

Section 41-D Criminal Procedure Code can cheer up criminal lawyers

14. The aforesaid provision actually gives scope to criminal lawyers to be present at the police station at the time of interrogation of their clients so as to prevent the police from applying third degree methods. The advocates can charge their fee from their clients on an hourly basis for their visit to police stations, so that what they lose by way of declining bail applications due to a decline in the number of arrests can be compensated by the visiting fee to the police

stations. The Advocates Act mandates that advocates are to represent only before those authorities who are empowered to record evidence of oath. Police officers do not come under this category. By applying the principle of harmonious construction it can be concluded that advocates can be present in the police station to prevent third degree methods by the police, but should not represent before them that their clients are innocent and should not be prosecuted, as it amounts to interference in investigation. They should not strike deals with the police under any circumstances.

JUDICIAL SYSTEM AND PUBLIC INTEREST LITIGATION IN INDIA

By

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At present, the concept of *locus standi* is receiving an increasing attention because a number of public interest litigations are being filed in Courts. *Locus standi* means “the ground to stand” or “right to file a case”. Previously only the person whose rights are affected could file a suit in the Court. A person could not come to the Court to ventilate the problem of others. This is the basic concept of *locus standi*. This concept has undergone radical changes in recent times. Public interest litigation is the order of the day to ventilate the provisions of down trodden people. Public interest litigation linked with the relaxation of *locus standi* and providing access to justice. It is also concerned with protection of the countless and unrepresented masses of India.

Justice *Krishna Iyer*, considered PIL as the product of creative judicial engineering. According to the eminent judge, “the jurisdiction of the Indian Supreme Court is the widest in the world. The challenges of India’s social changes are the sharpest; the dynamics of a functional jurisprudence is the

creative expression of judicial response to the crises of hunger for justice. PIL is the offspring of these social forces.

In a democracy, the most important task is welfare of the people as a whole. This is important cause and result in every nation. As far as India is concerned, the Kings in good olden centuries ago, gave importance to the safety and welfare of people. This was first priority to them rather than their other aspirations. They used to arrange more facilities to the people such as digging water tanks, planting trees, food and shelter to them. There used to be friendly nature among people. Everybody wished safety to others. Law was also stringent. Whether the party belongs to rich or poor, everybody was equal before law. For example, one king gave judgment against his son in a case and gave death penalty. Such was the enforcement of law.

There was change in the system in India after the entry of foreigners into India during the early period after B.C. Indians suffered

from poverty, hunger, disease, economic deprivation and social neglect, social and economic injustice before independence of India was prevailing.

The frustrating system and the condition was the outcome of the colonial justice before 1947 delivery system meted out by law Courts. Pre-independence legal system was static, suppressive, unaccountable, devoid of moral and political obligation and counterproductive to social change, *status quo* and passivity was the mantra and mechanical application of law was last concerned with the needs of the society. Protest against denial of civil liberty and human rights went un-headed for decades and people kept waiting for a change to come.

Finally after long freedom struggle under the leadership of *Mahatma Gandhi*, India got independence. A separate constitution was written under the leadership of eminent stalwarts like Dr. B.R. *Ambedkar*, Dr. *Babu Rajendra Prasad etc.*, elaborating the rights and duties of citizens of India. The human rights were protected eminent persons produced and admirable document, the Constitution of India, with significant provisions in the preamble as guiding principle. An equalitarian, socialistic, equitable and welfare State was the aim. Constitution became the hope of the deprived and the under privileged to attain social and economic justice.

The constitutional objective aiming at a social revolution and national preamble and Parts-III and IV of the Constitution in fundamental rights and directive principles could not have made any headway but for the emergence and acceptance of concept of public interest litigation by the judiciary, social equality, human rights for the poor and vulnerable, political justice would have remained only fond wish for the million without social jurisprudence coming to the front through the Courts of law. Conventional approach of judiciary of pre-independence era would have acted as

obstacle to the movement for a just and equitable social order. It is the dynamic and positive response of judiciary that has added significance to the public interest litigation as it exists today. It is public interest litigations instrumental in the progress of the society to peace and harmony.

