ethnic minorities and other".*[6]

U.K

England is the progenitor of Anglo-Saxon jurisprudence and of the strict doctrine of *locus standi*. Indeed it is on the basis of laws of England that the Indian case law has developed. Lord Denning is responsible for liberalization of doctrine of *locus standi*.

In England even when the strict rules of *locus standi* held its sway, there was a device for vindication of public interest, namely through relator action. Attorney general was the sole guardian of public interest. Acting in the special capacity as guardian of public interest he played an important role in the administration of justice and possessed ranging functions. He had a particular role and responsibility as custodian of public law. The Attorney General used to represent public interest for taking action in the public interest through court proceedings and the judiciary had an abiding responsibility, parallel to that exercised by attorney general and law officers of the crown in safeguarding the public interest in legal proceedings brought before the court. The relief sought should have been such as to benefit the public at large or at least a section of public and not the realtor action alone.

[6] *Dattaraj Nathiji Thauware v State of Maharashtra* (1992) ILLJ922SC

INDIA

'The public interest litigation is the product of realization of the Constitutional obligation of the Court.[7]

'*Public Interest Litigation'*, is a litigation filed by a person or organization for the protection of legal or pecuniary interest of a community/group of persons at large. Public interest litigation is a strong arm extended by judiciary to the poor and the needy through public spirited personnel is the golden cultivation, cultivated by judiciary in the farm house of justice. It is the only hope and scope for the public spirited person to approach judiciary on behalf of the suppressed and distressed person/community for the violation of fundamental rights guaranteed to them. The judiciary in its own judgment in the case of *State of Uttaranchal* v. *Blawant Singh Chaufal and others*[8] opined that under the strong head of public interest litigation, the Supreme Court provided space to the social activists to bring the case before the Court of justice through liberal interpretation to the words in Art 32(1) of the Indian Constitution[9]. To give life to the democracy in the days of Emergency period in 1976, the Supreme Court opened the way for the petitions by liberalizing the concepts of '*locus standi'* and '*aggrieved person'.*

The scope given has been utilized by the public spirited personnel not only in safeguarding the fundamental rights of the suppressed but also to protect the environment[10]. In the recent times, it has been used as an imperative tool to control the abuse/ sub-use of administrative discretion. The concept has been introduced for curbing the corruption, maladministration, unequal

[7] *State of Uttaranchal v Blawant Singh Chaufal and others*, 2010(1)SCALE492

[8] 2010(1)SCALE492

[9] Indian Constitution 1949, Article 32(1)

[10] *M C Mehta v Union of India* AIR 1987 SC 1086

treatment by authorities, confirm the protection of Part III & implementation of Part IV of the Constitution and in many other circumstances in which critical Constitutional questions has been raised. In upholding the public interest litigation the Supreme Court always referred the theory of Constitutionalism[11] which is imbibed in our Indian Constitution. Constitutionalism in the opinion of renowned author, Prof Jain M P, for the promotion of Constitutionalism in a country, the basic principles and norms required are 'a written Constitution, *independent judiciary with powers of judicial review, the doctrine of rule of law and separation of powers, free elections to legislature, accountable and transparent democratic government, fundamental rights of the people, federalism, decentralization of powers are some of the principles and norms which promote Constitutionalism in a country"*[12]. Public interest litigation evolved as one of the means, to protect the basic norms of Indian Constitution.

It is observed in *People's Union for Democratic Rights and Ors vs Union of India and Ors*[13] that the '*public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of Constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society".*

Reference of Public Interest Litigation in the Constitution and other Statutes

Order 1 Rule VIII talks of representative suit. The expression "public interest"[14] finds it reference in Constitution of India and few other statutes: **Article 302** of the Indian Constitution states that, "Parliament may by law impose such restriction on freedom of trade, commerce or

[11] M P Jain *Indian Constitutional Law,*(5th Ed, Lexis Nexis Butterworths Wadhwa, 2008), p 5

[12] Jain M P , p 96

[13] [1982] 3 SCC 235

[14] B.L.Wadhera, *Public Interest Litigation: A Handbook*, (Universal Law Publishing Co. Pvt. Ltd New Delhi, 2003), p.10.

intercourse between one state and another or within any part of the territory of India as may be required in the public interest"

Section 124 of the Indian Evidence Act, 1872 mentions 'public interest' as, "No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by that disclosure"

Section 241 of Companies Act, 2013 defines public interest as, "Any member of a company who complain, that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the company law board for an order under this section, provided such members have a right so to apply in virtue of section 399".

In *Kritisankarn Nair v Kumaran Nair*[15] the Kerala High Court held that the term, "Public interest as a subject in which the public or section of public is interested, becomes one of the public interest".

The Supreme Court in the case of State of *Bihar v Kameshwar Singh*[16] held that public interest is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statutes and what is public interest today may not be a decade later.

In *Bandhua Mukti Morcha v Union of India*[17], the court said that, "In public interest litigation the role of judiciary is more assertive than in traditional actions. In the following passage the court

[15] AIR 1965 Ker 161.

[16] AIR 1952 SC 252.

