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**A LABYRINTHINE APPROACH TO THE PUBLIC INTEREST LITIGATION IN
ENVIRONMENTAL ISSUES: CONVERSING A SOCIAL CONCERN IN THE
SURVEILLANCE OF '*PARENS PATRIAE*'**

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**A CASE COMMENTARY ON:
SWARAJ ABHIYAN V. UNION OF INDIA (2016) 7 S.C.C. 498.**

I. INTRODUCTION:

Actions speak louder than words, more often written words remain written, cherished and remembered but rarely are brought into action. The legislations, statutes and rules enacted for the protection and welfare of the society, at times merely remain words. One among the best blessings of the Indian Judiciary is probably the Public Interest Litigation (PIL), where even a common citizen can approach the court of law, if found any right being encroached. The Public Interest Litigation and environment issues have a long history, the earlier being a way by which most of the environmental disasters are eradicated. Though at times, the judiciary prompts certain questions regarding entertaining a Public Interest Litigation, which has not to be a concern of such importance if the said is found in public interest and welfare.

Illustrative of the said can be found in the case *Swaraj Abhiyan v Union of India*¹, where the question regarding entertaining a Public Interest Litigation attracts the judicial attention. The parable proving to be true, when the enactments made by the legislation remains in statues instead of being executed and the government claims lesser responsibility to enforce the same. The case being initiated to seek relief for the drought affected regions and to ensure methods to manage the calamity removing the disaster and ensuring the rights conferred by Article 21 of the Indian Constitution to the citizens and the duties and obligations the state has in concern with it. A Public Interest Litigation Petition (PIL) was filed before the Supreme Court under Article 32 of the Constitution of India on 11 May 2016 for the proper implementation of drought management programme set up through the Drought Management

¹ A.I.R. 2016 S.C. 2953; 2016 (4) M.L.J. 729; 2016 (3) R.C.R. 324 (Civil); 2016 (3) R.C.R. 444 (Civil); 2016 (5) SCALE 478; 2016 (5) SCALE 491; 2016 (5) SCALE 506; 2016 (7) S.C.C. 498; 2016 (5) S.C.J. 40 (India).

Act of 2005. The petition was filed by Swaraj Abhiyan, a non-governmental organisation lead by psephologist Yogendra Jadav and advocate Prashant Bhushan. Later the organisation announced its decision to be a political party following the expulsion of the petitioners from the Aam Admi Party (AAP). The petition also gave emphasis to the implementation of the National Food Security Act of 2003. Further claiming that 12 states in the country are suffering from extreme drought.

The said states being the respondents in the said case; the states are Uttar Pradesh, Madhya Pradesh, Karnataka, Andra Pradesh, Telengana, Maharashtra, Jharkhand, Chhattisgarh, Bihar, Gujarat and Haryana. And it has been alleged that the government has not taken any mitigating measures to control the effect of drought. According to the report of Swaraj Abhiyan three states namely Gujarat, Haryana and Bihar had been suffering the most from the effect of drought. The case was posted before the bench comprising of the eminent judges J. Madan B.Lokur and N.V. Ramana.

II. LEGAL ISSUES INVOLVED²:

A bird's eye view of the case attracts three main issues;

- 1.** Whether a political party could file a PIL before the Supreme Court.
- 2.** Whether the states can be held liable for contempt of court for the non- implementation of the impending acts of drought management and food safety.
- 3.** Whether union Government have the power to direct the states to declare a drought.

III. ADDRESSING THE AMBIGUITY³:

For the issue whether political parties could file a PIL before the Apex Court, the petitioners contended that even though they have announced their existence as a political party they haven't formally registered as one under the election commission and hence they cannot be officially considered as a political party. They also mentioned that the issues raised by them are not of political in nature but a matter of huge humanitarian distress concerning almost one third of the population of the country. Having contended that the main purpose of filing this Public Interest Litigation is that Supreme Court being the guardian of a fundamental right has the duty to protect the right of the citizens to live with dignity as provided under Article 21 of

² *Ibid.*

³ *Ibid.*

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the Constitution, their rights being effected by the drought. The petitioners have approached the court to solve this grave issue within the legal frame work. They contended that the cause of the problem is the inactivity and ostrich like the behaviour of the bureaucrats, blaming the executives for not implementing two of the major acts i.e. Disaster Management Act and Food Safety Act even after decades of its enactment. They have pleaded to the Apex Court to force twelve states and the Union of India to declare a drought and adopt necessary actions as of compensation and relief measures for the huge loss suffered in terms of crop loss and other distress caused to the individuals residing at the drought affected area in those states. They also prayed to provide a subsidy for the crop in the next year.

