A COMPARATIVE ANALYSIS OF THE IMPACT OF *LOCUS STANDI* ON PUBLIC INTEREST LITIGATION IN NIGERIA AND INDIA

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BING A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, BAYERO UNIVERSITY, KANO IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS (LLM)

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DECLARATION

I hereby declare that this work is the product of my own research efforts; undertaken under the supervision of Professor Muhammad Tabi'u and has not been presented and will not be presented elsewhere for the award of a degree or certificate. All sources have been duly acknowledged.

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Audu Bulama Bukarti (SPS/13/MLL/00021)

CERTIFICATION

This is to certify that the research for this thesis and the subsequent preparation of this thesis by **Audu Bulama Bukarti (SPS/13/MLL/00021)** were carried out under my supervision.

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APPROVAL PAGE

This thesis "**A COMPARATIVE ANALYSIS OF THE IMPACT OF THE DOCTRINE OF *LOCUS STANDI* ON PUBLIC INTEREST LITIGATION IN NIGERIA AND INDIA**" by **Audu Bulama Bukarti (SPS/13/MLL/00021**) has been well examined by us and we hereby approve it for the award of degree of Master of Laws (LLM).

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In the name of Allah, Most Gracious, Most High. For:

My Late Father:

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My Beloved Mother:

Hajiya Falmata Audu Kachallari

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ABSTRACT

Public Interest Litigation (PIL) has been used to achieve such objectives that can hardly be achieved through conventional private litigation such as enhancing access to justice for disadvantaged sections of the society and enhancing accountability of the government to the people. The major obstacle to the development of PIL is the doctrine of locus standi which requires a litigant to have personal and peculiar interest in a matter before they can maintain a law suit. Using the doctrinal research methodology, this work analysed Nigerian and Indian courts' interpretation and application of the doctrine of *locus standi* and how that impacts on PIL in the two jurisdictions. It was found that although both Nigeria and India inherited the common doctrine of locus standi, their approaches to the doctrine differ. While Nigerian courts are generally inclined to strict interpretation and application of the doctrine in other matters and this negatively affects PIL in the jurisdiction, Indian courts gradually liberalised their interpretation and application of the doctrine by allowing public-spirited persons to initiate and maintain law suits without having to show that they have been personally and peculiarly affected by the subject in issue. This shift became a condition sine qua non to the development of PIL in the country. This development paved the way for the liberalization of some major aspects of the Indian procedural law in matters affecting public interest. However, the study also showed that it is critical to ensure PIL does not become a façade to litigate private interests as too liberal approach to *locus standi* may lead to those side effects as noticed from the India experience. The study recommends that Nigeria should borrow a leaf from India by liberalizing its approach to the doctrine of locus standi in matters that affect the public or a section thereof.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Access to justice is a fundamental requirement for the realization of any human rights. This is because all human rights or all justiceable legal claims will be meaningless without a recognized forum of adjudication and enforcement that is easily accessible to all and sundry. Realities of modern societies, coupled with economic inequality, poor governance and historical injustices have combined to make justice inaccessible and a hard earned commodity to the poor.[1] But over the years, some countries have recognized the need to unshackle the poor from this 'bondage' through enhancing the justice delivery machineries.[2] Public Interest Litigation (PIL) has become a veritable tool of enhancing access to justice in the justice system of several countries. It has been used to achieve objectives that can hardly be achieved by conventional private litigation.[3] PIL provides a ladder for justice to the disadvantaged sections of the society such as prisoners, destitute and child or bonded labourers.[4] It also provides an avenue for the enforcement of collective rights and enables civil society organizations not only to spread awareness about human rights, but also to participate in government decision making. In fact, PIL contributes to good governance by keeping the government accountable to the people.[5]

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[1] United Nations Development Programme 'Disadvantaged Groups' in Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice (2005) http://www.apjrf.com/APJRF%20Content/UNDP%20-%20Programming%20For%20Justice%20-%20Access%20For%20All.pdf accessed on 17/05/2016

[2] Examples these countries include India and the United States.

[3] These include checking administrative excesses, enhancing transparency and accountability and promotion of participatory governance

[4] Deva, S., (2009) "Public Interest Litigation in India: A Critical Review" Civil Justice Quarterly Vol. 28 Issue 1, p. 19 at p. 31

[5] *Ibid*

Under the common law and also in Nigeria, initiation of legal actions largely depends on one's personal interest in the subject matter of litigation. This is rooted in the common law principle of *locus standi*. The term '*locus standi*' denotes capacity to institute proceedings in a court of law. It is used interchangeably with terms like 'standing' or 'title to sue'. Since independence, Nigerian courts have upheld this traditional common law position of *locus standi* while ignoring the substance of many claims. In fact, the courts have repeatedly held that for any litigant to successfully maintain a law suit, he must pass the *locus standi* test classically laid down by the Supreme Court[6] In reality, *locus standi* has become a cliché and has assumed significance in litigations in Nigeria.[7] While applying the doctrine of *locus standi* , Nigerian Courts have in several cases held that a public-spirited member of the public who cannot show an interest greater than that of other members of the society cannot successfully maintain a public interest suit.[8] In fact, where the interest of the public is at stake, it is only the Attorneys General of the Federation or the State concerned as the case may be that can institute an action.[9]

This traditional common law position of *locus standi* also obtains in other common law based systems.[10] But the trend is changing in a number of common law jurisdictions through PIL and activist constitutional

[6] In *Senator Abraham Adesanya v. President, Federal Republic of Nigeria & Anor.* (1981) 2 NCLR 358 (hereafter referred to as Adesanya's case)
[7] See for instances the cases of *A. M. Bello v. The Governor of Kano State* (2002) NNLR p. 560, *Adediran vs. Interland Transport Ltd* (1991) 9 NWLR (Pt. 214) 155 and *Adefulu v. Oyesile* (1989) 5 NWLR (Pt 122) p. 377
[8] *Owodunmi v. Reg. Trustees of CCC* (2000) 10 NWLR (pt. 675) 315 @ p. 338, paras F – G and A. M. *Bello v. Governor of Kano State (ibid)*
[9] *Fawehenmi v. President, F. R. N.* (2007) 14 NWLR (1054) p. 275 @ pp. 333 – 334, paras, H – A.
[10] Like England, Australia and Canada

adjudications.[11] For instance, the common law position of *locus standi* has been replaced in India by a liberal PIL approach. Two justices of the Indian Supreme Court, Bhagwati and Iyer JJ[12] prepared grounds for the birth of PIL in India. This included modifying the traditional requirements of *locus standi* by relaxing the requirement that one has to show personal and peculiar injury in order to sustain an action, liberalizing the procedure of filing writs and petitions, creating or expanding the Fundamental Rights provisions of the Indian constitution and evolving innovative remedies.[13] In fact, the modification of the traditional requirement of standing was a condition *sine qua non* to the evolution of PIL and robust public participation in the administration of justice. Socio-economic factors provided fertile ground for the evolution of PIL in India. On account of India being a country where majority of the people were ignorant of their rights or were too poor to approach the court,[14] the Courts of India held that any member of the public acting *bona fide* had a right to approach the court for redress of a legal wrong, especially when the actual plaintiff suffers from some disability or where the violation of collective rights is at stake.[15] Subsequently, merging representative standing and citizen standing, the Supreme Court of India held in *Gupta v Union*[16] of India that:

> Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any

[11]These include India and South Africa. See for instance Article 32 of the Indian Constitution, sections 24 and 38 of the South African Constitution and cases of *Bagnall v. The Colonial Government* (1907) 24 SC 470; *Dalrymple and Others v Colonial Treasurer* (1910) TS 372; *O'Brien v Amm* (1935) WLD 68

[12]These two justices headed various committees on legal aid and access to justice in the 1970s which provided a backdrop to their involvement in the Public Interest Litigation Project. See Cooper, J., (1993) 'Poverty and Constitutional Justice: The Indian Experience' Mercer Law Review, Vol. 44 No. 611, pp. 614 – 615.

[13] *Ibid*, pp. 616 - 632

[14] Deva, S., *op. cit (*n 4)

[15] *Ibid*

[16] (1981) Supp S. C. C. 87, 210

> constitutional or legal right … and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ.

Thus, the court in *Gupta*'s case justified the extension of standing on the basis of the need to enforce the rule of law and provide justice to vulnerable sections of the society.[17] Furthermore, the court observed that the term 'appropriate proceedings' used in article 32 of the Constitution[18] does not refer to the form but to the purpose of the proceedings: so long as the purpose of the proceeding is to enforce a Fundamental Right, any form will do. This interpretation allowed the Court to develop what later came to be known as 'epistolary jurisdiction' by which even letters or telegrams were accepted as originating processes in Fundamental Right issues.[19] These innovations greatly accelerated the development of PIL in India, the result of which is increased access to justice for less privileged members of the society.[20]

Although Nigeria shares a lot of historical antecedents with India in that they were both colonized by the Britain and both inherited a number of common principles and doctrines, both are common jurisdictions, both are liberal democracies with a written constitution and are developing countries and could arguably fit into the same socio-economic equations, *locus standi* still

[17] See Sule, I., (2013) 'Fundamental Rights (Procedure) Rules 2009 and Public Interest Litigation in Nigeria: Some Lessons from India' Kano Bar Journal, Vol. 1, No, 1, p. 38. It is suggested that the way a judge applies the rule of standing corresponds to how s/he sees his/her judicial role in the society. See also Barak, A., (2002) 'Foreward: A judge on Judging: the Role of a Supreme Court in a Democracy' Harvard Law Review Vol. 116 Rev. 16, p. 107

[18] The article 32 (1) of the 1950 Indian Constitution provides "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights contained in this Part is guaranteed."

