

# CITIZEN ADVOCATE, CIVIC ACTION AND CONSUMER PROTECTION

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## I. Introduction

The citizen advocate as a phenomenon is a direct off shoot of the move by the courts to relax standards relating to locus standi and maintainability of actions pursued for public benefit and public good.

At the time of independence, court procedure was drawn from Anglo Saxon jurisprudence.<sup>1</sup> A vast majority of India's "teeming millions" were unaware of their legal rights and had no idea how they could transform constitutional promises to reality. They were for the large part illiterate and since mere survival posed a huge challenge in their lives, improving their lot through court actions was very far from their minds.

The guarantees of fundamental rights and the assurances of directive principles described as the "conscience of the constitution".<sup>2</sup> It would have remained empty promises for the majority of illiterate and indigent citizen under adversarial proceedings. Public Interest Litigation (PIL) has been a conscious attempt to transform the promise to reality.<sup>3</sup>

The relaxation of strict standards relating to "standing" and "locus" to pursue legal action received a fillip when Justice P.N. Bagwati while preparing a report on legal aid observed "even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in the administration of justice."<sup>4</sup>

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1 Bandhu Mukthi Morcha v. Union of India (1984) 3 SCC 161 at 188

2 Granville Austin "The Indian Constitution : The Corner stone of a Nation" (Oxford University Press, New Delhi).

3 Public Interest Litigation: Potential and problems, Ashok H Desai and S.Muralidharan.

4 Report proposed when Justice Bhagwati was Judge of the Gujarat High Court.

Similarly the report of a committee on Legal Aid prepared by V.R. Krishna Iyer dealt with the nexus between Law and Poverty and spoke of PIL in this context. It emphasised the need for an active and widespread legal aid system that enables the law to reach the people, rather than requiring the people to reach for law.<sup>5</sup>

The traditional rules of procedure in the adversarial system of law permits only a person whose rights are directly affected to approach the court. Under the common law a person claiming the writ of mandamus had to show that he was enforcing his own personal rights.<sup>6</sup>

In *Municipal Council, Ratlam v. Shri Vardicham*<sup>7</sup> the court reacted to this approach and observed:

*“The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero in on them as they involve problems of access to justice for the people beyond the blinkered rules of “standing” of British- Indian vintage. If the centre of gravity of justice is to shift, as the preamble of our constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these must be considered .”*

*Municipal Council, Ratlam v. Shri Vardicham* is truly unique because that was a case when Section 166 of Criminal procedure Code 1973 was invoked by public spirited citizens seeking redress against an apathetic municipality that failed to provide adequate civic amenities.

Seervai refers to the expanded concept of locus standi in the context of one of the earliest PIL cases. He notes:

“The most striking illustration is furnished by the unreported judgment of Gandhi J, of the Bombay High Court, in a writ filed by a public spirited citizen – Mr. Piloody. In *Piloody v. Maharashtra*, Gandhi J adopted the views of locus standi which was later laid down by Bhagwati J in Judge’s case. Piloody complained that the Government – through three Ministers – had leased out valuable plots of land at a gross undervalue. Gandhi J rejected the respondents contention that the

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5 Report on legal aid prepared by Kerala High Court under the Guidance of Justice V.R. Krishna Iyer in 1973.

6 Charanjit Lal v. Union Of India (1950) SCR 869

7 (1980) 4 SCC 162 163

petitioner had no locus standi. He upheld the Petitioner's contention that the leases were granted mala fide at a gross under value. Having regard to the equities of the case, Gandhi J directed that if the lessees wanted to obtain the grant of lease they should pay 33 1/3% increased rent or return the land to government. The two originally separate rationales for a representative standing and citizen standing have now merged."<sup>8</sup>

It is interesting to note that Piloo Mody, a Petitioner in this case, who was a renowned architect and an equally renowned politician and an MP was himself unsure of whether he would be permitted to file the petition and as a measure of abundant caution he made a bid for purchase of the land being offered for sale.

The Supreme Court in the Judge's Case<sup>9</sup> 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 rights or any burden is imposed in contravention of any unconstitutional or legal provision or without authority of law or any such legal wrong or legal injury or legal 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 any relief, any member of 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 class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such persons or determinate class of persons."

In such cases the court will allow any member of the public acting in a bona fide manner to espouse the cause of such person or class of persons. This observation breathed life into the concept of "Citizen Advocate". Lawyers<sup>10</sup>, medical practitioners<sup>11</sup> and journalists<sup>12</sup>, have brought such representative actions.