[17] 1984 (2) SCR 67.

has distinguished between private litigations and public interest litigation.[18] It says that, "in public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bipolar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest litigation is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare state....the dispute is not comparable to one between private parties with the result there is no recognition of the status of a dominus litis for any individual or group of individuals to determine the course on destination of the proceedings, except to the extent recognized and permitted by the court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the interests of those, for whose benefit the action is brought. Generally, speaking it's about the content and the conduct of government action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies. Necessarily, both the party structure and the matters in controversy and sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc according as the exigencies of the emerging situation. The proceedings do not partake of predetermined private law litigation models but the exogenously determined by variations of themes".

Public interest litigation displays many unique features which are not found in traditional private litigation. In an ordinary traditional litigation two parties are arranged against each other there is

[18] O.P.Mishra, *Public Interest Litigation and Our Rights*, (First Edition, Diwedi Law Agency, Allahabad, 2003), p.10.

a disputed question of fact and/or law between them, they procedure their own evidence, witnesses and precedents, and the court ordinarily arrives at a decision after considering the materials and evidence placed before it. However, in public interest litigation all this changes, here a single individual or a small organization (petitioner) is arranged against the might of many ministries and departments with standing counsels and law officers.

Actio Populas* and *Pro bono Publico

The concept of PIL can be traced in the system of "*Actio Populas*" of Roman law which means "action for the public welfare". Another maxim is "*Pro bono Publico*", which means in the "benefit of public".

The Bhopal Gas Disaster (Processing of claims) Act, 1985, which enabled the union government to fill a claim for damages on behalf of the Bhopal gas victims exhibit a good example of Roman "*Actio Populas*" in the modern time. Court in *Pro bono Publico* granted relief to the victims.

Reason behind the liberalization

The SC was forced to liberalize the rule of locus standi when it found 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 empty joke.

Justice Bhagwati in *S.P Gupta v. Union of India*[19], stated, "Today a vast resolution is taking place in the judicial process, the theatre of law is fast changing and the problems of the poor are

[19] AIR 1982 SC 149

coming to the forefront. The court has to innovate new methods and device new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal rights have been violated, but who by reasons of their poverty or socially or economically disadvantaged position are unable to approach the court for relief."

Relaxation of rule in PIL

In adversial litigation, the requirement of locus standi of a party to litigation is mandatory, because the legal capacity of the party to any litigation whether in public or private has to be primarily ascertained on his capacity to take action in relation to any specific remedy sought for.[20]Clearing all impediments obstructing development of Public Interest Litigation, a comprehensive obstruction was given to the concept of PIL in the first judge's case. Having given ultimate farewell to the concept of *Locus Standi*, a way for free flow of Public Interest Litigation was paved. The scope of PIL thus was paved. The scope of PIL thus was enlarged to a greater extent by Justice Bhagwati who proved to the architect of PIL jurisprudence in India in his remarkable judgment in *SP Gupta vs. Union of India*[21], to which other six judges broadly agreed, he observed:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such

[20] *Janata Dal v H.S. Chowdhary*, (1992) 4 SCC 305.

[21] AIR 1982 SC 149.

legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons"

Epistolary Jurisdiction: Another facet of PIL

Another dimension which contributed a lot in the development of PIL in India was Epistolary Jurisdiction of Supreme Court and High Court which facilitated them with 'letter petition', in which letters started to be treated as writ petition.

Administrative tribunals and PIL

Administrative tribunals cannot entertain public interest litigation by total stranger. It was held in the case of *Duryodhan Sahu v Jitendra Kumar Mishra*[22] that administrative tribunal cannot entertain public interest litigation by a total stranger. In order to bring a matter before tribunal an application has to be made and same can be made, only by the person aggrieved by any order pertaining to any matter within the jurisdiction of the tribunal.

[22] AIR 1999 SC 114.

Public Interest Litigation in 1970s

Public interest litigation appeared on the Indian Judicial scene in mid-seventies when the Indian judiciary responded in a sympathetic way to the initiatives of Indian social action groups, journalists and scholars.[23] In the case of *Mumbai Kamgar Sabha vs Abdul Bhai*[24], Krishna Iyer J, by quoting the words of Prof Upendra Baxi held that 'the nomenclature of "*Social Interest Litigation"* suits more to such kinds of litigations which involves society focused problems. This is the case where the term of '*Public Interest Litigation"* and expression *'epistolary jurisdiction'*[25] were used for the first time in India. Krishan Iyer J, also opined in *Mumbai Kamgar Sabha* case that "*Test litigations, representative actions, pro bono public and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issue on merits by suspect reliance on peripheral, procedural shortcomings……. Public interest is promoted by a spacious construction of locus standi of our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher Courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law."*[26]

Public Interest Litigation in 1980s

In 1980s, the wave of public interest litigation has got so much importance both in public and in judiciary. It created as scope for judicial activism. *Municipal Council, Ratlam vs Vardichan*[27] a

[23] *State of Uttaranchal v Blawant Singh Chaufal and others* , 2010(1)SCALE492

[24] (1976) 3 SCC 832

[25] *Sheela Barse vs. State of Maharashtra* (1983) 2 SCC 96

[26] (1976) 3 SCC 832

[27] (1980) 4 SCC 162

land mark case has showed the path for people's involvement in matters of public importance by throwing the importance of *locus standi* to the least important position in Public Interest Litigation. In *Additional Judges* case, a precursor of public interest litigation in India, Bhagawati J., observed that "*whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such wrong or public injury.* He also observed that *"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or law and seek enforcement of such public duty and observance of such Constitutional or legal provision."* He emphasized the need for public interest litigation in India in his judgment, that "*If public duties are to be enforced and social collective "diffused" rights and interests are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights"*[28].