[19] See Jain, J., (2008) 'The Supreme Court and Fundamental Rights' in Verma and Kusum (eds.) Fifty Years of the Supreme Court of India (New Delhi: Universal Law Publishing Co. Pvt Ltd.) pp. 22 – 37

[20] See Deva, S., *op. cit* (n 4)

rears its head in many forms of litigations in Nigeria. However, a number of changes have occurred that could affect access to justice. In 2009, the Fundamental Rights (Enforcement Procedure) Rules (FREPR) was enacted that brought many changes to fundamental human rights litigation.[21] In addition, since the return to democracy in 1999, the country has introduced a series of constitutional, judicial, economic and political reforms that were designed to enhance the welfare of the citizenry, enhance access to justice, improve governance and consolidate the democratic process. In essence, developments have occurred within the last couple of decades that necessarily call for re-examination of traditional legal principles, including *locus standi*, through research and scholarly discourse, in the light of the developments within[22] and outside the country, and the fact that PIL has become a tool for addressing socio-economic inequalities and political exclusions.[23] Increasing agitations for social justice, good governance and flexibility in human rights jurisprudence has resulted in expanding the compass of justiceable claims across the world. In addition, there is an increasing academic consensus that access to justice is indispensable to the emergence of a free democratic society founded on the ideals of the rule of law and good governance, two inseparable bed fellows that have eluded Nigeria for half a century now. As such, any technical requirement that creates a direct or indirect impediment to the realization and fulfillment of these ultimate goals of the modern welfare state (rule of law and good governance) deserves to be put on the spot light in order to determine whether it has in fact outlived its relevance.

[21] See generally Haruna, B. A., (2010) 'An Analysis of the Fundamental Rights Enforcement Instruments in Nigeria: Past and Present' BUJPL Vol. 2, No. 1

[22] See for example the Preamble to the Fundamental Rights Enforcement Procedure Rule, 2009 which provides that the issue of standing should be raised in any fundamental right litigation and the Supreme Court decision in *Fawehinmi v President* (*op. cit*, n 9) where it was held that in matters bordering on the interpretation of the Constitution, any Nigerian can approach the Court.

[23] See Deva, S., *op. cit* (n 4)

Considering that some countries that share similar socio-economic, political and historical equations with Nigeria[24] have relaxed the traditional common law position of *locus standi*, it will important to attempt a study that will determine the current position of *locus standi* in Nigeria in the light of the developments that have taken place in the country over the years, particularly in the area of human rights litigations.

It is against the above background to the study that the research idea was conceived.

1.2 Statement of Research Problem

In Nigeria, the development of Public Interest Litigation (PIL) has been hindered by Nigerian courts strict interpretation and application of *locus standi*. Realizing benefits of PIL and the challenge of *locus standi*, some common law countries have softened their rigid adherence to the doctrine of *locus standi* by opening up space to facilitate human rights adjudication that is designed to enhance and further entrench the rule of law, good governance and accountability. In spite of the introduction of series of reforms in Nigeria's constitutional system over the past decades,[25] the democratic ideals of good governance, rule of law and accountability have eluded the country. The results include egregious human rights violations, increasing poverty, malnutrition, socio-economic inequalities, destitution, hunger, dwindling productivity and agricultural harvests, dwindling life expectancy, environmental degradation and consequent deprivations.[26] A number of

[24] Like South Africa and India

[25] These include change of the system of government from parliamentary to presidential, changing the structure of government from unitary to Federal and introduction of new constitutional courts like the Federal High Court and the National Industrial Court. Worthy of mention here is also the Access to Justice programme of DFID

[26] Lawan, M., (2011) 'Law and Development in Nigeria: A Need for Activism' Journal of African Law, 55, 59-85. http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8193639 accessed 21/12/2015; Dada, J. A., (2013) 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal' Journal of Law, Policy and Globalization Vol.10;

human rights instruments have been ratified and some even domesticated in the country;[27] in fact, two separate but related chapters of the 1999 Constitution were devoted to the promotion and protection of human rights and democratic governance.[28] Thus, in terms of substantive legal provisions, there are sufficient accountability provisions in the laws in Nigeria. However, procedural technicalities, particularly questions of *locus standi,* have posed serious challenges to the enforcement of justiceable legal claims in Nigeria, thereby compounding the above stated problems. There is certainly a crisis of governance in Nigeria and the one source of solace for particularly the poor citizens (the courts) is loaded with technicalities that obstruct access to justice.[29] If the individual or collective interests of a people are ignored on account of lack of sufficient standing to pursue those interests through litigation, then the quest for justice may seem to be undervalued. The common law requirement of *locus standi* has proven to be a clog in the wheel of the development of PIL. It bars public-spirited person (s) who cannot pass the personal interest and injury tests from maintaining law suits, be they private or public suits. Since the adoption of the current constitutional arrangement in 1979, two modifications which are favorable to PIL are noticeable.[30]

Chiroma, M. G., 'Challenges of Enforcement of Fundamental Human Rights under the Constitution of the Federal Republic of Nigeria, 1999' Being a Long Essay submitted to the Nigerian Institute of Advance Legal Studies (NIALS), University of Lagos Campus in Partial Fulfillment of Requirements for the Award of the Post Graduate Diploma in (Legislative Drafting) (PGDLD), October, 2010

[27] For instance, Nigeria accessioned the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights on 29th July 1993 and ratified: International Convention on the Elimination of All Forms of Racial Discrimination on 16th October 1967, Convention on the Elimination of All Forms of Discrimination against Women on 13th June 1985, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 28th June 2001, Convention on the Rights of the Child on 19th April 1991, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on 25th September 2012, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 2nd October, 2002, among other. See Human Rights Library: Ratification of International Human Rights Treaties – Nigeria available on https://www1.umn.edu/humanrts/research/ratification-nigeria.html accessed 22/12/2015

[28] These are chapters II and IV of the Constitution. It is to be noted that the provisions of Chapter II are only justiceable if and when they activated by the National Assembly using their powers under item 60 (a) of the 2nd Schedule to the 1999 Constitution of the Federal Republic of Nigeria

[29] Agbede, I.O., (2005) "Dynamics of Law Reform Enterprise: Nigerian Experience" Nigerian Bar Journal (5) 3, 50 - 64

[30] These modifications can be seen in the case of *Fawehinmi v. President* (*op. cit,* n 9) and the Fundamental Rights (Enforcement Procedure) Rules, 2009

However, these two modifications are only limited to interpretation of the constitution and enforcement of fundamental rights. It would seem therefore that the situation has not changed with respect to other PIL matters and the strict common law requirements of *locus standi* still apply to them.

1.3 Research Questions

This thesis has the following research questions:

1. What is the perspective of Nigerian courts to the interpretation and application of the doctrine of *locus standi* to PIL cases
2. How does the Nigerian courts interpretation and application of *locus standi* impact on the development of PIL in Nigeria?
3. What is the judicial perspective of India courts to the interpretation and application of the doctrine of *locus standi* to PIL cases
4. What is the impact of such approach to the development of PIL in India?
5. Are there any lessons Nigeria can draw from India?

1.4 Aim and Objectives of the Study

The aim of this research is to critically analyse the impact of *locus standi* to PIL cases in Nigeria. The objectives of this study are:

1. To analyse the interpretation and application of the doctrine of *locus standi* in PIL cases in Nigeria;
2. To examine how the interpretation and application of the doctrine impacts on PIL in Nigeria;
3. To analyse the interpretation and application of the doctrine of *locus standi* in PIL in India.
4. To examine how the interpretation and application of the doctrine in this jurisdiction impacts on PIL;

5. To identify the lessons Nigeria may learn from the experience of India.

1.5 Justification of the Study

This study is significant considering the benefits which PIL provides in promoting democratic accountability in some jurisdictions and the need to have more robust justice system in which PIL can be used to gain the benefits PIL offers. It is therefore pertinent to conduct this study so as bring to the fore the benefits of PIL, the clogs forestalling its development in Nigeria, and how a similar jurisdiction took care of these clogs so that stakeholders such judges, legislatures, scholars, lawyers and students may take heed.

1.6 Scope of the Study

This research will only analyse impact of the interpretation and application of the common law doctrine of *locus standi* to PIL cases in Nigeria and India with a view to highlighting lessons Nigeria could draw.

The study selected India because of a number of factors. First, like Nigeria, India is common law jurisdiction, having similar experience of British colonization which had left British principles and doctrines in their judicial systems. Secondly, whenever and wherever the concept of PIL is discussed, India is cited an example of advance development on the issue. Third, like Nigeria, India is developing countries contending with most of the challenges Nigerian legal system is facing. The two jurisdictions are therefore comparable.

1.7 Methodology

The methodology of this study is the doctrinal research methodology. Using this method, examination of the relevant materials which include primary and secondary sources was carefully conducted with a view to answering the

research questions formulated. It was further employed to compare and contrast what obtains in the two common law jurisdictions of Nigeria and India selected for this study.

1.8 Literature Review

There are a number of works the research was able to consult in the course of this study. The most important of these works are hereunder reviewed.

Ali's "**Effect of *Locus standi* on Access to Justice**"[31] discusses the effect of *locus standi* on access to justice in Nigerian courts. After defining what he called the 'nebulous concept of justice', the author examined the Supreme Court's pronouncements on its commitment to justice rather than mere technicality and crass legalism.[32] He then defined the doctrine of *locus standi* and categorized the Nigerian courts' view on the issue into three, namely, the radicalist view, the strict constitutionist view and the liberalist view.[33] The author went further to discuss how *locus* was used in several cases to refuse public-spirited members of the society access to justice.[34] He then reviewed the duties of a lawyer as a minister in the temple of justice[35] and how *locus standi* may stand on his way to ensuring justice is done and finally called for a liberal interpretation of the doctrine of *locus standi* so that access to justice may be enhanced in Nigeria citing foreign jurisdictions such as Canada and India.[36] This work will important to this study in that it will assist the researcher's conceptual definition of *locus standi* and its effect on access both of which are relevant to this study. However, the author did not cover the

[31] Ali, Y. O., "Effect of *Locus standi* on Access to Justice" Being A Paper Presented at the 1st Annual Memorial Lecture under the Aegis of the Nigerian Bar Association, Abeokuta Branch in Honour of the Late Chief Akitoye Akinbowale Coker, S.A.N and Apena of Egba Land on the 2nd of July, 2006
[32] *Ibid*, pp. 1 and 2
[33] *Ibid*, pp. 2 - 5
[34] *Ibid*, pp. 5 - 10
[35] *Ibid*, p. 11
[36] *Ibid*, pp. 12 - 19

emerging trends in PIL and nor is the work a comparative analysis of the subject.