In order to permit fuller access to courts, PIL has been marked by a departure from procedural rules extending to the form and manner of filing a writ petition,

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8 H.M.Seervai, Constitutional Law (4th Ed) Vol. I , pg 1381-82

9 S.P. Gupta v. Union of India 1981, Supp SCC 87 210

10 R.K.Garg v. Union of India (1981)4 SCC at pg 675

11 Dr. Shiva Rao ShantaramWagle v. Union of India (1988) 2 SCC at pg 115

12 SheelaBasre v. Union of India (1983) 2 SCC 96

appointment of commissions for carrying out investigation, and giving a report to court, and the appointment of lawyers as *amicus curiae* to assist the court.<sup>13</sup>

The flexibility of PIL procedure can best be illustrated by what is termed as “epistolary jurisdiction”.<sup>14</sup> Taking a cue from the American Supreme Court’s decision in *Gideon v. Wainwright*,<sup>15</sup> where a post card from a prisoner was treated as a petition, the Supreme Court said in the Judge’s case, that a public spirited person could move the court even by writing a letter. The court has accepted letters<sup>16</sup> and telegrams<sup>17</sup> as petitions. The danger of such ease of access leading to the apprehension that a litigant could indulge in forum shopping and address a particular judge was expressed by Pathak J in the *Bandhua Mukti Morcha* case:<sup>18</sup>

“When the jurisdiction of the Court is invoked, it is the jurisdiction of the entire court.... No such communication can be properly addressed to a particular judge.... Which judge or judges will hear the case is exclusively a matter concerning the internal regulation of the business of the court, interference with which by a litigant or a member of the public constitutes the grossest impropriety.”

Many of the early PILs (Public Interest Litigations) including *Sunil Batra (II) v. Delhi Administration*<sup>19</sup>, *Dr. Upendra Baxi v. State of UP*<sup>20</sup>, *Veena Sethi v. State of Bihar*<sup>21</sup>, and *People’s Union for Democratic Rights v. Union of India*<sup>22</sup> commenced with the petitioners sending letters to the Supreme Court.

On 1<sup>st</sup> December 1988, the Supreme Court, on its administrative side, issued a notification on what matters could be entertained as PIL. Under this notification, letter petitions falling under certain categories alone would be ordinarily

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13 *Supra* note 3.

14 *Ibid*

15 (1963) 372 US 335

16 *Ram Kumar Misra v. State of Punjab* (1984) 2 SCC 451

17 *Paramjit Kaur v. State of Punjab* (1996) 1 SCC 20 – A telegram was sent to Justice Kuldip Singh when he was a judge of the Supreme Court which led to investigation by CBI revealing fact of mass cremation of thousands of persons by Punjab police by labeling them unidentified.

18 (1984) 3 S CC 161 at pg 188.

19 (1980) 3 SCC 488 – right of prisoners to humane treatment

20 (1983) 2 SCC 308 – relating to functioning of a rehabilitative home for prostitutes

21 (1982) 2 SCC 583 – plight of mentally ill locked away in jails in Bihar

22 (1982) 1 SCC 253 – payment of minimum wages to construction labourers.

entertained. These included matters concerning bonded labour, neglected children, petitions from prisoners, petitions against the police, petitions against atrocities on women, children and Scheduled castes and Scheduled tribes. Petitions pertaining to environmental matters, adulteration of drugs and food, maintenance of heritage and culture and other matters of public importance could also be entertained. The notification set out matters that ordinarily were not entertained as PIL such as landlord – tenant dispute, service matters and admission to medical and other educational institutions.

The notification also laid down the procedure: the petition would be first screened in the PIL cell and thereafter it would be placed before a judge to be nominated by the Hon'ble Chief Justice of India for directions.<sup>23</sup>

## II. Citizen Advocates in the Early Days of British Administration

Contrary to popular perception, trying to bring about changes for public good through petitions and memos is not a recent phenomenon, although approaching courts for relief in such matters may be. One of the early activists in the Madras Presidency was Gazulu" Lakshminarasu Chetty. He was born in 1806 at Periamet, Madras in an affluent family. His father, Sidhulu Chetty, was into the trade of Madras hand kerchiefs, indigo and dyes, and was carrying on business under the name Sidhulu Chetty & Co. Lakshminarasu took up several public causes and perpetually kept bombarding the British with memos and petitions. Surprisingly, many of them yielded good results.