In *Upendra Baxi (Dr) v. State of UP*[29], the Supreme Court extended the scope by accepting the letter written by two law professionals as public interest litigation and issued remedial guidelines to improve the pathetic condition prevailing in protective homes. Even Judges went to an extent of delimiting the requirement of *locus standi* and sidelining the procedural importance accepted the letter written to the judge as public interest litigation petition[30] by applying the logical

[28] *S P Gupta v Union of India* AIR 1982 SC 149, p 190

[29] (1983) 2 SCC 308.

[30] *Nilabati Behra v State of Orissa* [(1993) 2 SCC 746]

interpretation of Art 32(1)[31] wherein there is absence of expression 'who' shall have the right to move the Supreme Court and absence of explanation to the word 'appropriate proceedings'. The Supreme Court opined that expenses less procedure may encourage the increase of the *pro bono public* petitions.

Public Interest Litigation in 1990s

In 1990s, the judiciary stepped ahead in judicial activism by accepting the news reports, letters, telegrams as petitions and *suo moto* started pursuing the matters which are in the interest of Public. In *Paramjit Kaur (Mrs)* v. *State of Punjab and Ors*[32], *a telegram sent to the Court was considered as habeas corpus petition.* In number of cases, the Supreme Court allowed public interest litigation to safeguard and protect the ecology and environment.[33] In this context, the Supreme Court has performed a yeoman service by taking cognizance, in a number of cases, of various environmental problems and giving necessary directions to the Administration.[34] In *Vellore Citizens Welfare Forum* v. *Union of India and Ors*[35] and *M C Mehta* v. *Kamal Nath and Ors*[36], the Court ruled that the 'Precautionary Principle' and the 'Polluter pays' principle are part of the environmental law in India and considered pollution as a civil wrong under tort. In *S Jagannath* v. *Union of India and Ors*[37] gave directions to Central Government for protection to

[31] Constitution of India 1949, Article 32(1).

[32] (1996) 7 SCC 20

[33] *M C Mehta v Union of India* AIR 1987 SC 1086, *Rural Litigation and Entitlement Kendra, Dehradun and Ors v State of U P and Ors* AIR 1985 SC 652, *A P Pollution Control Board v Prof M V Nayadu (Retd) and Ors* [(1999) 2 SCC 718]

[34] M P jain, p1137

[35] AIR 1996 SC 2715

[36] (2000) 6 SCC 213.

[37] (1997) 2 SCC 87.

the marine life and directed the Government to implement the 'Precautionary Principle' and the 'Polluter Pays Principle'.

Through public interest litigation, the Supreme Court established basic norms and guidelines which were followed as law in certain cases.[38] Public interest litigation has been used even as a weapon to fight with corruption and abuse of administrative discretion of the authorities.[39]

Public Interest Litigation after 2000

After 2000, the judiciary drew a clear line distinguishing the public interest litigations and political interest litigations. In *Balco Employees' Union* v. *Union of India and Ors*[40], while dismissing the public interest litigation filed by Shri B L Wadhera opined that the decision to disinvest and the implementation thereof was purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of busy-body therefore could not have fallen within the parameters of public interest litigation. One of the recent case of such kind is the *Centre for Public Interest Litigation* v. *Union of India and Anr*[41] wherein the decision of the government to sell majority of shares in Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited to private parties without Parliamentary approval or sanction was questioned as being contrary to and violate the provisions of ESSO (Acquisition of Undertaking in India) Act, 1974, the Burma Shell (Acquisition of Undertaking in India) Act, 1976 and Caltex (Acquisition of Shares of Caltex Oil Refining India Limited and all

[38] *Vishaka and Ors v State of Rajasthan and Ors* (1997) 6 SCC 241, *S Jagannath v Union of India and Ors* (1997) 2 SCC 87

[39] *Vineet Narain and Ors v Union of India and Anr* AIR 1998 SC 889, *Rajiv Ranjan Singh `Lalan' and Anr v Union of India and Ors* (2006) 6 SCC 613, *M C Mehta v Union of India and Ors* (2007) 1 SCC 110

[40] (2002) 2 SCC 333 para 88

[41] AIR 2003 SC 3277

the undertakings in India for Caltex India Limited) Act, 1977. The Supreme Court upheld the petitions directing government to amend the statutes appropriately.

