BOOK REVIEWS

PUBLIC INTEREST LITIGATION:IN QUEST OF JUSTICE (1993). By Sonia Hurra. Mishra and Co., Ahmedabad. Pp. xxxii + 270. Price Rs. 245.

PUBLIC INTEREST litigation (PIL) in India has taken deep roots. Some publicists prefer to call it "social action litigation". However, the expression more in vogue and popular among lawyers and judges is "public interest litigation".

As noted in a recent case by the Supreme Court of India itself, seeds of the concept under consideration were sown in India by Justice Krishna Iyer in *Mumbai Kamgar Sabha* v. *Abdulbhai*, where he observed:

> [R]epresentative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man.... Even Art.226... may be amenable to ventilation of collective or common grievances .... Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances....[1]

The concept of PIL had its origin in USA where the strict rule of *locus standi* was liberalised in the interests of justice. In UK, in *Attorney General* v. *Independent Broadcasting Authority*, Lord Denning said that he regarded it "as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then in the last resort any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced".[2] However in *R.*v. *Greater London Council*, it was held that public rights could only be asserted in a civil action by the Attorney General and that a private person was not entitled to bring an action in his own name for the purpose of preventing public wrongs.[3]

In India, the writ courts have not insisted on a formal application being filed in the court and cognisance of a matter has been taken even on the basis of letters addressed to the judges or news items published in the newspapers. In *S.P. Gupta* v. *Union of India*,[4] the Supreme Court said that it will readily respond even to a letter addressed by an individual acting *pro bono publico*. Several causes have

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1. A.I.R. 1976 S.C. 1455 at 1458.
2. 1973 (1) All E.R. 689.
3. See, 1976 (3) All E.R. 184.
4. A.I.R. 1982 S.C. 149 at 189.

been taken up before the courts by way of PIL. *Gupta's* case, where some lawyers challenged constitutionality of the law minister's circular regarding transfer of judges of the High Courts and non-confirmation of sitting additional judges of these courts, has been described by the Supreme Court as a "Charter of PIL and as a golden master key which has provided access to the courts for the poor and down-trodden".[5] In *Gupta's* case, the court held that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The court explained the concept of PIL in the following words:

> It may therefore now be taken as well established that where a legal wrong or 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 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 diability 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....[6]

In the light of the above rulings of the highest court of the land, the subject of PIL has acquired tremendous importance not only for the legal community but for the Indian society at large.

Sonia Hurra who wrote a doctoral dissertation on the subject of PIL for the University of Gujarat has, after making necessary revisions, now published the book[7] for the benefit of readers. The canvas of the book is much wider. It not only covers the familiar field indicating how even postcards and letters addressed to the court are being treated by the Supreme Court and High Courts as writ petitions, but succinctly analyses the basic thrust of PIL, the new investigative role of the courts and the extent to which PIL has resulted in increasing public accountability of the executive.

Hurra has extensively dealt with the progress made in the development of PIL in India with reference to cases decided in several areas of social concern. These developments have been compared with the legal system in vogue in USA. The doctrine of *locus standi* there has been examined in detail in the light of various cases decided by courts. It is evident that courts, there are not as liberal as in India in the matter of *locus standi*. However, Hurra has noted that public interest law firms have become increasingly important and respected in USA. She has also highlighted the successes of public interest lawyers there in various areas such as, (*i*) protection of environment; (*ii*) consumer interests; (*iii*) political reforms; (*iv*)

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5. See, *The Janta Dal* v. *H.S. Chowdhary*, A.I.R. 1993 S.C. 892 at 916.
6. See, *supra* note 4 at 188.
7. Sonia Hurra, *Public Interest Litigation : In Quest of Justice* (1993).
8. *Id.* at 73-85.

civil rights; (v) prisoners' and mental patients' rights, *etc.*[8] She also notes that such lawyers have helped to bring about an open government with more critical public scrutiny. The Freedom of Information Act has been pressed in service for this purpose.

Discussing the salient features of PIL in India, Hurra mentions that there is a rise of what she calls an "ideological plaintiff".[9] Notice to ideological party may suffice instead of being sent to a large number of individuals which may either be too costly or impractical.[10]

The author acknowledges that there is a growing concern about expansion of judicial power[11] but considers that broadening of this power is justified. In this connection, it may not be out of place to refer to the following observations of late Justice M. Hidayatullah in his foreword to Justice Thakker's book[12] which are in sharp contrast and frown upon enlargement of its powers by the Supreme Court:

> [T]he Supreme Court has assumed powers as if there is no difference between Article 32 and 226. Article 32 is being used for almost any purpose. Further, recourse is taken to enlarge powers of interference by way of article 21 with the result that all lines of jurisdication have been obliterated and also the rules of the court and the generally accepted rules of interest in the petitioner are violated and even letters by strangers and newspaper reports are used to start litigation. No wonder the Supreme Court has a backlog of over 200,000 cases!