Lakshminarasu was completely against proselytizing missionaries who, he felt, were functioning in Madras with the active connivance of the Government. The Government had, at that time, been contemplating a legislation whereby Hindu youth could convert without prejudice to their right to hereditary property. Lakshminarasu convened a public meeting and a memorandum signed by those present was sent to the Secretary State in England. The Government had to give in and drop the proposal to pass the legislation.

In 1852, Lakshminarasu played host to Danby Seymour, MP, when he visited India. Seymour had heard of Lakshminarasu, thanks to the frequent memos raised by him on various matters. On a tour of southern India, visiting places

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23 *Supra* note 13.

such as Cuddalore, Kumbakonam, and so on, the plight of land owners who were assessed at prohibitive rates and the defaulters who were physically tortured disturbed the duo. Seymour made notes of what he saw and presented them in the House of Commons in July 1854. The matter was debated upon and a Torture Commission was set up in September that year to conduct an inquiry. The Madras Native Association, a public interest organization formed by Lakshminarasu, played no small role in making this happen.

In 1855, Lakshminarasu sent a petition signed by about 14,000 persons praying that the administration of the British Territories be handed over by the East India Company to the Crown. This was one of a series of agitations led by Lakshminarasu in Madras and by orders in Bombay and Bengal. This led to radical changes such as appointments in the Civil Services through competitive exams and reducing the strength of the Court of Directors to eighteen from thirty, six of whom were to be nominated by the Crown. This was one of the key factors, along with the Mutiny of 1857, which led to the placing of India under the direct control of the Queen.

Lakshminarasu may be the fore runner of public litigants like Traffic Ramasamy who has, till date, filed about three hundred public interest litigations with varying degrees of success in the Madras High Court. Ironically, Lakshminarasu, who achieved a phenomenal degree of success by petitioning alien rulers, may not have had the same degree of success if he were to petition the powers that exist today in free India. This is a sad commentary indeed on our present system of governance. It would be apposite if the powers that be try to address the reasons for proliferation of public interest litigation rather than try to throttle this very important facet of access to justice.<sup>24</sup>

### III. Some Notable Citizen Advocates

#### M.C.Mehta

In early 1984, M.C. Mehta, a public interest attorney, visited the Taj Mahal for the first time. He saw that the famed monument's marble had turned yellow and was pitted as a result of pollutants from nearby industries. This spurred Mehta to file his first environmental case in the Supreme Court of India. The

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24 N.L. Rajah, *A 150 year journey from a Crown Court to a People's Court*, (2012).

following year, Mehta learned that the Ganges River, considered to be the holiest river in India and used by millions of people every day for bathing and drinking water, caught fire due to industrial effluents in the river. Once again Mehta filed a petition in the Supreme Court against the polluting factories and the scope of the case was broadened to include all the industries and municipalities in the river basin.

For years, every Friday, a court room had been set aside just for Mehta's cases in the Supreme Court. In 1993, after a decade of court battles and threats from factory owners, the Supreme Court ordered 212 small factories surrounding the Taj Mahal to close because they had not installed pollution control devices. Another 300 factories were put on notice to do the same. While the Ganges cases continued to be heard every week, 5,000 factories along the river were directed to install pollution control devices and 300 factories were closed. Approximately 250 towns and cities in the Ganges Basin have been ordered to set up sewage treatment plants.

Mehta has won additional precedent-setting suits against industries which generate hazardous waste and succeeded in obtaining a court order to make lead-free gasoline available. He has also been working to ban intensive shrimp farming and other damaging activities along India's 7,000 kilometer coast. Mehta has succeeded in getting new environmental policies initiated and has brought environmental protection into India's constitutional framework. He has almost single handedly obtained about 40 landmark judgements and numerous orders from the Supreme Court against polluters, a record that may be unequalled by any other environmental lawyer in the world.<sup>25</sup>

## **Sheela Barse**

Ms Sheela Barse is a senior activist and award-winning journalist. She has been a member of a number of government committees at the state and the national levels. For close to two decades, she has fought public interest litigations on social justice.

Through a tireless and pioneering campaign she was responsible for the charge sheeting of the paedophile Freddy Peats in December 1991 and his eventual conviction. The Margao based Peats ran a bustling shelter home,

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<sup>25</sup> Citation commending M.C.Mehta while awarding him the Goldman Environmental Prize.

Gurukul Orphanage, in South Goa. He started out in Colva and then, in the mid-1980s, he moved to Fatorda, near Margao, Goa's commercial capital and exploited young boys.