In *Kapila Hingorani* v. *State of Bihar*[42] while deciding the plight of the employees of public sector undertakings or the statutory authorities in the state of Bihar, the Court pierced the corporate veil and held State of Bihar liable. The Court held that "*the government of Bihar has a Constitutional obligation to safeguard the life and liberty clause of the employees of the corporations and companies owned by the government'.*

Supreme Court and Fundamental Human Rights

The last two decades of working of the judicial review has demonstrated that Supreme Court and High Courts have enthusiastically entertained petitions relating to violation of human rights. The cases involving violation of human rights have come to the Supreme Court and High Courts not only as private litigations, but also under the banner of *Public Interest Litigation* (PIL). The Supreme Court has liberalized *locus standi* in PIL, and thus any public-spirited citizen having no private interest can approach the Supreme Court and High Courts for prosecuting violation of Fundamental Rights.[43] The Court exercising its powers under the banner of public interest litigation has made an immense contribution to human rights jurisprudence in India by creating a new regime of human rights by expanding the meaning of Fundamental Right to equality, life and personal liberty; by fashioning new kinds of reliefs under the courts writ jurisdiction; and by judicial monitoring of State institutions, such as jails, women's protective homes, mental asylums and the like.[44]. The Court has asserted that in order to treat a right as a Fundamental

[42] (2003) 6 SCC 1

[43] *S.P.Gupta* v. *Union Of India,* [1981(Supp) SCC 87], See also *Bandhua Mukti Morcha* v. *Union of India,* (1984) 4 SCC 161

[44]. See Parmanand Singh, *"Human Rights Protection Through Public Interest Litigation in India*,"(XLV *IJPA* (1999))

Right, it is not necessary that it should be expressly stated in the Constitution as a Fundamental Right. Political, social and economic changes occurring in the country may entail the recognition of new rights and the law in its eternal youth grows to meet social demands.[45] Most significantly, custodial deaths,[46] illegal detentions,[47] prison administration,[48] right to shelter,[49] rehabilitation of mentally retarded and physically handicapped persons,[50] rights of women and children,[51] protection against exploitation,[52] telephone tapping and other privacy rights,[53] have been ably and legitimately dealt with by the Indian Supreme Court and High Courts. Simultaneously, the socio-economic rights have also been agitated before the courts and Courts have not shied away from giving relief in these areas. Issues relating to bonded labour, better environmental standards,[54] consumer rights,[55] rights against exposure to hazardous substances[56], inter-country adoptions[57] fall in this area. The Courts have even taken up the subject matter of good governance of the country under the public interest litigation. Therefore, issues relating to public

[45] *Unnikrishnan, J.P.* v. *State of Andhra Pradesh* AIR 1993 SC 2178

[46] *In Re Death of Sawinder Singh Grover*, 1995 (Supp) 4 SCC 450

[47] *D.K.Basu* v. *State of West Bengal*, AIR 1997 S.C.610, See also *Joginder Kumar* v. *State of U.P.* AIR 1994 SC 1349, *Nilabati Behera* v. *State of Orissa*, AIR 1993 SC 1960

[48] *Supreme Court Legal Aid Committee* v. *Union Of India* (1994) 6 SCC 731

[49] *Desh Raj Khurana* v. *Delhi Administration*, 1987 (1) SCALE 1313

[50] *Sheela Barse* v. *Union of India*, (1995) 5 SCALE 159

[51] Sheela Barse v. *Union of India*, (1986) 3SCR 443

[52] *Bandhua Mukhti Morcha, Supra* note 49, See also, P.U.D.R v. Union of India (1982) 3SCC 235

[53] *P.U.C.L. v.Union of India*, (1997) 1SCC 301

[54] *M.C. Mehta* v. *Union of India*, 1996(5) SCALE (Sp) 3

[55] *Common Cause, a Registered Society* v. *Union of India* (1997) 10 SCC 729

[56] *Research Foundation for Science, Technology Policy v. Union of India*, SCALE (PIL) 1981-97 1670.

[57] *Lakshmi Kant Pandey* v. *Union of India*,1989(2)SCALE 691

life, corruption, the criminal-politician nexus, allotment of plots, disinvestments of public sector undertakings, violation of building laws and byelaws have raked judicial attention. [58]

The procedure followed by Supreme Court under Art.32 has given new dimension to the enforcement of human rights in India. Not only has it liberalized the *locus standi* rule, to the extent of permitting any member of the public acting in a *bonafide* manner to espouse the cause of human rights violations by the State. It has developed epistolary jurisdiction, wherunder any member can invoke court's jurisdiction by writing a simple letter or sending a telegram. The court has also permitted new forms of fact finding authorities such as socio-legal commissions of enquiry and even handed over the investigation to National Human Rights Commission or even Central Bureau of Investigation. It has also taken the help of lawyers, journalists, retired judges, District Judges, and others for ascertaining the facts of violations of human rights. It has also stated that the Supreme Court rules pertaining to private litigations may not be appropriate in such public interest litigations involving human rights violations of class or classes of people.[59] It has been rightly argued that there are no limitations on the powers of Supreme Court and High Courts to award *appropriate* relief and remedy, except the ones that may be imposed by the Courts themselves.[60] Consequently, in dealing with the cases of violations of human rights, the courts have fashioned newer kinds of relief. These reliefs stand in contrast to the reliefs available under private law and private litigations. [61] These reliefs are preventive, curative, restitutive,

