In the past the paradise of justice was the monopoly of the affluent who alone possessed its golden key. This class-oriented common law system of dispensation of justice is now giving way to a new mass-oriented jurisprudence. A wave of public interest litigation which brings the goddess of justice to the illiterate and exploited has set in. This new trend drives away the past evils of legal technicality and procedural rigidity. Liberalisation of the need to prove locus standi for invoking the jurisdiction of the court is the most notable phenomenon of this change.

PUBLIC INTEREST LITIGATION— THE BACKGROUND

The rudiments of public interest litigation can be traced to Roman Law under which it was open to any person to bring what was called an *actio popularis* in respect of public delict or to sue for a prohibitory or restitutory interdict for the protection of *res sacrae* and *res publicae*. The *actio popularis* may be the ancestor of our public interest litigation.

In England, there was, from the very early days, the device of relator action. The foundation of this principle is the interest of the Crown as *parents patriae* in upholding the law for the benefit of the general public. The Crown is interested in seeing

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that public bodies discharge their functions properly and that they do not abuse or misuse their powers. This device imposes a measure of control over situations where, otherwise, members of the public might bring uncoordinated actions, resulting in confusion. Basically, this is a regulated form of *actio popularis*.

In U.S.A., the administrative agencies were considered to represent the public interest. The agency proceedings were to be the forums for vindicating public interest. Litigation in public interest began acquiring popularity in the U.S. in the early sixties. The reason was the failure of the administrative agencies, referred to as the fourth headless branch of the State, after the Executive, Legislature and the Judiciary were conceived as instruments to regulate the powerfully organized private sector. They were intended to streamline the administration in such a way as to better serve the interests of the public. The agencies had to discharge a variety of functions ranging from dispensation of social benefits to control of multinationals, protection of environment and the consumer public. In these matters, they were vested with powers to take important decisions and to implement them. But, by sixties, it became clear that, these agencies had failed in protecting the public interest due to their purposive inaction where action was called for.

Two factors that led to the failure of the agencies helped the development of public interest litigation. The first was, what the Americans call ‘agency capture’. Powerfully organised private sector which was to be regulated by the agencies, captured the agencies themselves and, they began to play to the tune of those against whom they were expected to act. The second factor was, the failure of the agencies to recognize the existence of large and diffuse interests in society which were badly disarrayed and unorganised. Thus, the administrative agencies became what are called the ‘low visibility’ areas of decision-making.

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The diffuse interests could not get redress for their grievances either in the Legislatures or administrative forums because, both these forums were controlled by powerfully organized vested interests. So, these interests had only the judicial forum to turn to. The 'public interest' law emerged as a means to vindicate the rights of minorities and weaker sections in society like women, children, the physically and/or mentally handicapped, the poor, the consumer public, environmentalists, etc. The existing legal system failed to protect these interests because of the problem of access to court, lack of standing to litigate, or economic disabilities. The public interest lawyers were instrumental in finding a way out of this impasse.

With financial support from the Office of Economic Opportunity (OEO) of the Federal Government of the United States, these lawyers mobilized law students and social-action groups to articulate within the legal frame-work, the diffuse interests of several million unrecognized people in the lower socio-economic strata and to force the system to change its priorities, procedures and politics for the benefit of those who were till then kept outside it.

**OBJECTIVES**

The objectives of this device, therefore, are principally, four:

1. Representing the diffuse interests in society.
2. Securing justice, political as well as social, to the extent possible, to the economically and socially handicapped.
3. Ensuring that the administrative and other political machinery work in a way subservient to the interests of the general public, and,
4. Bridling the law-enforcement machinery itself to move towards social justice.

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The courts try to further these objectives by increasingly allowing resort to public interest litigation. But, our current procedural norms place innumerable hurdles in the way of a prospective litigant. Those seeking justice will have to overcome these hurdles.

The Problem

We have the adversary system of court procedure as opposed to the inquisitorial. Adversary system requires parties opposed to each other to place evidence before the court to prove each other’s case. The court decides the case on the basis of who has given the best evidence and does not enquire further. So also, the court will adjudicate only if a matter is brought before it by somebody. Therefore, as far as public interest litigation is concerned, all members of society must be encouraged to bring before court, situations that warrant courts’ intervention. Such a course will help bringing before court vital issues of public interest which require urgent solutions, converting the Judiciary into a machinery sensitive to the injustice suffered by people and thus securing the ends of distributive justice and participative democracy. But, the biggest road-block obstructing the judiciary against adopting a social justice oriented and liberal attitude is the traditional concept of locus standi or standing, which the courts are reluctant to discard even today.