Ilofulunwa's "***Locus standi* in Nigeria: Impediment to Justice**[37]" is another work. In the article, after defining the doctrine of *locus standi* [38], the author went on to discuss the origin of the problem of *locus standi* in Nigeria by critically examining the decision of the Supreme Court of Nigeria in ***Adesanya v. President & Anor.***[39]. Specifically, the author examined the opinion of Muhammad Bello JSC (as he then was) on the issue of *locus standi* which he said triggered off the problem of the doctrine in Nigeria. He further argued that the Supreme Court was not unanimous in that case and the opinion of Muhammad Bello JSC (as he then was) did not represent the majority view of the Justices that decided that case.[40] The author went further to examine the issue of *locus standi* in other jurisdictions such as England and Gambia and concluded that in other jurisdictions there is a distinction between the test of *locus standi* in private law cases where the interest and injury tests are applied and public law cases where sufficient interest which is given a liberal interpretation is applied. The author finally concluded by calling on our courts to appreciate the fact that the Supreme Court did not by majority decision in *Adesanya*'s case decide that 6 (6) (b) of the 1979 Constitution should be the test for *locus standi* and urged our courts to approach the issue of *locus standi* liberally as done in other jurisdictions.[41] This work will aid the present research in that it has extensively discussed one of the key cases to be analyzed in this study. It also provides a model for this work's comparative

[37] Ilofulunwa, O., (n.d.) "*Locus standi* in Nigeria: An Impediment to Justice" www.lexprimus.com assessed 18/11/2014
[38] *Ibid*, p. 1
[39] (1981) 2 NCLR 358
[40] Ilofulunwa, O., *op. cit*, pp. 1 - 4
[41] *Ibid*, p. 6

analysis. Although this author made comparative analysis of locus in Nigeria with other jurisdictions, he did not compare Nigeria with the jurisdictions proposed for this study. He did not discuss the concept of PIL.

Okeke's "**Re-Examining the Role of *Locus standi* in the Nigerian Legal Jurisprudence**"[42] is a novel contribution in that it looks at the issue of *locus standi* from the other side of the coin. While most contemporary write-ups call for a liberal interpretation of the *locus standi* requirement especially in PIL cases, this author argues in favour of maintaining the *status quo ante*.[43] The author argued that removing the requirement of standing as a condition precedent to the institution of law suit is like stirring the hornets' nest as the consequential influx of legal suits in the Nigerian Legal System would overwhelm the existing facilities presently on ground.[44] Building his recommendation on his conclusion/inference that the requirement for *locus standi* has been removed from the 1999 Constitution rules (Fundamental Rights {Enforcement Procedure} Rules, 2009) and that there would be increased number of law suits, the author recommended that there should be time-frame within which courts must determine matters brought before them.[45] This work is important to this study as it provides arguments in support of strict interpretation and application of *locus standi* which will help this work in looking at the arguments of both the proponents and opponents of the strict application of the doctrine of *locus standi* and strike a balance between the two views. The author's discussion did not specifically cover the effect of *locus standi* on PIL and did not make comparative analysis.

[42] Okeke, G. N., (2013) "Re-Examining the Role of *Locus standi* in the Nigerian Legal Jurisprudence" Journal of Politics and Law Vol. 6, No. 3, p. 209
[43] *Ibid*, p. 213
[44] *ibid*, pp. 212 - 13
[45] *ibid*, p. 13

Gbade's "**Public Interest Litigation as a Catalyst for Sustainable Development in Nigeria**"[46] Examines the prospects and challenges of public interest litigation as a catalyst for sustainable development in Nigeria. The author discussed the philosophical and theoretical basis for the formulation of PIL[47]. The work also discussed the positive influence and contributions of public interest litigation to sustainable development.[48] The article went on to discuss challenges to PIL one of which is *locus standi*,[49] proffered solutions to these challenges.[50] This work is important to this research work as it will enrich this work's discussion on PIL in Nigeria. However, this work did cover the relationship between locus standi and PIL extensively. Furthermore, it is not comparative.

Oyewo's "***Locus Standi* and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts**".[51] This article examines the concept of *locus standi*,[52] its application in Nigeria, the nuances of the court's approach arising from the importation of justiciability,[53] the application of the sufficient interest test, and the nature of *locus standi* that ought to apply in PIL cases.[54] It then discusses the relationship between *locus standi* and jurisdiction[55] before the conclusion and recommendation for clarity of approach by the Nigerian courts.[56] The author argued forcefully that the position of the Supreme Court on locus standi is conflicting and shrouded in uncertainty, and called on the

[46] Gbade, A. O. (2013) "Public Interest Litigation as a Catalyst for Sustainable Development in Nigeria" OIDA International Journal of Sustainable Development 06:06, pp. 85 - 98
[47] *Ibid*, pp. 88 - 89
[48] *Ibid*, pp. 94 - 98
[49] *Ibid*, pp. 91 - 94
[50] *Ibid*, p. 99
[51] Oyewo, O. (2016) "*Locus Standi* and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts" International Journal of Scientific Research and Innovative Technology Vol. 3 No. 1 available on http://www.ijsrit.com/uploaded_all_files/2785964699_p8.pdf accessed on 23/09/2016, pp. 78 - 99
[52] *Ibid*, pp. 79 - 81
[53] *Ibid*, pp. 82 - 90
[54] *Ibid*, pp. 90 - 98
[55] *Ibid*, pp. 98 - 99
[56] *Ibid*, p. 99

court to use the next possible opportunity to resolve the seeming conflict on the issue.

Sule's "**Fundamental Rights (Enforcement Procedure Rules 2009 and Public Interest Litigation in Nigeria: Some Lessons from India**"[57], investigates whether or not the enforcement of fundamental rights rules enacted in 2009 did anything to practically enhance and support public interest litigation in Nigeria. Most importantly the article x-rayed the innovations of the rules and their implications on public interest litigation,[58] discussed the position of *locus standi* in Nigeria[59] and concluded that even with the introduction of the new rules, the doctrine of *locus standi* which is an uncertain and ambiguous concept continues to be an enigma in the Nigerian jurisprudence as far as it concerns PIL.[60] It finally established how Nigeria could learn valuable lessons on the issue of PIL from the Indian example.[61] This work will contribute to the present study in that it exposes some of the inadequacies of the current law encouraging public interest litigation in human rights cases and gives a model for comparing the current position of Nigerian law with that of India. This author only covered FREPR, 2009 and only discussed what obtains in India.

Chinyere's "**Access to Justice in Nigerian Criminal and Civil Justice Systems**"[62] deals essentially with the concept of access to justice in Nigerian civil and criminal justice systems. It studies the factors that influence it, notably, delay and corruption. It further examines the various laws; both

[57] Sule, I., *op. cit* (n 17)
[58] *Ibid*, pp. 39 - 47
[59] *Ibid*, pp. 47 - 51
[60] *Ibid*, p. 51
[61] *Ibid*, pp. 52 - 55
[62] Chinyere, A. C. "Access to Justice in Nigerian Criminal and Civil Justice Systems" available on https://www.academia.edu/16870444/AccesstoJusticeinNigeria accessed on 18/09/2016

international and domestic that guarantee access to justice for Nigerians and considers how these laws have been deployed to widen the access to justice in Nigeria. The first segment discusses the avenues for accessing justice. It considers the international and regional courts and committees like the International Court of Justice, the United Nations Human Rights Committee, the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, the ECOWAS Court, and the Nigerian judiciary.[63] The second segment deals with access to justice in criminal matters. It discusses the right to counsel and legal aid for indigent criminal defendants.[64] Plea Bargain and restorative justice or justice for victims of crimes is also discussed.[65] This article is important to this work as it will help enrich this work's discussion on the concept of access to justice. Even though the author touched on *locus standi* and PIL, the discussions on these issues are far from extensive.

Ekeke's "**Access to Justice and *Locus Standi* before Nigerian Courts**"[66] focuses on how *locus standi* inhibit access to justice before Nigerian courts. The study looks at the context of the interpretation of the principle of *locus standi* by Nigerian Courts and its effect on access to justice and public interest litigation by NGOs and individuals.[67] It also examines the impact of the provision for *locus standi* of the Fundamental Rights (Enforcement Procedure) Rules 2009.[68] It then provides an analysis of the interpretation of *locus standi* in other common law jurisdictions such as Kenya, India, United

[63] *Ibid*, 4 - 22
[64] *Ibid*, 22 - 44
[65] *Ibid*, 45 - 50
[66] Ekeke, A. C. (2014) "Access to Justice and Locus Standi before Nigerian Courts" being an LLM Thesis submitted to the University of Pretoria in Partial Fulfilment of the Requirements for the Award of the Degree of Master of Laws (LLM) available on http://repository.up.ac.za/dspace/bitstream/handle/2263/43108/Ekeke_Access_2014.pdf?sequence=3&isAllowed=y accessed on 23/09/2016
[67] *Ibid*, pp. 11 - 33
[68] *Ibid*, pp. 40 - 48

Kingdom and South Africa and compares such interpretation with what obtains in Nigeria.[69] The work finally concluded that Nigerian courts strictly interpret the doctrine of *locus standi*, that strict interpretation of locus standi hinders access to justice; Nigerian courts are isolated in their strict interpretation of the doctrine as other common law jurisdictions have liberalized their interpretation if same and advocated that Nigerian courts should borrow a leaf from other jurisdictions.[70] This work is very important as it is closely related to the present research work. However, the study did not cover PIL and its discussion on India is not extensive.