The petitioners pointed out the need for the timely payment for those employed under the Mahatma Ghandi National Rural Employment Guarantee Act (NGERS Act) and a demand to the state to provide 5 kg of rice to every person staying in this area irrespective of whether they are above or below the poverty line, including those without ration cards, providing milk and egg to children's to supplement their Midday meals Scheme or Integrated Child Development Scheme throughout the summer vacations. Since the drought also gravely affected the livestock subsidized cattle fodder should be provided and the crop loans for the drought affected areas must be reconstructed. The petitioner's asked for the appointment of a drought management commission with the panel consisting a retired judge, an official with administrative experience in handling drought and natural disasters and a rural activist experienced in similar fields and they also prayed that the National Disaster Management Authority to give technical assistance to this commission.

Further, pleading for the implementation of two of the impeding acts and also required to revise two of the major documents containing mitigating measures for disaster management which are Manual for Drought Management (for short "the Manual") prepared in November 2009 by the Department of Agriculture and Cooperation, Ministry of Agriculture in the Government of India and the National Disaster Management Guidelines for Management of Drought (for short "the Guidelines") prepared in September 2010 by the National Disaster Management Authority of the Government of India which is now more than six years vintage, stressing that it is a high time to consider revising its provision considering the experience gained over the years and the availability of more and better information including more accurate information now available from the use of technology, satellite imagery, weather stations etc. statute provides for risk assessment and risk management in

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the event of a disaster such as a drought and also crisis management in the event of a drought. They are quite surprised that the National Disaster Mitigation Fund has not yet been set up even after ten years of the enforcement of the DM Act. Risk assessment and risk management also appear to have little or no priority as far as the Union of India and the State Governments are concerned. Risk assessment and risk management also appear to have little or no priority as far as the Union of India and the State Governments are concerned.

As stated by the petitioner the two important document regarding drought management are the Manual for Drought Management (for short “the Manual”) prepared in November 2009 by the Department of Agriculture and Cooperation, Ministry of Agriculture in the Government of India and the National Disaster Management Guidelines for Management of Drought (for short “the Guidelines”) prepared in September 2010 by the National Disaster Management Authority of the Government of India. The respondents contend that it is not mandatory to follow these guidelines since they are non-binding in nature and they act nothing more than mere instructions to look upon. According to the present situation each of the three states has their own method for assessment drought and in accordance with those procedures their state could not be considered as a drought affected one.

The state of Bihar in its affidavit has clearly mentioned that the states rainfall deficiency has been decreased from thirty per cent to twenty per cent and the state has witnessed a considerable increase in the crop sown with paddy at ninety six per cent and maize at eighty nine per cent. They have also been providing subsidy’s for the cultivation of Kharif and Rabi crops. The state has been sufficiently covered with tube wells and canals to mitigate the water shortage and the state claims to have twelve Himalayan non perennial river basins, adding that the drought may be existing in a district or taluk, but it could not be a cause to declare the whole state as a drought affected one. Gujarat, the other respondent state in the case claims that it has already brought five hundred and twenty six villages in three districts under the drought affected category on first of April 2015. Subsequently, four hundred six villages were also declared as drought which brings to a total of nine hundred and ninety four. Gujarat also boasts about its abundant availability of water through the resources like bore wells and canals. Haryana also had claims to make. Even though the state receives less rainfall, the state is self-sufficient in irrigation with the availability of two important sources i.e., Bhakra Canal and Yamuna River. They also claim that almost eighty three per cent state is covered under irrigation with the help of canals, tube wells and wells. There is no shortage of fodder or

drinking water. The state also had other factors to be considered before declaring drought such as: (i) Extent of fodder supply and its prevailing prices compared to normal prices; (ii) Position regarding drinking water supply; (iii) Demand for employment on public works, and unusual movement of labour in search of employment; (iv) Current agricultural and non-agricultural wages compared with normal times; (v) Supply of food grains, and price situation of essential commodities, could be applied by the State, in combination for drought declaration, contending that all of these conditions were opposing the declaration of drought.