Locus Standi

This concept prescribes that, unless a person has suffered a direct injury or is aggrieved by the act he proposes to challenge, his action is not maintainable in a court of law. Thus, when an environmentalist approaches a court with an environmental problem, instead of considering the larger public interest, the objects of environmental law, the need for distributive justice and participative democracy, the court focusses its attention on the identity of the person who brings the action. The questions asked are: Who is he? Is he personally affected? Has he sufficient personal interest in the matter in issue?
EVOLUTION OF THE CONCEPT

Locus standi is a vintage doctrine. Its genesis is in the Common Law of the laissez faire dominated England. The king ruled the country, collected taxes, waged wars and maintained a general order in society. The subjects were left free in all their activities, provided they obeyed the laws. In individual disputes alone conflicting parties sought justice. The nature of litigation in courts in the early days was essentially contractual. The rule of 'privity of contract' governed the field. The laissez faire philosophy left the individual absolutely free and, freedom of contract was regarded as inviolable and sacrosanct. The Sovereign did not interfere with that freedom except in very few cases opposed to public policy.

With the advent of democracy, the centre of power shifted from the king to the representatives of the people elected and assembled in Parliament. They had to face elections periodically. To ensure their re-election, it was imperative for them to serve public interest. In their endeavour to promote a Welfare State, the representative institutions assumed more and more powers and welfare legislations proliferated. This involved more and more regulation of the citizens' freedom and conduct. Thus, the man in the street began to come into constant contact with the State in his everyday life. With its spawning laws and increased power, the State frequently infringed the rights of the individuals. This threw up a new type of litigation with the citizen pitted against the State.

Rule of Law required that every executive action should be supported by law. Therefore, unlawful acts of the State were questioned in courts. The question then arose as to who could question such illegal State acts. The courts answered that their legality could be challenged only by a person adversely affected. Under the circumstances, this was the only way in which the executive powers could be accommodated. It was thus that the concept of locus standi was evolved.

Standing or locus standi is the right of a person to sue or to seek relief in a court of law, as distinguished from a substantive right or interest possessed by him and which is alleged to be infringed or endangered by a State action. It is this factor that gives the litigant the personal qualification to challenge an illegal administrative or legislative act. Two principles have been held to underlie the concept of locus standi.

1. The petitioner (litigant) himself must have a grievance. He cannot base his claim on the grievance of another person. But, this is not necessary in writs of Habeas Corpus or Quo Warranto because personal liberty and usurpation of public office are accepted to be of general public concern.

2. No one can bring to court a purely academic dispute. Some legal right or interest of the petitioner must be infringed, threatened or clouded so that the controversy which he raised in court should be focussed on his individual grievance and interest, on which the court can pronounce.

This traditional concept of locus standi was strictly enforced and consistently insisted upon by the courts in India, England and the U.S.A. for a long time. Different pronouncements regarding the personality of litigants governed the field then. No concrete criteria could be spelt out from these decisions to determine the locus standi of a litigant beforehand. The courts used to insist interchangeably on requirements like 'legal right', 'special interest', 'sufficient interest' and whether the duty sought to be enforced is owed to him. In India also,

the situation was analogous.\textsuperscript{10} The uncertainty in the law of standing can be best demonstrated by referring to the cases where a shareholder's locus standi was in issue. In \textit{Chiranjit Lal v. Union of India}\textsuperscript{11} it was held that a fully paid-up shareholder of a company had no locus standi to challenge the taking over of the company by the State. On the contrary, a preference shareholder was held to have locus standi in \textit{Dwarakdas v. Sholapur Spinning and Weaving Co.}\textsuperscript{12} In the Bank Nationalisation Case,\textsuperscript{13} the locus standi of a share-holder was recognised as sufficient in as much as his right to receive dividend from his investment had ceased. Following this decision, shareholders of newspapers were held to have locus standi to challenge a law affecting newspapers in \textit{Bennet Coleman Co. v. India}.\textsuperscript{14} But, it is still not clear whether a fully paid-up shareholder will have locus standi.

The trend to liberalise the principle of locus standi started with the realisation by the Judiciary of the pitfalls in insisting strictly on the traditional requirements of locus standi. It was felt that locus standi should not be reduced to a Procrustean bed. Public interest litigation and legal aid movement also demanded more relaxed standing rules. But, the liberalising trend also has served to add to the confusion already existing with regard to the concept. Two factors have created this confusion.

Firstly, the relaxation of the requirements of standing has proceeded exactly on the same lines on which the strict rules were rigorously enforced. That is to say, depending on the personality of the litigant. The resultant confusion is the same as that prevailed before the liberalising trend began. The court

\textsuperscript{10} For a general discussion, see Jain, M.P. and Jain S. N., \textit{Principles of Administrative Law} (1979), p. 399 et seq.

\textsuperscript{11} A.I.R. 1951 S.C. 41.