Feldman's "**Public Interest Litigation and Constitutional Theory in Comparative Perspective**"[71] This article focuses on the way prevailing ideas of democracy and constitutionalism shape the capacity of private citizens to use the forms, procedures and substance of public law, and particularly constitutional law, to advance public political aims. It first distinguishes between interest group litigation and public interest litigation, and outlines some issues which affect the constitutional and political legitimacy of the latter.[72] It goes further to examine *locus standi* rules: their relationship with cultural factors, and their effects on public interest litigation by citizens under different constitutions.[73] It then examines how structural features of constitutions affect judges' freedom to allow public interest litigation, and explores ways in which four particular features of constitutions, namely, democracy, federalism, ideological interests and human rights, may limit the range of constitutional ethical norms which are available to judges in public

[69] *Ibid*, pp. 50 - 94
[70] *Ibid*, pp. 96 - 98
[71] Feldman, D. (1992) "Public Interest Litigation and Constitutional Theory in Comparative Perspective" *The Modern Law Review* **55:** 1, 44 - 72
[72] *Ibid*, 45 - 51
[73] *Ibid*, 51 - 56

interest disputes[74] and suggests some implications which all this has for constitutional theory.[75] This article enriches this study's discussion on PIL. It however does not cover *locus standi* and the discussion is not in the Nigerian context.

Odeku's and Animashaun's "**Poverty, Human Rights and Access to Justice: Reflections from Nigeria**"[76] highlights obstacles that the poor encounters when seeking justice and suggests policy responses for overcoming them. Article begins with the meaning of poverty and its impact on human rights and access to justice.[77] analyses the concept of fundamental rights as enshrined in the 1999 Nigerian Constitution and the impact on the rights of the poor to access justice. It then examines access to justice in the Nigerian context highlighting obstacles to effective access to justice in Nigeria which include illiteracy, economic cost, inordinate delays distance, mistrust, etc.[78] it concludes by making a case for concerted effort to reduce corruption, the need to restructure the legal system, reform, reorganize and re-orient law enforcement agencies among others.[79]

Muftau's "**Access to Judicial Justice in Nigeria: the Need for Some Future Reforms**"[80] ex-rays and elaborates on some of the challenges and many other factors that inhibit easy access to judicial justice in Nigeria. The work examines the concept of justice vis-à-vis section 6 (6) (b) of the Constitution which allows the citizens to seek redress in a court of law against any

[74] *Ibid*, 56 - 70
[75] *Ibid*, 70 - 72
[76] Odeku, K. and Animashaun, S. (2012) "Poverty, Human Rights and Access to Justice: Reflections from Nigeria" African Journal of Business Management 6.23 available http://search.proquest.com/openview/f489f99f3afca07d564e4bad397b2a54/1?pq-origsite=gscholar accessed on 23/09/2016, pp. 6754 - 6764
[77] *Ibid*, pp. 6755 - 6757
[78] *Ibid*, 6757 - 6762
[79] *Ibid*, pp. 6762 - 6763
[80] Muftau, R. (2016) "Access to Judicial Justice in Nigeria: The Need for Some Future Reforms" Journal of Policy, Law and Globalization Vol. 47, pp. 144 - 158

violations of their civil rights[81] and highlights some constraints inhibit access to justice in Nigeria as the language of the court, inbuilt challenges, appeal system, conditions precedent, illiteracy, cost of litigation, etc.[82] It finally makes recommendations for future reforms to enhance access to justice.[83] This article will contribute to this work's exposing of the concept of access to justice. However, it does not cover the impact of *locus standi* on access to justice nor does it touch on how PIL could enhance access to justice.

Taiwo's "**Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: a Need for a more Liberal Provision**"[84] explores the scope of *locus standi* in section 46 of the 1999 Constitution of the Federal Republic of Nigeria. It begins by exploring the concept of *locus standi* under the common law and then under the Nigerian law.[85] It then explores public interest litigation in constitutional interpretation[86] and *locus standi* in fundamental rights enforcement discussing some constraints bedeviling enforcement of fundamental rights.[87]It observed that the section contains a restrictive and narrow provision on *locus standi*. It finds that this narrow provision has the regressive effect of limiting access to court and it invariably constitutes an impediment or constraints on the enforcement of fundamental human rights in the country and highlights the discussion surrounding of *locus standi* in fundamental rights litigations. It discusses the roles of the judiciary, politicians and civil society in ensuring a flexible interpretation of *locus*

[81] *Ibid*, pp. 144 - 146
[82] *Ibid*, pp. 146 - 151
[83] *Ibid*, pp. 154 - 156
[84] Taiwo, E. A. (2009) "Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for a more Liberal Provision" Afr. hum. rights law j. vol.9 n.2 available http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962009000200009 accessed on 23/09/2016, pp. 546 - 575
[85] *Ibid*, 551 - 558
[86] *Ibid*, 558 - 561
[87] *Ibid*, 562 - 574

standi.[88] This work is an important reference material for the present study. However, it does discuss the relationship between *locus standi* and PIL.

Otteh's "**Litigating for Justice: a Primer on Public Interest Litigation (PIL)**"[89] discuses the meaning, history and role of PIL.[90] It surveys PIL in the United States, India, Uganda, South Africa, Nigeria and across other jurisdictions, and found that even though the construct, usage and characteristics of PIL differ, sometimes widely, across jurisdictions, but the sense in which it is understood, particularly amongst activists, scholars and jurists across much of the world now is coalescing around a dynamic access to justice concept or artifice, representing anything necessary to be done to alleviate specific human rights, environmental or developmental problems through the legal process.[91] It finally makes a case for advancing PIL.[92] This work is an important reference material for this work as it will provide same with extensive discussion of PIL across jurisdiction. However, the study did not cover the impact of *locus standi* on PIL.

Chidinma's "***Locus Standi* as an Obstacle to Environmental Justice in Nigeria**"[93]discusses *locus standi* as one of the three poignant challenges to environmental justice in Nigeria after discussing the concept and test of the doctrine.[94] It then examines the interpretation and application of the doctrine of *locus standi* to environmental litigations in the foreign jurisdictions of

[88] *Ibid*, pp. 570 – 573, 575
[89] Otteh, J. (ed.) (2012) "Litigating for Justice: a Primer on Public Interest Litigation (PIL)" available on http://accesstojustice-ng.org/Litigating%20for%20Justice.pdf accessed on 17/09/2016
[90] *Ibid*, 7 - 22
[91] *Ibid*, 35 - 87
[92] I*bid*, 97 - 105
[93] Chidinma, A. N. (2012) "Locus Standi as an Obstacle to Environmental Justice in Nigeria" available on https://www.scribd.com/doc/126890036/Locus-Standi-as-an-Obstacle-to-Environmental-Justice-in-Nigeria accessed on 23/09/2016
[94] *Ibid*, pp. 30 - 38

India,[95] Kenya and the United Kingdom after which in concluded that while Nigerian courts' interpretation of locus standi is restrictive, that of India, Kenya and United Kingdom is liberalized in different degrees[96] and recommended that Nigeria should borrow a leaf in order to enhance access to justice in environmental litigations.[97] This article is important in that it extensively discussed one of the concepts the present work will be dwelling on. It however did not deal with other aspects of public interest litigation such as human rights.

Aduba & Oguche's "**Key Issues in Nigerian Constitutional Law**"[98] discusses central issues in Nigerian constitutional law one of which is the doctrine of *locus standi*. Locus standi was discussed in Chapter Twelve of the book.[99] In this chapter which is entitled "Judicial Interpretation of the Principle of *Locus Standi* in Nigeria", the authors discussed the meaning of *locus standi*,[100] *locus standi* to enforce fundamental rights,[101] justification for the restrictive application of *locus standi* rule in PIL cases,[102] and gives example of cases in which the issue of locus standi was raised and how it was resolved by the courts.[103] This book is important as it will provide insight into the judicial attitude towards locus standi in Nigeria. It will also be useful in its discussion on the reason for the restrictive application of the doctrine to PIL cases. However, the book's discussion of PIL is far from being in-depth and does not cover discussion on other jurisdictions' interpretation of *locus standi*.

[95] *Ibid*, pp. 44 - 49
[96] *Ibid*, pp. 49 - 52
[97] *Ibid*, pp. 58 - 64
[98] Aduba, J. N. & Oguche, S.(2014) "Key Issues in Nigerian Constitutional Law" (Abuja: Nigerian Institute for Advance Legal Studies)
[99] *Ibid*, 328 – 374
[100] *Ibid*, 330 - 342
[101] *Ibid*, 342 – 352
[102] *Ibid*, 352 - 358
[103] *Ibid*, 358 - 370

Balakrishnan's "**Growth of Public Interest Litigation in India**"[104] summarizes the core features of the PIL process and demonstrates how it is different from the common law understanding of judicial process.[105] The author then presented an overview of the circumstances that led to the introduction of PIL into India.[106] He then surveyed some prominent PIL decisions. The author finally discussed how some litigants use PIL cases to advance personal rather than public interest, how the courts overstep their domain and reflected on some strategies used to streamline the institution of cases under PIL. This work contributes to the present study's understanding of the concept and application of PIL in India, it gives specific example which contribute in clarifying the concept of PIL[107] and highlights what he called 'the dark side of PIL' as seen in Indian experience.[108] All the aforementioned are important to the present research. This author's discussion covers only India and did not specifically discuss the doctrine of locus and its impact on PIL cases. The work did not cover Nigeria.