The respondent states also stated that even though it is a necessity to standardize the procedures for the determination of drought, sometimes situations would arise where the state would be forced to deviate from these standard guidelines. It also gave emphasis on the fact that the geographical conditions of every state are different and each has a unique identity. Some states depend on rainfall for water and some others have their own resources to ensure availability of water. The requirement of water is also different for different crops and less irrigation facilities would not always affect the cultivation. They also contended that in a federal polity it is not fair to force guidelines which are binding in nature and would be improper from the part of the government to do so. The state government is well aware of how to protect their own state and unnecessary encroachment done by the central government would lead to the infringement of their powers and rights. Hence it would be improper to direct the states to immediately declare drought as pleaded by the petitioner.

IV. COMMENTARY:

The bench in its decision in this writ petition, provided for several directives in connection with the drought and the drought- like conditions which are persisting in the several parts in India, which yet remain to be implemented. The Supreme Court had allowed political parties to file a Public Interest Litigation if they found that there is a bonafide intention to fight against the cause, whereby validating and entertaining the petition. Moreover, expounding the concept of *parens patriae*, which recognises the State as protector of its citizens as parent particularly when citizens are not in a position to protect themselves, slamming the respondent states, the court points out that; an admission does not invite imputations of ineffective governance, it is an acknowledgement of reality. An ostrich-like attitude the respondent states adopt is a pity, particularly since the persons affected by a possible drought-like situation usually belong to the most vulnerable sections of society.

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The Disaster Management Act, 2005 places considerable responsibility on the Union of India in matters pertaining to disasters. This begins with the formulation of a National Plan. The Union of India is expected to make available its vast expertise and database in leading the State Governments in the right direction. The final decision to declare a drought is of the State Government. The Court issued directions to implement the provisions of Disaster Management Act. The revised and updated Manual [Drought Management Manual] should liberally delineate the possible factors to be taken into consideration for a declaration of a drought and their respective weightage. The time limit for declaring a drought should be mandated in the Manual. In the proposed revised and updated Manual as well as in the National Plan, the Union of India must provide for the future in terms of prevention, preparedness and mitigation. A National Disaster Mitigation Fund is required by the Court to be established within three months and a National Disaster Response Force with its own regular specialist cadre is required to be constituted within six months.

The Government of India is directed to ensure that the Central Employment Guarantee Council is immediately constituted under the NREG Act. The NFSA mandates the State administration to provide 5 kilograms of rice/wheat per member every month to all families living below the poverty line, and the court was keen to know which of the twelve drought-affected States had implemented the law. Swaraj Abhiyan sought the court's direction to ensure that food grains are distributed to not just below poverty line (BPL) families but also to all those living in States facing severe rural crises. Besides, it sought a direction on the distribution of pulses and edible oil to the affected people and milk and eggs to children under the midday meal scheme. The Supreme Court entertaining the petition as Public Interest Litigation at a point facing the question as to the maintainability, the PIL being filed by a political party.

The admission of a PIL is to be a lesser matter of concern as when the Court finds a welfare issue of the general public at large in question; rare should be the question of considering the same. The Court promptly pointed out a fact that an admission of an existing fact in the state would not amount to ineffective governance rather an acknowledgement of reality, which happens to be an encouraging statement for the government to accept a reality and not bear a defamed tag. The Court stressed on the importance of implementation rather than enactment and did issue directions for the revision and updating of certain legislations which again is mere an order and had not ensured any mechanism by which the implementation could be

ensured. The Court re-pronouncing the statutes bid off its responsibilities without any apt solution for the prevailing condition. The findings of the petitioner being sensible to the Court, the Court made no efforts to provide other orders or injunctions to improve the condition of the drought effected areas but, rephrased and directed the petitioner's prayers. The Court burdening the state government with the right to declare drought if the situations call for so and demanding the Central government to aid the state government in drought related matters have made a fair balance between the two, the same being a diplomatic move which could be appreciated at the instance.

V. CONCLUSION:

The Court has maintained an ostrich like approach rather than the respondents, redefining the idiom, where the Court does acknowledge its powers and did pass decision but is way far from paving a way for the aggrieved petitioner and is an unacceptable condition where the judiciary does not provide a true solution or a proper decision in its conscience to the prevailing situation.