\textsuperscript{12} A.I.R. 1954 S.C. 119.


has only been qualifying the persons who have locus standi. The only difference is that it has been liberal in conferring locus standi on more and more persons. This can be seen from the decisions of the Supreme Court recognising the standing of unrecognised trade unions,\(^{15}\) the legal profession,\(^{16}\) law teachers\(^ {17}\) etc. Even now, our Supreme Court asserts as a general rule that a total stranger cannot enforce the fundamental rights of another person. In cases where the affected party is in some way disadvantaged, the court will allow a member of the public acting bonafide, to espouse the cause of such person or class of persons.\(^ {18}\) So, not only that the beneficiaries of the action should be socially disadvantaged, but the litigant should be acting bonafide. Such requirements as above are wholly unnecessary and can breed only confusion and uncertainty.

Secondly, the courts have been hopping back and forth between the traditional and liberal requirements of standing.\(^{19}\) To quote a recent example, in the *Judges Transfer* case,\(^ {20}\) the Supreme Court unanimously upheld the liberal rules of locus standi. But, the conservative attitude of the court surfaced soon, creating of uncertainties in the future course of liberalisation of locus standi.

In November, 1982, Mr. Sudeep Mazumdar, a newspaperman invited the attention of the Supreme Court, by a letter, to the injuries and accidental killings of tribals in the largest

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20. See supra, n. 16.
ammunition testing range of the army near Itarsy in Madhya Pradesh. People were dying in large numbers, while collecting scrap from the exploding shells. This was a typical situation where the court should have been only eager to interfere. But, strangely enough, the court framed a set of ten questions on public interest litigation, doubting its legitimacy and questioning the liberal approach to locus standi adopted in earlier cases and, referred them to a Constitution Bench for decision.

Both the factors mentioned above have created an unsatisfactory situation. If public interest litigation is to serve as a means to facilitate access to courts and to render justice to the seven hundred million people of India, then a change in judicial attitude in relation to the concept of standing is absolutely essential. The uncertainty that clouds the concept will discourage prospective litigants from approaching the courts in public interest, because, until his locus standi is upheld, he would not know whether he can get relief. There are innumerable classes of people in our society with varied interests and to qualify them for locus standi on the basis of identity of 'person' would be impossible. For example, a lawyer has locus standi to challenge transfer of judges, but, can he challenge misappropriation of funds by a municipality? Or should he be a rate-payer too at the same time? Similarly, can the prospective purchaser of a motor car challenge non-maintenance of roads by the municipality? Or should he be a car-owner? It is difficult to assess one way or the other. The further question is, if roads are not maintained properly, is it not in public interest that the municipalities be compelled to do their duty. If so, does it matter whether the litigant is a car owner, a prospective car-owner or x, y, or z?

A PROPOSAL

It is submitted that, the identity of the litigant is immaterial in deciding the merits of the case. In the same way, the motive or intention of the litigant is also immaterial. He may be a

publicity-monger, a professional litigant or a busy-body. If his allegations are true and made in public interest, he should be heard.

In England, even when the strict rules of locus standi held sway, there was a device for vindicating public interest, namely, Relator Actions. The Attorney-General used to represent public interest. He, by lending his name to a private action, could convert it into an action in public interest. In U.S.A., the administrative agencies were forums for representing public interest. But, in India, we had no such means to enforce public interest without the constraints of locus standi. The Supreme Court of India held that relator action is not possible in India as in England because the Attorney General of India and Advocate General of States are not the guardians of public interest.21 But, now that we have evolved the mechanism of public interest litigation, we have a forum for representing public interest effectively.

The objective of public interest litigation outlined earlier delineate the role that this device can play in our contemporary society. This mode of litigation should exist as a means whereby public interest could be enforced. Here, the identity of the person should not be material. What should be, is the public interest. This field should be a ‘no locus standi zone’. Therefore, any person who comes before the court seeking to vindicate public interest should be heard. He need only show that his action is a public interest litigation. This criterion of ‘public interest’ would also give the courts enough leeway to exclude frivolous litigation, And, this criterion would be more meaningful and conducive to the ends of public interest litigation than enquiring into the identity of the litigant and his personal qualification.

Public interest litigation is a very potent instrument which can serve as the means of rendering justice within the existing framework of our legal system. Its relevance in a hierarchical, caste-ridden, economically and socially backward society like ours, is beyond question. Particularly so, in a decadent, colonial jurisprudence in which there is still no awareness and initiative
for legal and judicial reforms. Therefore, it is necessary to enlarge the scope of, and to streamline, this new device so as to make it effectively serve the inarticulate masses of our people. It is time that the doctrine of locus standi is given a decent burial by the Supreme Court in relation to public interest litigation.

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