Sen's "**Public Interest Litigation in India: Implications for Law and Development**"[109] raised a lot of very important issues relating PIL in India. In it, the author critically examined the PIL regime in India as a case study of the initiation of substantive, institutional and procedural reforms for reaching the developmental goals of PIL by an 'insider' institution which is the Supreme Court of India.[110] After briefly discussing the historical origins of PIL in

[104] Balakrishnan, K. G., "Growth of Public Interest Litigation in India" Being an Address Presented at the Singapore Academy of Law Fifteenth Annual Lecture on 8/10/2008
[105] *Ibid*, pp. 2 - 4
[106] *Ibid*, pp. 6 - 11
[107] *Ibid*, pp. 12 - 17
[108] *Ibid*, pp. 18 - 20
[109] Sen, S., "Public Interest Litigation: Implications for Law and Development" on www.http//.mcrg.ac.in accessed 18/11/2014
[110] *Ibid*, p. 5

India,[111] the article went on to examine how PIL has seen to the elaboration of rights jurisprudence by the Supreme Court of India.[112] It went further to look at how the expansion of the *locus standi* rule was used as a PIL strategy to increase popular participation and liberalization of judicial access. The article then examined how the courts' PIL judgements aiming to better enforce constitutional guarantees and social welfare legislation have tried to secure government's accountability and protect against state lawlessness and corruption. It also looked at how the courts' flexible interpretation of their powers under Article 32 (2) of the Indian Constitution has expanded their writ jurisdiction to carve out remedies that appear to significantly sift the line between adjudication and administration. It finally summarized the major criticisms against PIL in India and tried to debunk some of them, and concluded that PIL allows the court to act as a catalyst for democratic pressures to develop to make recalcitrant governments act.[113] This work contributes immensely to this study's conceptualization of PIL and its contribution to development. Like the preceding author, this author's discussion is not comparative covers only India and did not specifically discuss the doctrine of *locus standi* and its impact on PIL cases. The work did not cover Nigeria.

Deva's "**Public Interest Litigation in India: a Critical Review**"[114] offers a critical review of the PIL regime in India with a view to bringing to light those objectives of the Civil Justice System which could be achieved by PIL that can hardly be achieved through conventional private litigation.[115] The author did

[111] *Ibid*, pp. 7 - 8
[112] *Ibid*, pp. 8 - 13
[113] *Ibid*, pp. 13 - 17
[114] Deva, S., *op. cit* (n 4)
[115] *Ibid*, p. 19

this after examining the judicial moulding of the doctrine of standing, procedure, substance and reliefs in PIL cases[116] through what he called 'the three phases of PIL'.[117] After presenting the debate over the labeling of PIL,[118] it furthermore highlighted the dark side of PIL as it could be used to serve as a façade to fulfill private interests, settle political scores or gain easy publicity unless good measures are put in place to check this. It also discussed how PIL could be used by the judiciary to run the country on a day-to-day basis and thereby entering the legitimate domain of the executive and the legislature[119] and concluded that the challenge before states is to strike a balance by allowing legitimate PIL cases and discouraging frivolous ones. The article finally suggested ways to achieve balance between the two extremes.[120] This work will contribute to the present research in its conceptualization of PIL and its evolution in India. Like the two previous authors, this author's discussion is not comparative as covers only India and did not specifically discuss the doctrine of *locus standi* and impact on PIL cases. The work did not cover Nigeria.

That the literature reviewed will immensely contribute to the present study in its conceptualization and discussion of the concepts under study. The literature did not cover the position of the doctrine of *locus standi* in relation to PIL in Nigeria. Similarly, none of them analysed the interpretation and application of the doctrine of *locus standi* in the two jurisdictions for this study. It is in view of this that this study seeks to analyse the impact of the doctrine of *locus standi* on PIL with a view to exposing the negative effects of its strict

[116] *Ibid,* pp. 23 - 26
[117] *Ibid,* pp. 27 - 29
[118] *Ibid*, pp. 26 - 27
[119] *Ibid*, pp. 33 - 38
[120] *Ibid,* pp. 38 - 40

application of the doctrine of *locus standi* on PIL and discussing how the doctrine of *locus standi* was liberally applied in other jurisdictions and the benefit they derived therefrom. The study advocates for a changed judicial attitude towards the interpretation and application of *locus standi* in Nigeria. Finally, it highlights the dark side of the complete removal or too liberal interpretation of *locus standi* which could act as stirring the hornets' nest as the consequential influx of legal suits in the Nigerian legal system may overwhelm the existing legal facilities presently on ground as noticed in the Indian experience and advocate for a careful balancing of this double-adged sword.

1.9 Organizational Layout

This study consists of six (6) chapters. The first chapter is introductory in nature. It begins by giving a general background of the study. It identifies the research problem and raises the main research questions it sets to answer. It also defines the scope of the study, highlights its aims and objectives and provides its justification. It then explains the methodology the researcher used in carrying out the study and reviews available relevant literature in this field. It provides the study's organizational layout, definition of key terms and bibliography.

The second chapter is devoted to conceptual discourse. It discusses the doctrine of *locus standi*, starting from its meaning and philosophy to its history. It discusses the concept of access to justice from it meaning to those factors inhibiting access to justice in Nigeria. It then discusses the concept of Public Interest Litigation. This includes the meaning of the concept, its history, its advantages and disadvantages and other issues related to these.

The third chapter is dedicated to the application of the doctrine of *locus standi* in Nigeria. Included in the chapter is Nigerian courts' interpretation of the *locus standi*, the relationship between *locus standi*, *locus standi* in fundamental enforcement and the statutory relaxation of *locus standi*.

The fourth chapter discusses PIL in Nigeria; it deals with the history of PIL in Nigeria, the interpretation and application of the doctrine of *locus standi* to PIL cases in Nigeria and other factors militating against the development of PIL in Nigeria.

The fifth chapter discusses PIL and *locus standi* in India. It discusses Indian courts interpretation and application of locus standi, Indian courts liberalization of the doctrine in PIL cases and further liberalization of the entire PIL system. It also discusses the impact of the relaxation of the locus standi principle in PIL cases and the contributions of PIL in India. The chapter also highlights the lessons Nigeria could learn from the foreign jurisdiction studied, among other things.

The sixth chapter which is the final one will be the concluding chapter. It presents summary of the study. It also presents findings, observations and conclusions of the study and recommendations made.

1.10 Definition of Key Terms

Unless where otherwise is expressly stated, in this work the following terms carry the following meanings:

Public interest litigation: this means a legal action initiated in a Court of Law for the enforcement of public interests or general interests in which the public

or class of the community have pecuniary interest or some interests by which their legal rights or liabilities are affected.[121]

Locus standi refers "a place of standing; standing in court. A right of appearance in a court of justice or before a legislative body on a given question."[122]

Epistolary Jurisdiction:

Epistolary jurisdiction is a procedure invented by Indian courts whereby an applicant simply approaches the Court for the enforcement fundamental of rights by writing an ordinary letter or post card to any judge of the high court.

[121] *The Black's Law Dictionary* (6th edn)
[122] *Ibid*

CHAPTER TWO

CONCEPTUAL DISCOURSE OF THE DOCTRINE OF*LOCUS STANDI,* ACCESS TO JUSTICE AND PUBLIC INTEREST LITIGATION

2.1 Introduction

This chapter dwells on the meaning and conceptual basis of the doctrine of *locus standi* and briefly explores the global trends regarding its application. The doctrine of *locus standi* is of global significance, having featured in the most prominent legal systems of the world. The idea is founded on fundamental legal conceptions regarding the enforcements of the rights and duties of litigants which is part of the theme of the present research. The interpretation and application of the concept in some selected jurisdictions will be reviewed in this chapter. The jurisdictions are Australia, Canada, England and the United States. These jurisdictions were chosen because they are usually held up as presenting well developed systems for judicial protection of rights and share common law heritage with Nigeria and India and on which the study will more specially focus.

The chapter also discusses the concept of public interest litigation from a multi-jurisdictional perspective. It presents the meaning of the concept and proceeds to the debate as to whether it is Public Interest litigation (PIL) or Social Action Litigation (SAL). The chapter presents a brief but concise discourse on the evolution and trends of PIL in some select jurisdictions after which the importance of the PIL and some criticisms against it were presented.

2.2 Nature of *Locus Standi*

A convenient starting point for the present purpose is to discuss and provide some operational definitions of the *locus standi* as a legal doctrine before

proceeding to Public Interest Litigation which is a later development. It is important to contextualize the discussion by first examining the meaning of the principle of *locus standi* , its 'universality' or otherwise and then situate the research within a broader debate on access to justice, citizen litigation rights versus their duty to the law as well as the socio-legal divide that feeds the debate.

2.2.1 Meaning of *Locus standi*

Etymologically, the expression '*Locus standi*' is a derivative of two Latin words: '*Locus*' which means 'place' and 'Standi' which means 'standing'. When put together, *locus standi* means 'place of standing' or 'place to stand' or 'a place for standing'.[123]It has been defined by the Black's Law Dictionary[124] as "the right to bring an action or to be heard in a given forum; STANDING."