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[58] *M.C. Mehta* v. *Union of India*,(1997)8SCC770 ;*Delhi Development Authority skipper Construction Co.(p)Ltd.* (1996) 4 SCC 622 ;*Vineet Narain v. Union of India*,(1996) 2 SCC 199

[59] See Upendra Baxi, *" The Avatars of Indian Judicial Activism: Explorations in the Geographies of (IN)Justice*" in Fifty Years of The Supreme Court of India (2003) Verma and Kusum (Eds), 156-209

[60] H M Seervai, Constitutional Law of India, (4th edn, vol 3 Universal Publication 2003) p 3119

[61] See also, Justice Madan B.Lokur, "*Some Recent developments in Indian Public Law-Forging New Tools*", (VII *Nyaya Deep* (2006) Issue 2), 40-56

rehabilative and compensatory.[62] The compensatory relief is essentially a relief based on the doctrine of constitutional tort applied in constitutional litigations in human rights litigations. This type of remedy is available in other legal jurisdictions also. The Supreme Court has heavily relied on this doctrine in legitimizing payment of compensation to the victims of human rights violations. This relief does not prevent the victim of human rights violation from claiming damages from a civil court.[63]

Relation between Public Interest Litigation and Judicial Activism and the Emergence of PIL in India[64]

Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of *"Locus Standi"* that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of the so-called "PUBLIC-SPIRITED CITIZENS"[65] for the enforcement of Constitutional and Legal rights. Now, any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition:

1. In the Supreme Court under Article 32 of the Constitution of India;
2. In the High Court under Article 226 of the Indian Constitution

[62] P.N.Singh, *Supra* note, 68, 74.

[63] Upendra Baxi *Supra* note 91.

[64] Pritam Kumar Ghosh, Judicial Activism and Public Interest Iitigation in India, (Vol.1, No.1, Galgotias Journal of Legal Studies, ISSN. 2321-1997,2013.)

[65] They are people of this country who do not have direct interest at stake in the PIL filed before a Court but work *ProBono Publico,* i.e. in the larger interests of the public and for their general welfare in good faith. Noted public-spirited citizens in India who have represented mass interests before the Supreme Court and other High Courts are *M,C. Mehta* and *Subhas Dutta*

3. In the Court of Magistrate under Section 133 of the Code of Criminal procedure

Protection of the Human Rights of the Accused through PIL

Herein, a modest attempt has been made to study the rights of the accused under the constitution of India and the Criminal Procedure Code, 1973, which is the only procedural criminal law in India and how the supreme court has conferred the new fundamental rights on the accused in the interpretation of Article 21 in the light of international covenant on human rights.[66]

Humanisation of Criminal Procedure Code, 1973

In the subject matter of Criminal Procedure Code, 1973, human values involved to a greater degree than in any other laws. CrPC, 1973 provides several human rights to the accused and the convicted persons in order to humanizes the whole process of arrest, remand, investigation and trial of offences.

The term "accused " has not been specifically defined in the code but what we generally understand is that the accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished. An offence is defined as an act or omission made punishable by any law for the time being in force. An accused cannot have similar footing with the convicted person. In the Bill of Rights Ordinance, 1991 affirms that every accused has a right to be presumed innocent until his guilt is proved. Thus, the accused person has every right like other citizen of the country except his curtailment of person liberty in conformity with laws. The basic difference is that an accusation has been made against the accused person for violation of law or offence prevalent in the country. The rights of the

[66] *Ibid*, 128

accused person are of much concern today. Belatedly though, it has been observed the blatant and flagrant violation of their rights in different stages. The implication of article Art. 21 of the Constitution of India is that a person could be deprived of his life or personal liberty only in accordance with procedure established by law. As per Art. 22 of Constitution of India, a person who is arrested for whatever reason, gets three independent rights. The first is the right to be told or informed the reasons for the arrest as soon as an arrest is made, the second is the right to be produced before a Magistrate within 24 hours and the third is the right to be defended by an advocate of his choice.

Rights of the Accused under the Code of Criminal Procedure, 1973

Right to a copy of police report and other documents

In *State* v. *Sardar Singh*[67], the matter was dealt with at length by a Division Bench of this Court. The provisions of Sections 173, 161, 162 and 207-A (3) of the old Code of Criminal Procedure, 1898 were scrutinized and it was laid down:

The provisions relating to recording of statement of witnesses and supplying of the copies provide a valuable safeguard to the accused so that they may be utilized at the trial for preparing effective defense. Such a request cannot be normally whittled down. Where the circumstances are such that the Court may reasonably infer that prejudice has resulted to the accused from the failure of supplying of the copies of the statements recorded under Section 161, Cr. P.C., and the Court is justified in directing that the conviction should be set aside. The object of Sections 162, 173(4) and 207A (3), Cr. P.C. is to enable the accused to obtain a clear picture of the case against

[67] 1970 Cri LJ 558 (Raj)

him. The sections impose an obligation upon the prosecution agency to supply copies of the statements of witnesses who are intended to be examined at the trial to enable the accused to utilize them in the course of cross-examination to establish such defence as may be desired to put up and also to shake the testimony of the witnesses. If in a case statements of witnesses were first recorded by the investigating officer and again by a senior officer, copies of both should be supplied to the accused.