S.N. Jain, former Director of the Indian Law Institute who has been quoted by Hurra, had also cautioned that while PIL had the potential to correct administrative wrongs, it could be an engine of destruction if indiscriminately used.[13] Some apprehensions have been expressed about judges exercising the powers *suo motu* in PIL cases,[14] which the author does not agree with. She is also not in favour of restricting the scope of PIL through rule of verification and confirming waiver of the rule to a few cases involving *habeas corpus* as suggested by Justice R.S. Pathak.[15] In a recent speech delivered while inaugurating the "Indo-US Legal Forum", Chief Justice M.N. Venkatachaliah is reported to have expressed the view that all constitutional adjudication involved some degree of legislative element.[16] Accordingly, inspite of reservations expressed by some publicists and jurists from time to time, there appears to be no question of going back as far as growing role of courts in PIL is concerned.

Hurra has made an interesting study of PIL cases where relief was granted or refused or where the court pronounced on rights of the petitioner without granting

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9. *Id.* at 101.

10. *Cf., Charan Lal Sahu* v. *Union of India*, (1990) 1 S.C.C. 613; *Union Carbide Corporation* v. *Union of India*, 1991 4 S.C.C. 584.

11. *Supra* note 7 at 103.

12. C.K. Thakker, *Administrative Law* viii (1992).

13. *Supra* note 7 at 109.

14. *Id.* at 144-5 (*vide* S.K. Agarwala, *Public Interest Litigation in India* 43 (1985).

15. *Id.* at 145-6.

16. See, "CJ favours wider SC scope", *The Hindustan Times* 30 Jan. 1994, p.12 (New Delhi).

relief. This has been done in the part dealing with limitations on public interest litigation in India. Some noticeable omissions are, *Mithilesh Kumar Sinha* v. *Returning Officer*,[17] where it was held that a person who is not a candidate for Presidential and Vice-Presidential elections has no *locus standi* to present an election petition, and *Simranjit Singh Mann* v. *Union of India*,[18] where the court held that a party which is a total stranger to prosecution cannot challenge conviction and sentence in a petition under article 32 of the Constitution. Responding to the practice of addressing letters to individual judges, which has been criticised as amounting to shopping for judges, the author favours such letters being placed before the Chief Justice or the procedure being regulated by rules.

Hurra considers that PIL signals rejection of *laissez faire* notions of jurisprudence.[19] She emerges as a powerful champion of the cause of PIL in India. Through her study of PIL, she has enhanced our understanding of the concept and dispelled scepticism voiced against it in many quarters. It is a deeply researched and stimulating study and sets high standards for future contributions on the subject under debate.

The movement in favour of PIL appears to have received a further impetus with establishment of the International Institute of Public Law.[20]

There are vast territories which are still uncovered. PIL is in vogue in several other countries. For example, in a public interest litigation in Australia, the petitioner was successful in obtaining an injunction against tobacco advertisements and statements about alleged lack of scientific evidence to link smoking to health risks in non-smokers.[21] The applicant was also awarded costs on an indemnity basis on the ground that the applicant had offered to settle the litigation which was rejected by the respondent. The court held that it was inappropriate that a person acting in the public interest should be left to meet part of his costs.[22] It is hoped that in a future edition of her book, Hurra would expand the scope of her study even further by bringing within its scope more countries. This would in turn help in further development of PIL in India.

Justice M. Hidayatullah did suggest in his foreword to Justice Thakker's book,[23] that most of PIL "is the venture of some lady lawyers" and that it was unfortunate that the author approved of this. This, it is submitted, should not deter Hurra from pursuing her chosen field further.

*Subhash C. Jain**

17. A.I.R. 1993 S.C. 20 at 35.

18. A.I.R. 1993 S.C. 280.

19. *Supra* note 7 at 121.

20. See news item, "With PIL around, law no more wags its tail for the poor", *The Indian Express*, 28 Jan. 1994, p.6 (New Delhi).

21. See, *AFCO* v. *Tobacco Institute*, (1991) 98 A.L.R. 670.

22. *Australian Federation of Consumer Organisations Inc.* v. *Tobacco Institute of Australia Ltd.*, (1991) 100 A.L.R. 568; *Commonwealth Law Bulletin* 68-9 (Jan. 1993).

23. *Supra* note 12.

* LL.M., Ph.D., Joint Secretary and Legal Adviser to the Government of India. The views expressed here are personal views of the reviewer.