The term has also been judicially defined to denote the legal 'capacity to institute proceedings in a court of law.'[125]Similarly, Ilofunluwa defines *locus standi* as the 'right of an individual or group of individuals to bring an action before a court of law for adjudication".[126] Bonine sees it as 'the gateway to access to justice'[127]

A community reading of judicial interpretations of the doctrine of *locus standi* across major common law jurisdictions reveals that the doctrine simply postulates that a party must be injured or at least affected by an act which he is assailing to be unconstitutional or illegal before he will be accorded the right

[123] www.colinsdictionary.com/dictionary/locusstandi accessed on 22/09/2015 at 11:05pm
[124] (7th edn)
[125] *Fawehenmi v. President (op. cit*, n 9*)*
[126] Ilofulunwa, O., *op. cit* (n 37) p. 4
[127] See Bonine, J. E., (1999) 'Standing to Sue: The First Step In Access to Justice' file:///C:/Users/username/Downloads/Standing%20to%20Sue%20%20The%20First%20Step%20In%20Access%20to%20Justice.htm accessed 18/12/2015

to be heard by any judicial authority. It operates to deprive a party of the right to institute an action on the ground that he lacks connection or sufficient connection with the subject matter of the action.[128]Standing or *locus standi* is the term for the ability of a party to demonstrate to the court sufficient connection to and/or harm which he will suffer from the law or action he seeks to challenge so as to support or justify his participation in the case.

This doctrine became a key principle of the common law since at least the Magna Carta, 1215[129]. It has spread to many countries of the world. The doctrine is now interpreted in different countries of the world in any, a combination or all the following senses:

1. The party is directly subject to an adverse effect by the statute or action in question, and the harm suffered will continue unless the court grants relief in the form of damages or a finding that the law either does not apply to the party or that the law is void or can be nullified. This is called the "something to lose" doctrine,[130] in which the party has standing because they directly will be harmed by the conditions for which they are asking the court for relief. This confers locus on the party in question in almost all countries of the world.
2. The party is not directly harmed by the conditions by which they are petitioning the court for relief but asks for it because the harm involved has some reasonable relation to their situation, and the continued existence of the harm may affect others who might not be able to ask a court for

[128] *Fawehenmi v. President (supra* {n 9}*)* p. 300
[129] www.ibal.bmth.ac.uk/pdf_doc/86.pdf accessed 22/09/2015
[130] Referred to In Otoo, F. K., (2015) 'Legal and Equitable Rights of our Ancestors' Journal of Law, Policy and Globalization, 39, www.iiste.org/Journal/index accessed on 22/09/2015

relief. In Nigeria for example, an action could be challenged by any person for being unconstitutional.[131]

3. The party is granted automatic standing by an Act of parliament. For example, under section 51 of the Fiscal Responsibility Commission Act, 2007, every person has the legal capacity (capacity) to enforce the provision of the Act without having to establish *locus standi*. In the same vein, under some environmental laws in the United States and South Africa, a party may sue someone causing pollution to certain waterways without a federal permit, even if the party suing is not harmed by the pollution being generated.[132]

2.2.2 Philosophical Origin of the Principle of *Locus standi* and Access to Justice

The idea of commencing a legal action in a recognized judicial forum for adjudication is almost universal. It could be traced to the beginning of our civilized existence and the formation of political communities for the maintenance of peace and security while guaranteeing survival for all law abiding citizens through the collective protection of individual freedoms and natural demands.[133] Thus, the social contractarians' notion of the state of nature when life was, in the famous words of Hobbes, 'brutish, nasty and short' is antithetical to this idea because 'animalistic tendencies' for dispute resolution in a state of nature cannot accommodate the claims of the weak, the discriminated and the poor and therefore only the strong can have 'justice' in such period. The quest for justice which animates the idea of the rule of law is

[131] See *Fawehenmi v. President (op. cit*, n 9*)*
[132] See for example the South African National Environmental Management Act, 2007
[133] Fukuyama, F., (2011) 'The Origins of Political Order' New York: Farrar, Straus and Giroux

only attainable where aggrieved members of the society have an acceptable forum for a fair redress.[134]

The traditional justification of the principle of *locus standi* seems to be grounded in the idea that individuals must not take the law into their hands. Citizens must allow the state machineries of justice to function and while they function people cannot expect them to address or remedy every wrong in the society. This concept is a reflection of the action popularis (popular actions by any citizen) and 'intereses diffusas' (diffused interest).[135]

Contextualizing his support to unimpeded *locus standi* from the perspective of access to justice, Bonine argues that:

> If democracy is for all, if the rule of law is for all, and if justice is for all, then standing should be for all as well. To put it in the proper order, where standing *is* available to all, democracy, the rule of law, and justice are more likely to be for all as well.[136]

2.2.3 Requirements of *Locus Standi*

Through a long line of cases, certain ingredients have been formulated as the basic requirements of standing. They are summarized as follows:

1. **Injury-in-fact:** The plaintiff must have suffered or will imminently suffer injury - an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent (that is, neither conjectural nor hypothetical; not abstract). The injury can be either economic, non-economic, or both.
2. **Causation:** There must be a causal connection between the injury and the conduct complained of, so that the injury is fairly traceable to the

[134] Bonine, J. E., *op. cit* (n 74)
[135] *Ibid*
[136] *Ibid*

challenged action of the defendant and not the result of the independent action of some third party who is not before the court.

3. **Redressability:** It must be likely, as opposed to merely speculative, that a favorable court decision will redress the injury.

2.2.4 Rationale of *Locus standi*

The doctrine of *Locus standi* is an old private common law principle which was formulated in the course of time to achieve some objectives or purposes. Firstly, it has been argued that the doctrine was developed in the first place under both English and Roman-Dutch laws to ensure that courts play their proper function in any constitutional democracy where the rule of law and the doctrine of separation of powers underlie the constitutional system, namely, that courts will not make law, but merely apply the law by adjudicating disputes that are ripe for adjudication and not prospective and hypothetical cases.[137]

Secondly, the doctrine was developed to, in a way, prevent the floodgates from opening where busybodies, meddlesome interlopers, cranks and other mischief makers could take up any case and bring it before the court regardless of their interest in the matter or the outcome thereof. In a sense, the doctrine serves a gate keeping function. Thirdly, this legal situation was born out of the focus of private law litigation on the protection and vindication of private interest or right. While discussing the rationale behind the doctrine of *locus standi* , G. N. Okeke notes:[138]

In order to exclude characters who have no interest at stake in a matter from meddling with it, the road to litigation has been made narrow by virtue of the

[137] Okeke, G. N., *op. cit* (n 42)
[138] *Ibid*

legal construction of the *locus standi* principle. This construction is a contentious act of protecting a legal system from being inundated and over whelmed by pieces of litigations, half or more than half of which are grossly superficial and artificial. This protection, therefore, operates like a sieve tube, the aid of which is employed to separate the substance of a thing from the chaff or unwanted contaminants.

2.2.5 Criticisms against the Doctrine of *Locus standi*

The doctrine of *locus standi* has suffered serious criticisms especially as it relates to PIL. It has been opined that the doctrine hinders access to justice. Ali, SAN[139] aptly described this when he submitted that ready access to the court is one of the attributes of a civilized legal system, and rigid adherence to the ubiquitous principle inherent in *locus standi* which is whether a person has the standing to sue in a case will amount to taking that fundamental attribute away. He further submitted:

Denial of Access to court will result to unbridled profligacy, perfidy and corruption in high places. That means that the citizenry has been finally caged! And where does this take us? Clearly into the precincts of tyranny, dictatorship, fascism and in the foreseeable future, anarchy![140]

In conclusion, the author advocated for urgent legal, constitutional, judicial changes and re-orientation to address the vexed issue of *locus standi* in Nigeria.[141]

In the same breath, Lord Diplock was very categorical regarding the effect of *locus standi* on access to justice when he remarked in *Inland Revenue*

[139] Ali Y. O., *op. cit* (n 31)
[140] *Ibid*, p. 15
[141] *Ibid*, p. 16

Commissioners v. National Federation of Self Employed and Small Business Ltd[142]thus:

> It would in my view be grave lacuna in our system of public law if a pressure group like the Federation or even a single public-spirited taxpayer were prevented by outdated technical rules of locus from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

It also been opined by yet another author[143] while discussing *locus standi* in the Nigerian legal system as one of the obstacles to the protection of human rights thus:

Other factor that is often used to preclude access to courts in Nigeria is the overused concept of *locus standi* . This could indeed create a formidable obstacle in the quest for the protection of human rights.

As we shall discuss later in the research, the above objections and criticisms may not be entirely empty or misplaced because it can be argued in a sense that the doctrine of *locus standi*, by directly preventing litigants from maintaining a law suit until and unless they can establish *sufficient interest* in the matter in question, impliedly prefers that an illegality should continue than to accord a person who has no sufficient interest to get that illegality righted.

2.2.6 Position and Application of *Locus standi* in Some Jurisdictions

The doctrine of *locus standi* whose interpretation and application was initially strict in many common law jurisdictions has been going through a lot of transformation which is at different stages in different countries of the world. The doctrine has been treated differently across jurisdictions but there are

[142] (1981) 2 WLR 723 @ 740

[143] Okogbule, N. S., 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects' http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=145040 accessed 26/8/2015

three discernible approaches across all jurisdictions: judge-made standing law, constitutional standing, and statutory standing.[144] As discussed hereunder, the acceptance or otherwise of the doctrine depends on the peculiar legal and political history of individual countries. As a constitutional issue, some jurisdictions have made explicit provision such as in Nepal[145] and Botswana[146] while others enliven it through judicial activism supported by implicit constitutional provisions like in India and Tanzania.[147] For instance, article 88 (2) of Nepal's Constitution provides that the Supreme Court shall have the extra ordinary power to issue necessary and appropriate orders to protect rights in suits of "public interest or concern" while section 18(1) of the Botswana Constitution, allows any person who alleges a violation of the Constitution to apply to a court for redress.[148] What is remarkable from the cases is that all four countries are developing countries with almost similar democratic credentials and socio-economic indices like Nigeria.

Now, it is important to consider the approaches of the more advanced legal systems on this matter.

