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PUBLIC INTEREST LITIGATION & JUDICIAL ACTIVISM

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Man's life today on the earth is governed by complex laws and by complicated legislation. In such circumstances it is not possible for a man to know what are the rights and benefits conferred upon him under such laws and legislations.

Our country is governed by rule of law and therefore a common man must have knowledge of law.

Number of social welfare legislations are being introduced with an intention to bring socio-economic justice within the reach of common man, but the said laws are not making any impact upon the socio-economic conditions of the people. Whatever may be the other causes for not effectively implementing such laws but the main cause seems to be lack of awareness on the part of the beneficiaries. It is therefore necessary that a common man should be educated regarding his rights and obligations.

Modern India does not require old order, law has to march with life and the society. Today law of life is the concern for all for the good of each and concern for each for the good of all. Legislation and laws should be enacted so as to make it the instrument of socio-economic change.

That in order to achieve social justice to redress social disparity, legal awareness among the people is quite necessary. The

42nd Amendment of the Constitution 1976 Act, Article 39(A) has been introduced which came into effect from January 1977. This new addition of Article 39(A) in the Constitution provides free Legal Aid and ensures that opportunity for securing justice should not be denied to any citizen by reason of economic or other reasons of disabilities. This provision being one of the Directive Principles of the State Policy, Union Govt. and the State Government have framed rules. The State of A.P., framed rules under G.O.Ms.No.416, Home, dated 11-8-1980.

Public Interest Litigation (P.I.L.) is a new type of litigation initiated by Supreme Court to enable the poor and vulnerable section of the society for the enforcement of fundamental rights. This type of litigation has given new scope to the concept of "*locus standi*" which has been extended for the protection of the poor and the oppressed people. According to the traditional *Anglo-Saxon* concept of "*Locus Standi*" only the person wronged could sue for judicial redress. But because of the prevailing socio-economic conditions in the country, where there is considerable poverty, illiteracy, ignorance, the Supreme Court felt that the traditional approach will result in closing the doors of justice to the poor and the deprived section of society, so it added a new dimension to the doctrine of *locus standi*. According to the new interpretation, if the legal rights of

an individual or class of persons are violated and if by reason of poverty or disability they cannot approach the Court of Judicial redress, any public spirited individual or institution acting in good faith, can move the Court for Judicial redress.

The Supreme Court by its various judgments has opened a new chapter of "Public Interest Litigation" where merely on a letter or application the complaints are being registered and necessary orders are being passed. The Public Interest Litigation has given new dimensions to the judicial outlook in the administration of Justice. Under this chapter notice of the grievances of weaker sections, bonded labour, women and children have been taken by the Supreme Court and necessary directions were issued such as reform in Jail Rules, release of bonded labour, providing scheme and asking the Government for fixing minimum wages and asking Legal Aid Advice Committee to get released the prisoners on bail who cannot afford to furnish surety etc. Further banning the use and dumping hazardous, noxious and toxic waste, direction for the proper treatment cure and rehabilitation for leprosy patients. Thus many such several steps were taken under the public interest litigation to safeguard the interest of general public. This itself is the beginning of the Judicial Activism in our country.

In a civilised society law is above the state. In the present days most of the politicians ignore the principles that they are under the Rule of Law, on the other hand they assert their Right to Rule.

Once our former Chief Justice of India Mr. *A.M. Ahmedi* said "Unless there is respect of law, democratic Governments cannot achieve its objectives and goals. It is always said and true that politicians are not above law, the reverse of it wobbles the structure of democracy".

When the two wings of the democracy out of three fail to perform their respective duties, the public opinion has to change the course of action but public opinion has not

yet ripe to take note of the accountability of their elected representative, therefore the judiciary came forward to set right the wrongs.

Corruption vertically and horizontally sparing no department of national life has spread like virus in the country and Swaraja alas has lost its Gandhian charm.