Reverting to the case in hand, we have held that to failure of the prosecution to supply the copies of the statements of witnesses recorded under Section 161, Cr. P.C. the appellants is a serious irregularity resulting in material prejudice to the accused. This illegality goes to the root of the trial. This illegality in trial cannot be cured under Section 465, Cr. P.C. The aforesaid illegality in itself is sufficient to vitiate the trial. The conviction, should therefore, be quashed and a new trial should be ordered.[68]

Right to be discharged when no sufficient ground

As per **section 227 of CrPC**, when the judge is convinced that there is no sufficient ground for proceeding against the accused after duly considering the case, it is the right of the accused that he be discharged.

In *Sajjan Singh* v. *CBI*[69] , it was held that "It is clear that the Judge concerned has to consider all the records of the case, the documents placed, hear the submission of the accused and the prosecution and if there is "not sufficient ground" (Emphasis supplied) for proceeding against the accused, he shall discharge the accused by recording reasons. If after such consideration and

[68] *Dalla And Anr. vs State Of Rajasthan* 1988 CriLJ 42 (SC)

[69] Arising out of S.L.P. (Crl.) No. 6374 of 2010

hearing, as mentioned in Section 227, if the Judge is of the opinion that "there is ground for presuming" (Emphasis supplied) that the accused has committed an offence, he is free to direct the accused to appear and try the offence in accordance with the procedure after framing charge in writing against the accused."

Right to present evidence

According to section 243(1) of CrPC, the accused has the right to present his evidence and defend his case. The magistrate is duty bound to record written statements put by the accused.

Right to be present when evidence is taken

Section 273 of CrPC makes it obligatory on the part of the Magistrate to ensure that all evidence taken in the course of the other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

Right to be defended

Section 303 of CrPC and Article 22(1) of the constitution of India provides a right to all the accused persons, to be defended by a pleader of his choice.

Legal aid at State expense in certain cases

This is not a right available to all the accused but to certain category of accused as a privilege. So where, in a trial before the Court of Session, the accused is not represented by a pleader, and the court believes that he does not have sufficient means to engage a pleader, it shall assign a pleader for his defence at the expense of the State, under section 304 of CrPC.

Right to cross-examination of witnesses

Section 311 of CrPC gives the accused (and the prosecution) full right to cross examine a witness called by the Court.

Under section 243(2) of CrPC, if the accused applies to the Magistrate to issue any process for calling any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing.

Section 138 of Evidence Act says that the right of cross-examination available to opposite party is a distinct and independent right. When accused declined to cross-examine witness and thereafter the said witness is not available for cross-examination, the evidence of such witness recorded is admissible in evidence but that will have to be true to that account.

In *Badri v. State of Rajasthan*[70], it was laid down that where a prosecution witness was not allowed to be cross-examined by the defence on a material point with reference to his earlier statement made before the police (recorded Under Section 161, Cr. P.C.), his evidence stands

[70] AIR 1976 SC 560

untested by cross-examination and cannot be accepted as corroborating the evidence of other witnesses.

No influence to be used to induce disclosure

As per section 316, the accused shall not be subjected to any sort of influence by means of any promise or threat or otherwise, to induce him to disclose or withhold any matter within his knowledge.

Right to bail

Right to bail is one of the cherished rights, claims or privileges of the accused person. The Criminal Procedure Code, 1973, does not define bail, although the terms bailable offence and non-bailable offence have been defined in section 2(a) Cr.P.C. Further, ss. 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr.P.C.. Thus, it is the discretion of the court to put a monetary cap on the bond. Unfortunately, it has been seen that courts have not been sensitive to the economic plight of the weaker sections of society.[71] Where there are no reasonable grounds to believe that the accused is involved in the commission of the non- bailable offence, the accused shall be released on bail under section 436 (1).

It has been held in plethora of cases with regards to non-bailable offences that when a person is charged with commission of a bailable offence, he gets an absolute right of being enlarged on

[71] Urvashi, *"Indian system of Bail-Anti Poor"*< available at http://www.legalserviceindia.com> *Accessed on 29 January2015*

bail as soon as he shows his willingness to give bail and the Court cannot impose any condition while enlarging an accused on bail in a case where bailable offence is alleged. [72]

Section 437 of the Code provides for release on bail in cases of non-bailable offences. In such cases, bail is not a matter of right. Any officer or court releasing any person on bail in a case of non-bailable offence is required to record in writing his/its reasons for doing so. [73]

RIGHTS OF THE ACCUSED UNDER THE CONSTITUTION

Right to life and liberty

Article 21 of the constitution of India provides that no accused shall be deprived of his life or personal liberty except in accordance with procedure established law which is just, fair and reasonable. This article also provides that the accused has the right to free and speedy trial.

Right against double-jeopardy

As per article 20(2) of constitution of India, no person shall be prosecuted and punished for the same offence more than once**.**

Right against self-incrimination

As per article 20(3) of constitution of India, no person accused of any offence shall be compelled to be a witness against himself.**[74]**

SUPREME COURT AS A SENTINEL OF HUMAN RIGHTS

[72] *Sultan Kamruddin Dharani v. Union of India* (2008)110 BOMLR 3273

[73] *Kashi Nath Roy v. State of Bihar* AIR 1996 SC 3240

[74] Legal Protection available to the accused during a criminal trial.