Non-adversarial litigation procedure brought by the Supreme Court of India was in tune with the hopes and aspirations of millions who could not have secured enforcement of their fundamental rights through adversarial litigation procedure. The report of National Judicature in 1977 stated that "We have injustices inherited and acquired. The victims are large number of community which suffers hardship in our expensive Court system it is impossible for lower income group to enforce right".

Public interest litigation thus got recognized as an effective instrument to bring new social order as enshrined in the constitution and attained a special significance.

PIL is litigation for the procedure of the public interest in Indian Law Article 32 of the Indian Constitution contains a tool which directly joins the public with jury. A PIL may be introduced in a Court of law by the Court itself (*suo moto*) rather than the aggrieved party or another third party.

The right to file suit is given to a member of the Public by the Courts through Judicial activism. The member of the public may be Non-Governmental Organization (NGO), an institution or are individual.

The Supreme Court of India, rejecting the criticism of judicial action, has stated that the judiciary has stepped into give direction because due to executive inaction, the laws enacted by the Parliament and State Legislatures for the poor since independence have not been properly implemented.

The Constitution (42nd Amendment) Act, 1976 which came into effect from 3.1.1997

has inserted a new Article 39-A in Part-IV of the Constitution. This article directs the State to secure equal justice and free legal aid to one and all, irrespective of economic and other disabilities. This constitutional provision also has helped the emergence of the Public Interest Litigation in India.

The following analysis shows the nature and scope of public interest litigation.

Any voluntary organization or a public spirited persons can file a petition in the Court to deal with the provisions which have a public interest.

ANALYSIS — EVIDENCE AFFIDAVIT UNDER ORDER 18 RULE 4 C.P.C.

Whether the Chief Evidence Affidavit under Order 18(4) C.P.C., without a further Statement that the Affidavit has been prepared based on the Evidence of the Deponent is liable to be rejected?

By

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As a sequel to the recent Amendment of C.P.C., with effect from 1.7.2002 under Order 18(4) C.P.C., has been substituted and Rule 1 provides that in every case examination-in-chief of the Witness shall be on an Affidavit and copy thereof shall be supplied to the opposite parties by the party who calls them for evidence. However, where a witness is not a party under control he can take recourse to Order 16(1) C.P.C. and after he is summoned he can be asked to file an Affidavit or be examined in Court as laid down in 2005 (2) ALD 230 (F.B.). In other words, where summons would be issued under Order 18(4) C.P.C., may not apply. The Court has a discretion to direct examination in Court or by Affidavit as laid down in AIR 2003 SC 189—*Salem Bar Association v. Union of India*, subject to exception as provided under Order 16(1) C.P.C., in the case of issue of summons where the witness is not under the control of the parties, it is inevitable, in all cases whether appealable or non-appealable examination-in-chief has to be done on affidavits only.

Be this, as it may

Mere filing an Affidavit, is not the beyol and end all the matter unless the deponent appears before the Court and confirms and

appears for cross-examination as laid down by the Full Bench 2005 (2) ALD 230 (F.B.). Thus this practice is being followed and there is no controversy at all.

But the entire controversy is with respect to failure to mention in the Evidence Affidavit, that the Evidence Affidavit has been prepared based on the evidence deposited by the Deponent and its legal affect.

It is suggested based on authorities in the absence of such a statement that the evidence is prepared based on the evidence deposited by the deponent, the evidence affidavit is not evidence affidavit and as a concomitance thereof pursuant to the substitution of Order 18 Rule 4 C.P.C., which specifically sets out the procedure, and is to be rejected. Keeping in view the intention of substitution of Order 18 Rule 4 C.P.C., which is confirmed by the Supreme Court in AIR 2003 SC 189

To the extent of diligent search made by the Writer, subject to any other authority if available the foundation for this article is the authority laid down in AIR 2005 Bom. 294 to 297, the relevant portion is delineated as follows:

Paragraph 8 : “In my opinion therefore