It is on account of Supreme Court's intervention number of Hawala Cases came to light. According to Justice *Kuldip Singh* that "Public Office is a public trust and even in the exercise of his discretion the Minister must adhere to certain norms if he did not he must take the consequences". Justice *Kuldip Singh* in a judgment against the allocation of the petrol pumps held Captain *Satish Sharma* guilty and fined him for rupees fifty lakhs. It is said that when the Executive has become incompetent and corrupt, what is wrong if the judiciary takes initiative to put things straight. Judges are doing what they are expected to do judiciary is playing a key role in exposing corruption in higher places. Its interference is to save the country. Judicial Activism is a fact of life. Judicial Activism ensures social justice which for a long has been kept aside. It is the Judiciary whose direction to the C.B.I. and a clear direction to the authorities for providing adequate security to the C.B.I. personnel, number of politician were charge sheeted in Hawala Cases, Justice *D.J. Desai* retired Judge of the Supreme Court delivering Chandra Rajeshwara Rao Rao Memorial Lecture on "On Judicial Activism and Social Justice" said the Judicial Activism would be meaningless unless socially sensitive Judges make a progressive interpretation of the Constitution to meet the requirements of the society. He further stated that Judicial Activism has opened the doors of the Supreme Court for the people who could not have gone to the Court while dealing with the subject, Justice *D.J. Desai* stated that there is nothing new but it is only a progressive interpretation of Constitution to meet the requirement of an ever changing society".

To me the present Judicial Activism depends upon the social vision of the Judges who have to keep the welfare of the people above everything. For deciding cases of corruption, Justice should not be fettered in procedural technicalities otherwise legal technicalities often conceal the truth. The recent cases of corruption are of unprecedented nature and they require, new solutions without any roots in precedence. A new formula has to be evolved to lend a human touch in administration of justice.

It is being noticed that politicians being embarrassed by series of Court Judgments against the Ministers, Members of Parliaments, Legislatures, want to clip the wings of the Judiciary, which is a very dangerous move. According to the former Chief Justice Sri *P.N. Bhagvathi*, Judicial Activism is necessitated because of the failure of the Executive, to carryout its obligations. It is primarily directed at correcting the aberrations of the Executive and for ensuring the Rule of Law. Thus in the present circumstances there is no need to curb the Judicial Activism. The entire nation is applauding the Courts on this count. Judiciary wants that constitutional promises have to be translated into action.

The Public Interest Litigation or Judicial Activism is pricking like a thorn to the politicians and men in power, therefore they are bent upon curbing these two dynamic systems adopted by the Judiciary in the interest of general public. *H.D.Deve Gouda* regime was thinking of introducing a bill that persons seeking remedy under public interest litigation will have to deposit

Rs. 50,000/- in case if the application is filed in the High Court and Rs. 1,00,000/- One Lakh if the application is filed before the Supreme Court. And now the present *I.K. Gujral* Govt. wants to set up a committee to review the necessity of putting restriction on this system. The present move of the Government is nothing but an attempt of Hijacking the power of the Judiciary and depriving the common man from his fundamental rights and from approaching the Court.

There is also a move of introducing Constitutional Amendment Bill to restore 1993 position in the appointment of Judges which means that the Government wants to have its final say in the appointment of Judges of the High Court.

The present bid to influence the Chief Justice of India and other Judges who are hearing *Jain Hawala* Cases is quite alarming. The lawyer community which is fully aware of the corruption prevailing in the country has already lodged protest when the former Prime Minister Mr. *Deve Gouda* met Sri *A.M. Ahmedi* the retired Chief Justice of India at a time when Sri *Narasimha Rao* was to appear before the Court in corruption charges. The bar has raised its voice condemning the present tactics of influencing the Judges which is highly deplorable. Lawyers should come forward and organise protests against the introduction of the bill to Check Public Interest Litigation.

Today we have to meet the challenge of 21st Century for bringing reforms in criminal jurisprudence to curb Corruption.