Canada

In Canadian administrative law, whether an individual has standing to bring an application for judicial review, or an appeal from the decision of a tribunal, is governed by the language of the particular statute under which the application or the appeal is brought. Some statutes provide for a narrow right of standing while others provide for a broader right of standing. For example, under s. 18(1) the Canadian *Federal Court Act*, an application for review may be made

[144] Bonnie, J. E., *op cit*
[145] *Ibid*
[146] *Ibid*
[147] *Ibid*
[148] *Ibid*

by "anyone directly affected by the matter in respect of which the relief is sought"

However, the Canadian law generally allows a litigant to bring a civil action for a declaratory judgement against a public body or official in respect of actions done or purported to have been done in official capacity. This is considered an aspect of administrative law, sometimes with a constitutional dimension, as when the litigant seeks to have a legislation declared unconstitutional.

United Kingdom

In British administrative law, the applicant needs to have a *sufficient interest* in the matter to which the application relates.[149] This *sufficient interest* requirement had been hitherto strictly interpreted and applied by courts in both private and public litigations. However, it has later been construed liberally by the courts especially in public law cases. As Lord Diplock puts it:[150]

[i]t would...be a grave *lacuna* in our system of public law if a pressure group...or even a single public spirited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

The contemporary situation in the United Kingdom is that standing no longer presents an insurmountable challenge to public interest litigation.[151]

Australia

Australia has a common law understanding of *locus standi* which is expressed in statutes such as the Australian Administrative Decisions (Judicial Review)

[149] Senior Courts Act 1981 s.31(3)
[150] *Inland Revenue Commissioners Appellants v National Federation of Self-Employed and Small Businesses Ltd.* [1982] A.C. 617
[151] Holder, J., and Lee, M., (2007) *Environmental Protection, Law and Policy Text and Materials* 379 (Cambridge: Cambridge University Press, 2nd ed.)

Act, 1977(ADJR) and common law decisions of the High Court of Australia especially the popular case of *Australian Conservation Foundation v Commonwealth* (1980).[152] The tests for Standing are: does the party have a special interest in the matter?[153]Is that interest too distant?[154]

Like in the above jurisdictions, there is no open standing[155] unless a particular statute allows it[156] or where needs of a specified class of people demands it. The issue is one of remoteness.[157] Standing may apply to class of aggrieved people,[158]where essentially the closeness of the plaintiff to the subject matter is the test.[159]Furthermore, a plaintiff must show that he or she has been specially affected in comparison with the public at large.[160]

Also, while there is no open standing *per se* in Australia, prerogative writs like *certiorari*, prohibition, *quo warranto* and *habeas corpus* have a low burden in establishing standing. Australian Courts also recognize amicus curiae (friend of the court), and the various Attorneys-General have a presumed standing in Administrative Law cases.[161]

United States

In the United States, the Supreme Court of the United States has held that the question of standing is in essence whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.[162] There are a number of requirements that a plaintiff must establish to have standing before

[152] *Australian Conservation Foundation v Commonwealth* (1980) 146 CLR 493 AustLii
[153] *Combett v Commonwealth* (2005), *Williams v Commonwealth* (2012) 288 ALR 410 and Right to *Life v The Secretary of the Commonwealth Department of Human Services and Health and Family Planning Victoria Inc* [1994] FCA 1362 2
[154] See Re McBain; *Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372 and *Ruddock v Valaris* (2001) (Tampa case)
[155] See Standing in Public Interest Cases, *Queensland Public Interest Law Clearing House Incorporated* and *Conservation Foundation v Commonwealth* (1980)
[156] *Sinclair v Marybourough Mining Warden* (1975)
[157] See Kelly, M.R.L.L., (2009) 'Administrative Law Briefs' (Pearson Education Australia) and *Transurban v Allan* (1999)
[158] Truth about *Motorways v Macquarie* (2007)
[159] See also *Ogle v Strickland* (1986) 13 FCR 306
[160] *Onus v Alcoa of Australia Ltd* (1981)194 CLR 27 AUSTLII
[161] Re Smith; Exparte Rundle (1991) WAR295, *Truth about Motorways v Macquarie* (*op. cit*, n 105) and *Ruddock v Valaris* (Supra)
[162] *Warth v. Seldin*, 422 U.S. 490, 498 (1975)

a federal court. Some are based on the case or controversy requirement of the judicial power of Article Three of the United States Constitution, which provides thus: "The Judicial Power shall extend to all Cases . . . [and] to Controversies . . ."[163] The requirement that a plaintiff must have a standing to sue is a limit on the role of the judiciary because standing is built on the idea of separation of powers.[164] Federal courts may exercise power only "in the last resort, and as a necessity".[34]

The American doctrine of standing is assumed as having begun with the case of *Frothingham v. Mellon*.[165] But legal standing truly rests its first precedential origins in *Fairchild v. Hughes*, (1922) a decision pronounced by Justice Brandeis.

In 2011, in *Bond v.* United *States*, the U.S. Supreme Court held that a criminal defendant has standing to challenge the federal statute he or she is charged with violating as being unconstitutional under the Tenth Amendment.

Additionally, in the United States, there are three major judicially created standing principles as follows:

1. **Prohibition of Third-party standing:** A party may only assert his or her own rights and cannot raise the claims of a third party who is not before the court. However, there are certain exceptions for instance where the third party has interchangeable economic interests with the injured party, or a person unprotected by a particular law sues to challenge the over-sweeping effects of the law into the rights of others. For example, a party suing over a law prohibiting certain types of visual material, may sue because the 1st Amendment rights of theirs, and others engaged in similar

[163] See US Constitution, Article III, s. 2, cl.1.
[164] *Allen v. Wright*, 468 U.S. 737, 752 (1984)
[165] 262 U. S. 447 (1923)

displays, might be damaged. Additionally, third parties who do not have standing may be able to sue under the *next friend* doctrine if the third party is an infant, mentally handicapped, or not a party to a contract. Also, another example of a statutory exception to the prohibition of third party standing exists in the qui tam provision of the Civil False Claims Act which permits any citizen who has knowledge of a fraud against the government to initiate a civil action in federal district court in the name of the United States against the perpetrators of the fraud.[166]

2. **Prohibition of generalized grievances:** A plaintiff cannot sue if the injury is widely shared in an undifferentiated way with many people. For example, the general rule is that there is no federal taxpayer standing, as complaints about the spending of federal funds are too remote from the process of acquiring them.
3. **Zone of interest test:** There are in fact two tests used by the United States Supreme Court for the *zone of interest* as follows:
    a) Zone of injury – where the injury is the kind of injury that Congress expected might be addressed under the statute.[167]
    b) Zone of interests – where the party is arguably within the zone of interest protected by the statute or constitutional provision.[168]

a. Recent Developments in the US

Recently, there were some important developments regarding the doctrine of locu standi in the United States. For instance, in 1984, the Supreme Court reviewed and further outlined the standing requirements in a major

[166] *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000). See also Nolan, K. J.,(2000) 'Standing to Sue Under the Federal False Claim Act: The Supreme Court Declines to Take the Whistle A', The Florida Bar Journal, Volume LXXIV, No. 7 , p. 58
[167] *Federal Election Commission v. Akins*, 524 U.S. 11 (1998)
[168] *Allen v. Wright*, 468 U.S. 737 (1984)

ruling concerning the meaning of the three standing requirements of injury, causation, and redressability.[169] In the suit, parents of black public school children alleged that the Internal Revenue Service was not enforcing standards and procedures that would deny tax-exempt status to racially discriminatory private schools. The Court found that the plaintiffs did not have the standing necessary to bring the suit.[170] Although the Court established a significant injury for one of the claims, it found the causation of the injury (the nexus between the defendant's actions and the plaintiff's injuries) to be too attenuated and concluded that "the injury alleged was not fairly traceable to the Government's conduct (which the) respondents challenge as unlawful".[171]

In another major standing case, ***Lujan v. Defenders of Wildlife***,[172] the Supreme Court elaborated on the redressability requirement for standing. The case involved a challenge to a rule promulgated by the Secretary of the Interior interpreting section 7 of the Endangered Species Act of 1973 (ESA). The rule rendered section 7 of the ESA applicable only to actions within the United States or on the high seas. The Court found that the plaintiffs did not have the standing necessary to bring the suit, because no injury had been established.[173] The injury claimed by the plaintiffs was that damage would be caused to certain species of animals and that this in turn injures the plaintiffs by the reduced likelihood that the plaintiffs would see the species in the future. The court insisted though that the plaintiffs had to show how damage to the species would produce imminent

[169] *Ibid*, 752
[170] *Ibid*, 755
[171] *Ibid*, 757
[172] 504 U.S. 555 (1992)
[173] *Lujan v. Defenders of Wildlife*, 504 U.S. at 562

injury to the plaintiffs.[174] The Court found that the plaintiffs did not sustain this burden of proof and observed that the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.[175] This means that the injury must be imminent and not hypothetical.

Beyond failing to show injury, the Court found that the plaintiffs failed to demonstrate the standing requirement of redressability.[176] The Court pointed out that the respondents chose to challenge a more generalized level of Government action, "the invalidation of which would affect all overseas projects". This programmatic approach has "obvious difficulties insofar as proof of causation or redressability is concerned".

In a 2000 case, ***Vermont Agency of Natural Resources v. United States ex rel. Stevens,***[177] the United States Supreme Court endorsed the "partial assignment" approach to qui tam relator standing to sue under the False Claims Act — allowing private individuals to sue on behalf of the U.S. government for injuries suffered solely by the government.

b. Taxpayer standing

The initial case that established the doctrine of standing, *Frothingham v. Mellon*, was a taxpayer standing case. Taxpayer standing is the concept that any person who pays taxes should have standing to file a lawsuit against the taxing body if that body allocates funds in a way that the taxpayer feels is improper. The United States Supreme Court has held that taxpayer standing is not by itself a sufficient basis for standing against the

[174] *Ibid*, 564
[175] *Ibid*, 563
[176] *Ibid*, 568
[177] 529 U.S. 765 (2000)

United States government, unless the narrower flast test is met.[178] The Court has consistently found that the conduct of the federal government is too far removed from individual taxpayer returns for any injury to the taxpayer to be traced to the use of tax revenues, e.g., *United States v. Richardson.*

In ***DaimlerChrysler Corp. v. Cuno***,[179] the Court extended this analysis to state governments as well. However, the Supreme Court has also held that taxpayer standing is constitutionally sufficient to sue a municipal government in a federal court.