In September 2004 on a petition filed by her, the Bombay High Court had allowed Sheela Barse to intervene in the matter pertaining to malnutrition deaths in Vidarbha as well as in northern Maharashtra and asked the state government to study her recommendations to tackle the situation in tribal areas on a war footing.

In *Sheela Barse v. State of Maharashtra*<sup>26</sup>, the Petitioner asked that she be given the right to interview prisoners to ascertain prison conditions. Incidentally she argued for this right under Articles 19(1)(a) and 21 which she contended guarantee to every citizen reasonable access to information about the institutions that formulate, enact implement and enforce the laws of the land. Every citizen has a right to receive such information through public institutions including the media as it is physically impossible for every citizen to be informed about all issues of public importance individually and personally. As a journalist, she petitioned that she had a right to collect and disseminate information to citizens, nearly 18 years before the Right to Information saw the light of day.

In the *Sheela Barse (II) and others v. Union of India and others* PIL of 1986 the Petitioner argued for keeping children who had committed offences out of jail. The court ruled that child offenders should not be kept in jails and the cases regarding child offenders should be disposed of in a time bound manner. If this were not done, the prosecution against the child would be liable to be quashed. The Court also held that it would be desirable if the Central Government initiated a Parliamentary Legislation on the subject of Children's Act.

In the SC judgement in *Sheela Barse v. State of Maharashtra* the court ruled that woman suspects must be kept in separate lock up in the police station. They should not be kept where male suspects are detained.

## **Olga Tellis**

Olga Tellis is another well-known journalist who took the State of Maharashtra to court for not following legal procedures while evicting slum dwellers. In 1981,

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26 1987 SCC(Cr) at 759

the State of Maharashtra and the Bombay Municipal Council decided to evict all pavement and slum dwellers from the city of Bombay. The residents claimed such action would violate the right to life, since a home in the city allowed them to attain a livelihood and demanded that adequate resettlement be provided if the evictions proceeded. The court declined to provide the remedies requested by the applicants but found that the right to a hearing had been violated at the time of the planned eviction. The court held that the right to life, in Article 21 of the Constitution, encompassed means of livelihood since, "if there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life." However, the right to a livelihood was not absolute and deprivation of the right to livelihood could occur if there was not a just and fair procedure undertaken according to law. The government's action must be reasonable and any person affected must be afforded an opportunity of being heard as to why that action should not be taken. In the present case, the court found that the residents had been rendered the opportunity of being heard by virtue of the Supreme Court proceedings. While the residents were clearly not intending to trespass, they found it was reasonable for the government to evict those living on public pavements, footpaths and public roads. The evictions were to be delayed until one month after the monsoon season (31 October 1985). The court declined to hold that evicted dwellers had a right to an alternative site but instead made orders that (i) sites should be provided to residents presented with census cards in 1976 (ii) slums in existence for 20 years or more were not to be removed unless land was required for public purposes and, in that case, alternative sites must be provided (iii) high priority should be given to resettlement.<sup>27</sup>

Consequent on broadening of rules relating to locus standi, Public Interest petitions by public spirited citizens or citizen advocates have been legion and the aforementioned cases form only a small sample of the cases that have been agitated by them. However the provisions of the Consumer Protection Act 1986 have not been as liberal as constitutional courts in broadening the scope of representative action by citizens though these courts have broadened rules relating to locus standi in favour of consumer groups or associations representing Public Interest. This is largely because unlike a constitutional court consumer fora are constrained by the provisions of statutes under which they are created and have to function within these limits as we shall presently see.

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27 *Olga Tellis v. State of Maharashtra* 1986 AIR pg 180

## **IV. Consumer Associations can Represent Consumers Before Consumer Fora**

A Complaint was filed before the State Commission by the widowed mother and two minor children of the deceased. The complaint related to the medical negligence of the doctor and the hospital concerned. Complaint was filed through an authorised agent that is, the secretary of the consumer welfare foundation, Chennai. He later revoked that authority in favour of another person who filed an authorisation letter from the widow to represent the case before the State Commission. State Commission was of the view that the authorised representative of the litigant complainant not being an advocate could not be given a right of audience though there was no prohibition for the party itself to represent his own case under the Act. This question was then taken in Revision to the National Commission and the Commission after considering in detail the various issues arising from the judgment of the State Commission at Chennai held that an authorised agent or a voluntary consumer organisation have a right to represent a complainant and have a right of audience before the forum and the said right cannot be taken away by referring to the provisions of the code of civil procedure that have no application. However, the authorised representative should not be one who has used such appearance as a profession to earn his livelihood. It was also held that in appropriate cases, the forum can also forbid an authorised agent as the forum had to guard itself against touts who are out to exploit the already harassed consumer. It was also held that where a complainant withdraws a complaint; the authorised representative can still proceed with it if the matter or issue involved concerns unfair trade practice or restrictive trade practice.<sup>28</sup> This view has now been approved by the Supreme Court.

