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ACCESS TO JUSTICE AND LOCUS STANDI

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The preamble of the constitution ensures, inter alia, justice-social, economic and political, equality of status and of opportunity and the dignity of the individual. It is a basic human right to have access to fast inexpensive and expeditious justice. Access to justice would become meaningful only if the judicial system adopts a fair process. The basic human rights guaranteed to persons will become meaningless if it cannot be enforced properly. Even if the law provides remedies and forums for the enforcement of basic rights, it would become meaningless if it cannot be accessed by the people.

The term locus standi denotes legal capacity to institute proceedings and is used interchangeably with terms like 'standing' or 'title to sue'¹ Rule of locus standi in its traditional form is of Anglo Saxon origin. The general rule is that only those persons whose rights are infringed can move the court for a remedy. The usual practice followed by the courts is to confine the right to persons who can show some degree of violation of legal right. According to traditional rule of locus standi, the person approaching the court for redressal of his grievance has to show violation of his personal rights. The issue of locus standi of the person, having grievance has to be decided by the court at the threshold, much before the main issue is considered by the court. If the answer to the question of locus standi, is that there is no violation of interest, the issue in dispute is not justifiable. The lack of standing may prevent consideration of an extremely important matter with the result that an action otherwise illegal may go without redress. Undoubtedly, the strict application of this rule results in the denial of access to the judicial remedies to a large number of litigants. The traditional rule of locus standi prevented the public spirited persons from agitating on their behalf.

1. S.M. Thio, Locus Standi and Judicial review (1971) p.1.

In England, R V Commissioner of police of the Metropolis, exp. Blackburn², Blackburn approached the court for a mandamus requiring the commissioner to reverse a policy decision that the time of police officers would not be spent on enforcing the provisions of the Betting, Gaming and Lotteries Act, 1963 against gaming clubs. It was observed that the party who applied for mandamus must show that he had sufficient interest to be protected and that there was no other equally convenient remedy.³ In the second Blackburn case⁴ a declaration was sought to the effect that by signing the treaty of Rome, Her Majesty's Govt would be surrendering in part the sovereignty of the crown in parliament and would be surrendering it forever. Main issue was whether Blackburn had the locus standi. Lord Denning M.R observed that⁵ "I would not myself rule him out on the ground that he has no locus standi. But I do him out on the ground that these courts will not impugn the treaty making power of Her Majesty, and on the ground that in so far as Parliament enacts legislation, we will deal with that legislation as and when it arises".

The Court was of the view that every citizen has an interest in seeing that the law is enforced, that is sufficient interest in itself. In the third Blackburn case,⁶ it was held that Mr.Blackburn had sufficient interest,as Mr.Blackburn had served an useful purpose in drawing the matter to its attention. In the last Blackburn case⁷ it was for an order of prohibition to issue against the Greater London Council to prevent them from exercising their censorship powers over the public exhibition of cinematographic films in accordance with a test of obscenity which was bad in law. Here also there was a contention that Blackburn had no locus standi as he did not have sufficient interest,to bring those proceedings against Greater London Council. But the court of appeal repelled this contention.

2.(1968)1 All ER.763

3. Lord Denning M.R (1968)1 AllER763 at 770

4. Blackburn V Attorney General, (1971)2 AllER1380

5.Ibid at 1383, The appeal was dismissed as the statements of claim disclosed no cause of action

6. R V Comissioner of Police of the Metropolis, exp.Blackburn(1973)QB 241

7. R V Greater London Council (1976) 3 All. ER 184

Lord Denning M.R observed⁸ that Mr.Blackburn has made out his case, and he is citizen of London and his wife is a rate payer. He has children, who may be harmed by the exhibition of pornographic films. If he has no sufficient interest, no other citizen has. Subsequently in Gouriet V Union of Post Office workers⁹, it was held that, it was a fundamental principle of English Law that public rights could only be asserted in a civil action by the Attorney

General as an officer of the Crown representing the public and that a private person was not entitled to bring an action in his own name for the purpose of preventing public wrongs and therefore, the court had no jurisdiction to grant relief. After *Gouriet's* case,¹⁰ the law was changed in UK and a general enactment was made by Parliament.¹¹ Even after the strict rules of *locus standi* had been enacted, the English Court took a broad and flexible approach on the question of sufficient interest.¹²

