

Changing Trends in Public Interest Litigation

Presentation by Sanjay Parikh

["Has the judiciary turned its back on the poor?" A Seminar, 4th Nov 2006, New Delhi]

It is important to discuss about the reasons for developing a tool like Public Interest Litigation and how it has transformed recently. While criticizing judiciary one must not forget about the executive inactions of last ten years and the recent laws passed by the legislature. It is necessary to substantiate by two examples, one is aquaculture case which permitted the multinational corporations to have their aquaculture activities at the cost of the traditional fishermen. The second was the case on Electoral Reform wherein it was mandatory for the candidate to give declaration of assets, immediately an ordinance was brought in.

When the PILs were getting developed, it was an understanding that the job of the courts is not to work to interpret the laws but also make the States carry their executive actions. Even the limited understanding of judiciary review cannot provide justice to what constitutes the social wrong, they are wrong to the general public; there may be perpetuation of illegalities and executive excesses, either on an individual or on the society as a whole. The failure to perform public duty should not go unchecked and should not promote disrespect for the rule of law.

As the purpose of the concept of Public Interest Litigation was to make the constitutional rights of the deprived sections meaningful. In the meantime, courts have evolved their own guidelines and principles for entertaining Public Interest Litigation. It is also true that individuals or institutions have done a great service to the people by addressing the issues concerning the rights of women, civil liberties, custodial deaths, environment, public health and the courts have given bold and far reaching judgements on some of these issues.

At this juncture, it is pertinent to see globalisation which has the potential to wipe away the social, economic, and cultural rights of the people and nullify the Constitution and democracy. What role the courts will have to play within the constitutional parameters? Can the courts simply brush aside the decisions, widely affecting the rights of the people? There cannot be any just or fair reason to depart from the march of Public Interest Litigations towards achieving equality. The debate can only be about the controlling mechanism and how to prevent its abuse, but the abuse of it by busy-bodies or persons with self serving interest cannot give any justification to depart from PIL jurisdiction.

On one hand the court has taken the right to food seriously, but on the other took away the benefit of employment or the source of livelihood from contract labours, daily wagers and even individual workers seeking reinstatement. Similarly, on the one hand protection of environment, forest reserves has been taken up vigorously, but in the name of development construction of hotels and residential apartments has been permitted in sensitive areas, big hydel projects

have been allowed by saying that precautionary principle does not apply to them.

While the industries were polluting the river Yamuna in the name of environment protection, people living in the slums have been asked to shift without realizing that there is a deep-rooted problem of migration. The state's obligation to protect the life and livelihood is not meant only for haves, but also for have-nots.

Corruption impedes development and infringes on human rights in various processes of empowerment. It is realized that electoral reforms alone can bring in true democracy to free and fair elections. But the political parties, have completely eroded the democratic values of the constitution, resulting in money and muscle power of the ruling class.

For centuries the agriculture farmers had complete control over seeds, agricultural operations, etc, but it is not there today. The Breeders' Acts, Seed Act have been amended and Protection of the Plant Varieties and Farmer's Rights Act 2001 has been introduced. These provisions have forced the farmers to shift from their traditional breeders' rights. International law has become relevant while determining the legal and constitutional rights including of the people of our country. For example, through the intervention of the courts the patents of Basmati rice was retained by India.

Swamiji pointed out that there are very few advocates left to file the Public Interest Litigation. There is no doubt that the executive negligence in action and violation, corruption and political life and the legislatures has brought enormous pressure on the court. It is indeed a testing time not to give up but to fight with knowledge and conviction.