## **V. Locus Standi of Consumer Association to Seek Relief in its Favour While Representing Consumer**

A consumer filed a case along with consumer association against the Opposite Party bank. The complainant withdrew the case against the Bank and the complaint was dismissed without any hearing on merits. In appeal by the consumer association it was contended that notwithstanding withdrawal of complaint by aggrieved consumer, consumer organisation was entitled to claim costs. Rejecting this argument the National Commission held that the consumer

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28 In the matter of Authorised representatives of parties, 2003 (1) CPR 282 (NC).

organisation can file an independent complaint. However, when it is prosecuting the case on behalf of some other consumer then the association can seek relief only for the benefit of the consumer and not to their own benefit<sup>29</sup>.

### **A. Directions Issued on The Basis of The Public Interest Complaint Filed By Consumer Association**

The Complainant, a consumer organisation alleged hazards to public health by the use of fluoride in tooth paste marketed in the country. The National Commission passed orders directing the Ministry of health to take appropriate action on the complaint. The Ministry of Health filed a detailed affidavit explaining the steps taken by them for constituting an expert group to go into the question as to whether there are hazards to public health by the use of fluoride beyond any particular level in tooth paste. The complainant was granted leave to make further representations to the government based on the affidavit filed by them in court.<sup>30</sup>

### **B. Joint Complaint by Several Aggrieved Consumers as an Association Maintainable**

The Locus Standi of Association of persons as consumers arising out of an agreement to supply water with each individual cultivator. The issue related to negligence in water supply. The question raised was as to the maintainability of a complaint by all the cultivators clubbing claim and jointly filing petition in State Commission. It was held that such a complaint was permissible.<sup>31</sup>

The amendments effected to the Act in 2003, vide amendments to section 2 (1) (b) (iv) read with section 13 (6) now authorise even a complaint to be filed in a representative capacity and has further provided that to such complaint the provisions of rule 8 of Order I of CPC would apply.

### **C. Complaint By Registered Association Maintainable**

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29 Consumer Education & Research Society, Ahmedabad v. Canara Bank, 1992 (1) CPR 531 (NC)

30 Consumer Education & Research Society v. Hindustan Ciba Geiry Ltd., 1992 (1) CPR 360 (NC)

31 Orissa Lift Irrigation Corporation Ltd v. Birakishore Rout, 1991(2) CPR 125 (NC)

Complaint about the deficiency in housing was filed against Ghaziabad Development Authority by EIL (an association of its employees). EIL was registered after filing of the complaint. Point arose as to whether EIL can file complaint and the National Commission held that EIL could file complaint. The complaint was filed by registered association of 215 members and the Pecuniary claim exceeded 20 lakh rupees collectively. It was held that National Commission can be approached as an association though individual complaint would have been much below pecuniary limit<sup>32</sup>.

## VI. Conclusion

As observed earlier the generous rules relating to Locus Standi as applied to constitutional Courts cannot be applied to litigations before the consumer forum. The Consumer fora are bound by the provisions of the Consumer Protection Act 1986. This has restricted the scope of Citizen advocates and other public spirited citizens from filing cases before consumer fora. Two aspects are however noteworthy. Firstly, the definition of the term "Consumer" under the provisions of the Consumer Protection Act is a very restricted one. It does not take within its ambit the rights of a citizen as consumer except in those cases where it could be established that there has been direct payment of consideration to the Government for the goods and services it provides. A citizen as a consumer is entitled to fresh air to breathe and clean drinking water to consume. These issues cannot even be agitated by citizens before consumer courts while a public spirited citizen can raise these issues on behalf of all other citizens in a constitutional court. The second aspect is that while a public spirited citizen may not possibly be empowered to raise these issues before a consumer forum, he is most entitled to raise these issues before statutory authorities. These distinctions will have to be borne in mind by public spirited citizens and citizen advocates so that it may guide them in approaching the proper forum for relief.

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32 Engineers India Ltd.v. GDA (2001) 1 CPJ 8:2001 (1) CPR 57 (NC)