Right against torture and custodial Violence

'Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.'

'Adriana P. Bartow'[75]

Torture has emerged as world phenomena. State torture has become a fashion with a number of authoritarian government.

In *Sunil Batra* v. *Delhi Administration*[76], Krishna Iyer J., delivering the majority judgment held that integrity of physical person and his mental personality is an important right of a prisoner, and must be protected from all kinds of atrocities.

In *D.K Basu* v. *State of West Bengal*[77], Justice Anand observed that "Custodial torture" is a naked violation of human dignity and degradation with destroys, to a very large extent, the individual personality.

Supreme Court through its dynamic and creative interpretation in Sunil Batra, Kishore Singh, Sheela Barse, Charle Sobraj, Prem Shankar Shukla, D.K Basu etc., has elevated human rights against torture, cruel, inhuman and degrading treatment or punishment provided under Article 5 of UDHR and Article 7 of the ICCPR to the status of fundamental rights under article 21 of the constitution of India.

[75] VIII th International Symposium on Torture - speech by hon'ble Dr. Justice A.S. Anand, Chief Justice of India On September 22, 1999 at Vigyan Bhavan, New Delhi

[76] AIR 1978 SC 1675

[77] AIR 1997 SC 610

Right to live with human dignity

Individual dignity is one of the cherished values of our constitution.[78] Supreme Court also upheld the right to live with human dignity in Francis Corlie Mullin vs. Union Territory of Delhi[79]. In this case court speaking through justice Bhagwati held that right to life includes the right to live with human dignity. Court further held that the detenue's right to have interview with his lawyer and family members is part of his personal liberty guaranteed by Article 21. In the preamble of the constitution, dignity of the individual has been assured to all people.

Right Against illegal arrest and detention

Article 22(1) and (2) provides protection to all persons against illegal arrest and detention. In *Jogendra Kumar* v. *State of UP*[80], the supreme court held that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

Right to legal Aid

In *M.H Hoskot* v. *State of Maharashtra*[81], Supreme Court held that where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of

[78] See the Preamble of the Constitution of India.

[79] AIR 1981 SC 746

[80] AIR 1963 SC 1618

[81] AIR 1978 SC 1548

justice so requires assign competent counsel of for the prisoner's defence, provided the party does not object to that lawyer.

In the case of *Hussainara Khatoon* v. *State of Bihar*[82], the court held that procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as 'reasonable fair and just. It is an essential ingredient of reasonable, fair and just procedure.

SC: Don't decide case if accused has no lawyer[83]

Following this judgment, In the case of a division Bench of Justice Katju and Justice Mishra ruled that criminal defendants have a right to counsel. "Article 21 which guarantees protection of life and personal liberty is the most important of all the Fundamental Rights guaranteed by the constitution," the apex court bench said. They further observed that, "In the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the court should appoint a counsel who is practicing on the criminal side as amicus curiae and decide the case after fixing another date and hearing him," This judgment received both national and international recognition.

Judiciary cannot decide a case if an accused is not represented by a counsel, the Supreme Court has ruled in an important judgment. There have been instances when lawyers have been branded for taking up cases, like during Kasab's trial and Jessica Lal case. The bar council in Srinagar too prevented its members from representing those accused in a sex racket case, not long ago.

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[82] AIR 1979 SC1369

[83] Sanjay K Singh, Don't decide case if accused has no lawyer, *The Economic Times*, Feb 26, 2011

"In our opinion, a criminal case should not be decided against the accused in the absence of a counsel," said a bench comprising Justices Markandey Katju and Gyan Sudha Misra. The bench set aside the order of the Guwahati High Court, which had upheld the conviction of an accused without hearing the plea of his counsel.

"In the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the court should appoint a counsel who is practicing on the criminal side as amicus curiae and decide the case after fixing another date and hearing him," the apex court said.

If a counsel who did not appear on the previous date appears but cannot give satisfactory explanation for his absence, he will be precluded from appearing and arguing the case on behalf of the accused. In such a situation, it is open to the accused to either engage another counsel or the court may proceed with the hearing of the case by the counsel appointed as amicus curiae, the bench ordered.

The court zeroed in on the constitutional provision providing for legal assistance to the accused in a criminal case. "Liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important of all the Fundamental Rights guaranteed by the constitution," the apex court bench said. We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel," said the apex court in its order.

Right to Speedy Trial

"Delay defeat equity" is a maxim of the law of equity, justice delayed is justice denied is the well-known principles of criminology.

Speedy trial is the essence of criminal justice and there can be no doubt that delays in trail by itself constitutes denial of justice.[84] In *Hussainara Khatoon* v. *State of Bihar*, Justice Bhagwati observed: *'We think that even under our constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi* v. *Union of India'*

In *A.R Antulay* v. *R.K Naik*[85], the Supreme Court dealt with the scope of speedy trail. The court held that the right to speedy trail encompasses all the stages namely stage of investigation, inquiry, trail, appeal, revision, and retrial.

