



## **FACULTY OF JURIDICAL SCIENCES**

**Course : LLB , 1st Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code :LLB 101**

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## **Constitutional law - I**

**OBJECTIVE:** The objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the constitution including their functions.

### **UNIT – I**

- **Salient features of the Indian Constitution.**
- **Preamble**
- **Definition of State (Art. 12)**
- **Doctrines of Ultra-vires, severability, eclipse, waiver (Art, 13)**

### **UNIT-II**

- **Right to equality (Art. 14)**
- **Prohibition of discrimination, Rights to equality of opportunity (Art. 15-16)**
- **Right to freedom under Article 19: Freedom of association; Freedom of movement;**
- **Freedom of residence; Freedom of assembly; Freedom of association; Freedom of**
- **movement; Freedom of residence; Freedom of occupation, trade and business;**
- **Right to take out processions; Right of the State to impose reasonable restrictions**

### **UNIT – III**

- **Protection in respect of Conviction under Article 20,**
- **Ex-post-facto law; Double jeopardy; Self-incrimination;**
- **Right of Life and Personal Liberty (Art. 21),**
- **Protection in respect of arrest and detention**
- **Right to freedom of religion (Articles 25-28)**

### **UNIT – IV**

- **Cultural and Education Rights (Articles 29-30)**
- **Enforcement of Fundamental Right, Writ Jurisdiction of the Supreme Court and**
- **High Court (Article 32, 226)**
- **Right to property before and after the Constitution 42nd Amendment Act, 1976**
- **Abolition of Untouchability, Titles (Articles 17-18)**
- **Right against exploitation (Articles 23, 24)**

### **Suggested Readings:**

1. **Austin Granville: Constitution of India: Cornerstone of a Nation; and Working A Democratic constitution**
2. **NarenderKumar : Constitutional Law of India.**
3. **Basu D. D : Shorter Constitution of India**
4. **Jain, M.P.: Constitutional Law of India,**
5. **Seervai, H.M. : Constitutional Law of India, Vols. I-III**
6. **Shukla, V.N. : Constitutional of India (ed. M.P.Singh)**
7. **B.R. Sharma : Constitutional Law and judicial Activism**
8. **M.C. Jain Kagzi : The constitution of India**
9. **B. Shiva Rao: The Framing of India's Constitution**

# LECTURE 37

Consequently, the Supreme Court modified this strict practice of locus standi to tackle the problem of access to justice through various cases.

For instance, in case of [Bandhua Mukti Morcha v. Union Of India](#), the petitioner initially faced a problem because of locus standi since it was an organisation not directly suffering because of bonded labourers working in stone quarries in Faridabad. The Court observed that there is no specific method of proceeding given in Article 32 and writ petition can be initiated in both formal and informal ways.

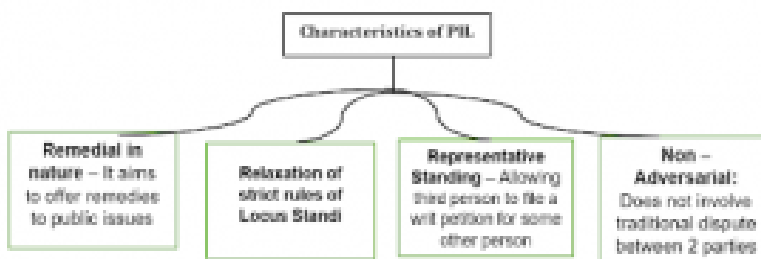
Thus, the question of locus standi was raised in this case and the court said that where a disadvantaged class does not have access to justice, the court can relax the strict principle of locus standi and allow a public-spirited citizen or group of citizens to approach the court on his behalf. Thereby, it allowed the petitioner to file the writ petition and allowing them to help the bonded labourers.

It must also be referred here that the Supreme Court has also been given epistolary jurisdiction which allows it to convert any informal petition made through letters, telegram etc, into a writ petition and hear the matter. For example, as a result of an open letter written by four eminent law professors, Vasudha Dhagamvar, Lotika Sarkar, Upendra Baxi, and Kelkar against the judgement given in [Tuka Ram v. State of Maharashtra](#) regarding the meaning of consent involved in sexual acts, the rape laws in India were amended.

Public interest litigation – A dynamic approach

Public Interest Litigation (PIL) refers to litigation undertaken to redress public grievances and protect and promote the interest of the society at large. It allows any public-spirited person to approach the court and file a petition for a public cause, thus relaxing the strict rule of Locus Standi.

This can be better understood with the help of an illustration: A is a publicly spirited person who witnesses that an organisation is employing large no forced labourers, who due to poverty find it difficult to approach the court. PIL allows A to file a petition so that the right of these labourers can be upheld and they can escape the bonds of forced labour, even though he is not personally affected by such violation.



Before moving further, we must look at the characteristics of PIL. These are as follows: Anybody can file a PIL in the Supreme Court under Article 32 of the Constitution and in the High Court under Article 226 of the Constitution and the court of a magistrate under section 133 of CRPC. As discussed above, the PIL process can even be initiated by the court after it receives a letter, postcard, newspaper report or an email to it regarding a public issue.

These can be treated as a writ petition and the court can take action upon it, once it is satisfied that the letter is sent by the aggrieved person, a public-spirited person or a social action group dedicated to ensuring the enforcement of legal and Constitutional rights of disadvantaged people.