In U.S.A also the courts have taken a liberal attitude in the matter of *locus standi* in litigations affecting the environment and the consumers at large though they have taken a strict attitude in some cases. A liberal approach was adopted by the Supreme Court in giving *locus standi* in *United States V SCRAP*¹³, an incorporated association formed by five law students for the purpose of enhancing the quality of the human environment for its members and for all citizens, challenged an action of the rail roads in increasing freight rates by 1.5% as the rate structure would discourage the use of 'recyclable' materials and promote the use of new raw materials that

8. Ibid at p.191

9. (1977)3 All.ER.70

10. *Gouriet V Union of Post office workers*, (1977)3 All.ER 70

11. Section 31(3) of the Supreme Court Act,1981 which states that no application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court, and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates

12. *IRC V National Federation of Self Employed and Self Business Ltd* (1981)2 All.ER.93

R V Secretary of State for the Environment ex parte Rose Theatre Trust Co.(1990)1 AllER745

13. 412 US 669 (1973)

Compete with SCRAP and thereby adversely affecting the environment by encouraging unwarranted mining and other extractive activities. In this case Court allowed *locus standi* to SCRAP .

The trend in UK and USA shows that the liberalization of the rule of standing is a universal phenomenon. In India also the trend is to liberalise the rules relating to *locus standi* . the Supreme Court has expressed the true scope of the concept of *locus standi* in *Fertilizer corporation Kamagar Union v Union of India*.¹⁴ In simple terms, *locus standi* must be liberalized to meet challenges of the times. *Ubi jus ibi remedium* must be enlarged to embrace all interests of public minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets¹⁵. The learned judge further observed that public interest litigation was part of the process of participative justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial door steps.¹⁶ In Bar council of

Maharashtra V Dabolkar ¹⁷, the court has given a wider meaning to the term aggrieved person ,and held that the expression aggrieved person would vary from circumstances to circumstances and from statute to statute. In India it is the law that where a statute regulates property rights or right to carry on a particular business, the ‘person aggrieved’ has only a restricted meaning. This was clearly explained in Motibhai Desai V Roshan Kumar¹⁸.It was held that the expression ‘person aggrieved denotes an elastic concept and that its extent depends on variable factors. In this case the court held that the applicant lacked locus standi. In Sunil Batra V Roshan Kumar,⁴⁹ the petitioner Sunil Batra was allowed locus standi as a member of a class, that of prisoners

14. AIR 1981.SC.344

15 Ibid

16. Ibid

17.(1975)2SCC.702

18. AIR.1976 SC 578, The issue before the Supreme Court was whether a trade rival could be accorded locus standi to challenge an order passed without jurisdiction.

19. (1980) 3 scc488

who were being lodged in inhuman conditions. In this case the court widened the scope of locus standi in filing habeas corpus, and extended the availability for the enforcement of a constitutional right to which he was lawfully entitled even in confinement.

In Janata Dal V H.S. Chowdhary,²⁰ The Supreme Court observed that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for, has to be primarily ascertained at the threshold. The strict rule of locus standi in private litigation is relaxed, broadened and liberalized in case of public interest Litigation. In the above case, CBI filed FIR against some person allegedly involved in BOFORS Kickback. A citizen filed a petition by way of public interest litigation and the court dismissed the petition holding that the petitioner was not having locus standi.

In Vinoy Kumar V State of U.P ²¹ , Supreme Court denied locus standi to an advocate to challenge the legality of an order. By innovative interpretation and by piercing the corporate veil, the court has expanded the right of locus standi to include corporations, giving them the right to file writs for the violation of fundamental rights guaranteed under Art.19.²² The upshot of the above analysis is that most often the courts have taken a rigid attitude in the matter of locus standi. The establishment of an interest in the proceedings is the basic requirement of standing. It is difficult to evolve any general principle on locus standi. It could be argued that there should not be any standing

rules at all and the only check the court would possess would be to formulate and apply self made rules against vexatious litigant. It is submitted that limited and restrictive rules about locus standi are generally inimical to a healthy system of access to justice. If any subject matter which is of public importance is brought to the court and is turned down by raising the issue of locus standi, necessarily it will amount to a clear case of denial of access to justice, which may have far reaching effects because the court cannot shut the doors of justice even if the subject matter affects the entire public and hence is justiciable.

20. AIR 1993. SC892

21. AIR 2001 SC 972

22. Nair .service .society V State of Kerala (2007)4 SCC.1