RECENT PIL'S ON RIGHTS OF THE ACCUSED

PIL seeks relief for accused persons[86]

A PIL filed in Orissa High Court has raised the issue of lack of provision for immediate supply of first investigation reports (FIRs) registered with the police to the accused persons or their kin."The very right of the accused person gets defeated in the absence of a copy of the FIR in which he has been named, as he does not remain in a position to know the exact nature of

[84] *Hussainara Khatoon vs. State of Bihar* AIR 1979 SC1369

[85] AIR 1984 SC 684

[86] Editorial "PIL seeks relief for accused persons "*The Telegraph* Sunday , October 16 , 2011 |

allegations labelled against him to approach the appropriate forum for obtaining relief," said Budhia.

PIL challenges law that keeps accused in jail after acquittal[87]

Delhi State Legal Services Authority (DLSA) has moved the Delhi High Court to strike down a provision of the Criminal Procedure Code (CrPC) over reports of persons being detained in jail even after their acquittal due to this legal formality. Section 437A of the CrPC, introduced by an amendment in 2009, makes it mandatory for a court to release an acquitted person only after the person furnishes a bail bond with sureties.

"If an acquitted person is not in a position to procure sureties then, even after his acquittal, he would continue to suffer incarceration. Such an interpretation would defeat the jurisprudence of the law on acquittal," the plea, filed by DLSA member secretary Dharmesh Sharma, says.

Arnesh Kumar v. *State of Bihar*[88]

C.K. Prasad, J. observed:

'The police has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public.'

People's Union for Civil Liberties v. *State of Maharashtra*[89]

Elaborate guidelines issued on investigation of death / grievous hurt in police encounters

[87] Aneesha Mathur , "PIL challenges law that keeps accused in jail after acquittal", *The Indian Express*, , Oct 09, 2014

[88] (2014) 8 SCC 273, para 5]

[89] Criminal Appeal No.1255 of 1999, decided on 23.09.2014]

In the present case, where Gopal Sankaranarayanan was the amicus curiae, the issue of genuineness of nearly 99 encounters between the Mumbai police and the alleged criminals resulting in death of about 135 persons between 1995 and 1997 was raised and the Court, considering the grievous injuries caused in police encounters, apart from death, said that the aforementioned guidelines shall also be applicable to such cases as far as possible. The Court, before parting with the case, directed that the said guidelines shall be treated as law declared under Article 141 of the Constitution and hence, shall be strictly complied with.

Lily Thomas v. *Union of India*[90]

It was held that S. 8(4) of the Representation of the People Act, 1951 is ultra vires the Constitution which provides three month's window to appeal without even disqualification.

CONCLUSION

The Republic of India is a Democratic Welfare State. These two dimensions should be seen in their interdependence, which enable the state to protect human rights. PIL is a judicial response to violation of human rights emerged out of long struggle for civil rights in India.

A glittering landmark in the annals of the recent developments of the constitutional law on human rights could be traced with the emergence and profound growth of judicial interpretation to bring about efficiency and efficacy for better enforceability of human rights. The doctrine of PIL is explaining the widening horizons of new dimensions in the judicial process giving not only a ray of hope but also ensuring the general public and the common man that within the precincts of the constitutional provision, any injustice inflicted will not remain unattended and

[90] (2013) 7 SCC 653

due notice is taken by the judiciary for immediate redressal. PIL keeps the engine of judicial activism running with enormous pace to serve the poor, needy, downtrodden, oppressed and socially and economically disadvantaged victims.

Since PIL in India is 'Judge made and judge-led', it is upon the Judges to make further development in its proper perspective. From this point of view, there are five ingredients of a humane and democratic judicial system. Justice Krishna Iyer has described it as the Panchsheel of democratic judicial system. I would conclude with these Panchsheel of legal reforms.

First, we should have a system of justice, civil, criminal and other, in which the average citizen has access without hinderance.*Second*; we should have simple, non-technical, inexpensive, informal, flexible, compassionate and realistic procedure. *Third*, there should be institutional diversity and plurality of remedies. No technicalities should be done keeping in view the broad frame of justice, equity and good conscience. The court should award "socially just relief". *Fourth*, a new kind of 'Judicial engineering' is required in the judicial system. A clear policy on public interest, law, social action jurisprudence and lawyers for the people. *Fifth*, preventive justice, legal literacy, negotiated settlements, cooperative adjustment, reconciliation, arbitration and other non-formal methods must be found out.

It would be appropriate to conclude by quoting Cunningham, *"Indian PIL might rather be a Phoenix: a whole new creative arising out of the ashes of the old order."* PIL represents the foremost endeavor by a developing common law country to break away from legal imperialism

perpetuated for centuries.[91] We may end with the hope once expressed by an eminent judge "The judicial activism gets its highest bonus when its orders wipe some tears from some eyes." [92]

[91] Nikhil Jain, Importance of Public Interest Litigation in India<available at http://www.lawctopus.com/academike/importance-public-interest-litigation-india/> accessed on 29 January 2015

[92] Justice Krishna Iyer