At times, the courts can also *suo motu* cognize in such matters. This means that courts can by themselves initiate proceedings against a party. For instance, the *suo motu* cognizance by the court in matters of Delhi water pollution and directed the state to finalise in an action plan within 10 days.

Public Interest Litigation has gained a lot of importance. This is because:

- It helps in promoting the right to equality, protect the right to life and liberty and uphold the other fundamental rights of people who cannot represent themselves.
- By ensuring that the fundamental rights of all are protected, it allows promoting more human rights such as the right to education, medical care, housing, clean environment, speedy trial etc.
- It expands the scope of justice by allowing the courts to set up commissions to look into the matter and collect relevant evidence if a party is unable to do so because of economic backwardness.
- Because it is inexpensive in nature, it enables the court to provide a remedy to a greater number of people.
- It enables the court to ensure that the rights of minorities are protected.
- It also helps in raising public awareness about societal issues through increased media coverage.

#### Criticism of PIL

Throughout the years' many criticisms have emerged with respect to PIL. Some of these are:

1. The courts overstep their boundaries, particularly in the social and economic domain by laying down complex policies through PIL. Many people believe that other branches of the government are more equipped to formulate and analyse these policies. This is actively observed in cases related to pollution, sexual harassment, torture, management of CBI etc.
2. Many people say that courts have taken undue advantage of the popularity that they have gained from PIL by expanding its powers and shielding itself from scrutiny.
3. Some people also argue that courts have taken undue advantage of the inexpensive PIL process because of which multitude of cases come in. They say that courts spend a lot of

time on frivolous cases which improves their popularity. For example, the court entertained a PIL to rename 'Hindustan'.

4. PIL have led to an increase in the burden of the workload of the superior courts, abuse of judicial power and increased the gap between the promises made and the actual reality.
5. It is also being used by individuals for their private purposes, covered under the umbrella of public grievances to gain popularity.
6. Moreover, PIL is being overused these days. As a result, its initial purpose of enforcing human rights of disadvantaged groups might get defeated entirely.

Abuse of PIL not to be allowed: Guidelines

It has been observed that the tool of PIL granted to the citizens is being abused. This is seen when frivolous cases are filed in the courts under the purview of PIL since it does not require heavy court fees. This leads to ignorance of important cases, which are many-a-times pushed to the background because of the frivolous cases. Thus, real justice is not achieved.

To overcome such abuse, certain guidelines have been laid down in the case of [State of Uttaranchal v Balwant Singh](#) in which the court imposed Rs. 1 Lakh on the respondents for filing a frivolous petition. The guidelines given by the court are as follows:

- The courts must encourage only genuine and bona fide PIL's. All extraneous PIL applications must be discouraged. It must also be ensured that there is no motive of personal gain because of which a petitioner is filing this petition.
- All High Courts must devise their own procedures for dealing with PIL's and formulate rules to encourage genuine PIL's. The High Courts which have not formulated these rules must complete the formulation within 3 months and send a copy to the secretary-general of the Supreme Court.
- The court must, prima facie (on the face of it), verify the credentials of the petitioner before entertaining a PIL.
- Before entertaining the petition, the courts must prima facie be satisfied regarding the correctness of the contents of the PIL petition.
- The courts must ensure the PIL petition involves substantial public interest before deciding to entertain it.
- The courts must ensure that those PIL applications which involve larger public interest, are more grievous or are more urgent, are given priority over the other applications.
- The courts must impose exemplary costs if the applications filed is found to be frivolous.

Also, in the case of [PN Kumar and another v Municipal Corporation of Delhi](#), the Supreme Court of India held that if a writ petition is pending before the High Court, a similar writ petition cannot be filed in the Supreme Court. In such cases, the parties can only move to the Supreme Court in appeal. This is because the Supreme Court is already highly burdened. Moreover, the

High Court Judges are judges of eminence and have the necessary skills to look into such matters.

Besides these, the Courts have laid down the categories which will be entertained as PIL. These include:

1. Bonded Labour matters,
2. Neglected Children,
3. Petition from jails complaining of harassment, death in jail and speedy trial,
4. Petition against police for refusing to register a case, harassment for bribe, kidnapping, rape,
5. Petition against the atrocities faced by women,
6. Petition against harassment of people belonging to Scheduled Castes and Scheduled Tribes,
7. Petitions pertaining to the environment,
8. Petition from riot victims,
9. Family Pensions.

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### **Choose the correct option**

1. **Fundamental Rights have no value without?**
  - A. Right to Freedom
  - B Right to Freedom of Religion
  - c Right to Property
  - d. Right to Constitutional Remedies
  
2. **Who certifies a bill as a money bill when it goes to other house or for President's assent?**
  - a.Finance Minister
  - b.Prime Minister
  - c.Speaker of the House of People
  - d.Speaker of the Council of states
  
3. **Indian citizenship can be acquired by?**
  - A.Birth
  
  - B.Descent
  
  - C.Registration

D.Naturalization

e.Any of the above

4. **Under a single, integrated, hierarchical judicial system, the High Court in the states are directly under the**
  - (a) President
  - (b) Union Parliament
  - (c) Governor of the state
  - (d) Supreme Court
5. **Which of the following amendments curtailed the power of Judicial review of the Supreme Court and the High Court ?**
  - (a) 24th
  - (b) 44th
  - (c) 26th
  - (d) 42nd