States are also protected against lawsuits by their sovereign immunity. Even where states waive their sovereign immunity, they may nonetheless have their own rules limiting standing against simple taxpayer standing against the state. Furthermore, states have the power to determine what will constitute standing for a litigant to be heard in a state court, and may deny access to the courts premised on taxpayer standing alone.

In Florida, a taxpayer has standing to sue if the state government is acting unconstitutionally with respect to public funds, or if government action is causing some special injury to the taxpayer that is not shared by taxpayers in general. In Virginia, the Supreme Court of Virginia has more or less adopted a similar rule. An individual taxpayer generally has standing to challenge an act of a city or county where they live, but does not have general standing to challenge state expenditures.

[178] *Flast v. Cohen*, 392 U.S. 83 (1968)
[179] 547 U.S. 332 (2006)

c. Standing to challenge statutes

With limited exceptions, a party cannot have standing to challenge the constitutionality of a statute unless they will be subjected to the provisions of that statute. There are some exceptions, however, e.g. courts will accept First Amendment challenges to a statute on over breadth grounds, where a person who is only partially affected by a statute can challenge parts that do not affect them on the grounds that laws that restrict speech have a chilling effect on other people's right to free speech.

The only other way someone can have standing to challenge the constitutionality of a statute is if the existence of the statute would otherwise deprive them of a right or a privilege even if the statute itself would not apply to them. The Virginia Supreme Court made this point clear in the case of ***Martin v. Ziherl***.[180] Martin and Ziherl were girlfriend and boyfriend and engaged in unprotected sexual intercourse when Martin discovered that Ziherl had infected her with herpes, even though he knew he was infected and did not inform her of this. She sued him for damages, but because (at the time the case was filed) it was illegal to commit "fornication" (sexual intercourse between a man and a woman who are not married), Ziherl argued that Martin could not sue him because joint tortfeasors - those involved in committing a crime - cannot sue each other over acts occurring as a result of a criminal act.[181] Martin argued in rebuttal that because of the U.S. Supreme Court's decision in ***Lawrence v. Texas*** (finding the state's sodomy law unconstitutional), Virginia's anti-fornication law was also unconstitutional for the reasons cited in

[180] 607 S.E.2d 367 (Va. 2005)
[181] See also *Zysk v. Zysk*, 404 S.E.2d 721 (Va. 1990)

Lawrence. Martin argued, therefore, she could, in fact, sue Ziherl for damages.

Lower courts decided that because the Commonwealth's Attorney did not prosecute fornication cases and no one had been prosecuted for fornication anywhere in Virginia in over 100 years, Martin had no risk of prosecution and thus lacked standing to challenge the statute. Martin appealed. Since Martin has something to lose - the ability to sue Ziherl for damages - if the statute is upheld, she had standing to challenge the constitutionality of the statute even though the possibility of her being prosecuted for violating it was zero. And since the U.S. Supreme Court in *Lawrence* has found that there is a privacy right in one's private, noncommercial sexual practices, the Virginia Supreme Court decided that the statute against fornication was unconstitutional. The finding gave Martin standing to sue Ziherl since the decision in *Zysk* is no longer applicable.

However, it is to be noted that the only reason Martin had standing to challenge the statute in this case was that she had something to lose if he was not accorded standing.

2.3 Access to Justice

This research work is framed within the larger context of access to justice. This is because the major aim of PIL is enhancing access to justice[182] while *locus standi* impedes access to justice.[183] Thus, it is important to clarify the concept of 'access to justice and discuss some factors inhibiting access to justice in Nigeria.

[182] Deva, S. *op cit* (n 4)
[183] Ali, Y. O., *op cit* (31)

2.3.1 The Concept of Access to Justice

Access to justice can be looked at from two main perspectives: the narrow and the wider senses. In the narrow sense of the term, it can be said to be co-extensive with access to the law courts. In this sense access to justice simply refers to the substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for the violation of their legal rights within the legal system. It focuses on the existing rules and procedures to be used by citizens to approach the courts for the determination of their civil rights and obligations. It may also be considered as the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through the justice system, for grievances in accordance with human rights principles and standards. One of the prerequisites of a system that assures access to justice is that the judiciary must be independent. An independent judiciary is the most effective guarantee that society has for ensuring constitutionalism, individual rights, law, order, and stability. While in the wider connotation it embraces access to the political order, and the benefits accruing from the social and economic developments in the state. In this sense, access to justice implies access to social and distributive justice. It is however important to underscore the point that these perspectives are not necessarily disconnected since the extent to which one can have distributive justice in any system is largely determined by the level and effectiveness of social justice in the country. The consequence of this is that any discussion of one aspect of the concept will necessarily entail a reference to one or more components of the other. This is

because without access to justice, it is impossible to enjoy and ensure the realization of any other right, whether civil, political or economic.

It has been said that access to justice is not limited to the procedural mechanism for the resolution of disputes but includes other variables like the physical conditions of the premises where justice is dispensed, the quality of the human and material resources available thereat, the quality of justice delivered, the time it takes for the delivery of justice, the moral quality of the dispenser of justice, the observance of the general principles of the rule of law, the affordability of the cost of seeking justice in terms of time and money, the quality of the legal advisers that assist the litigants, the incorruptibility and impartiality of operators of the system.

It therefore goes without saying that access to justice is a charged concept that embraces the nature, mechanism and even the quality of justice obtainable in a society as well as the place of the individual within this judicial matrix. It is also important to underscore the fact that access to justice is undeniably an important barometer for assessing not only the rule of law in any society but also the quality of governance in that society.

To ensure access to justice, several international and domestic judicial and quasi-judicial bodies have been established by authorities. At the international level, such bodies include the International Court of Justice, the United Nation Human Rights Committee, African Commission on Human and People's Rights and the African Court on Human and People's Rights. At the domestic level, these bodies include trial court such the Federal High Court, State High Court, and appellate courts such as the Court of Appeal and the Supreme

Court. There are also quasi-judicial bodies such as the National Human Rights Commission.

2.3.2 Constraints to Access to Justice in Nigeria

Several scholars have identified a number of constraints inhibiting access to justice in Nigeria. While some of these obstacles are substantive in nature, others are procedural and yet others have their roots in the present political and economic system in the country. Some of these constraints are briefly discussed hereunder.

a) Delay in the Administration of Justice

That there is inordinate delay in the administration of justice in Nigeria is a pedestrian statement. Very often, ordinary cases of unlawful termination of employment or even those for the enforcement of fundamental rights lasting between three to five years or even more. Several factor have been identified to be the factors responsible for this delay. lawyers writing letters of adjournment of cases, inability of judges and magistrates to deliver judgments on time, failure of the police or prison authorities to produce accused persons in court for trial, the rule that once a magistrate or judge is transferred and a new one takes over a case, it has to start de novo, etc.

It goes without saying that such delays not only erode public confidence in the judicial process but also undermine the very existence of the courts. This is in spite of the fact that speedy trial is guaranteed by Section 36 (1) of the 1999 Constitution which provides that: "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted

in such manner as to secure its independence and impartiality". In the same vein, Article 36 (4) of the Constitution provides that whenever any person is charged with a criminal offense, he shall be entitled to a fair hearing within a reasonable time by a court or tribunal.

b) Cost of Litigation

It is a well known fact that, relative to the economic situation in Nigeria, the cost of litigation in the country is so high that the ordinary Nigerian can hardly afford adequate legal representation when he has a legal matter to pursue. This is all the more so when we consider that the vast majority of Nigerians are constantly preoccupied with how best to make a living for themselves and their extended family. Perhaps in order to enhance their own economic standing, legal practitioners in Nigeria have devised the method of collecting not only their professional fees but also transportation fees each time they go to court, thus invariably adding to the financial burden of the litigants. When this is considered against the background that a particular case could last up to four or five years, then the enormity of the financial burden on litigants can be better appreciated.

As if this were not enough, filing fees in some courts are so high that it is often impossible for majority of Nigerians to have access to the courts. This is particularly so in the case of the Federal High Court, where the filing fees are related to the amount of monetary claims made by litigants. Under the current Rules of the Federal High Court, for a claim of ten million naira, the litigant must pay a filing fee of over fifty thousand naira and this must be paid before the filing of the suit. Moreover, for matters requiring survey plans and valuation reports, the Nigerian citizen, rich or poor alike, is required to ensure

that these are already attached to the Statement of Claim at the time of filing, even when it is known that the payment of these professionals could very well be beyond the financial capability of the litigants.

c) Effect of Some Constitutional Provisions

It is ironical that some of the constitutional provisions basically designed to guarantee the protection of fundamental rights, unwittingly have the effect of precipitating delays in the judicial process. In this connection reference must be made to some provisions of the 1999 Constitution. Section 36(6) (b) for instance, provides that "every person who is charged with a criminal offense shall be entitled to be given adequate time and facilities for the preparation of his defense".

The guiding principle has been to ensure that an accused person is allowed to utilize the available opportunities to properly present his defense in a criminal case. This implies for instance, that if an accused person is arraigned in court and does not have a counsel, the court will oblige him with an adjournment to enable him secure the services of one. Similarly, when he requires a particular document or court process for his defense and these are not immediately available, he should be given enough time to make arrangements to obtain the said document or court process or even file a process if he intends to do so. Ordinarily, the application of this rule should not result in undue delay, but in the peculiar circumstances of Nigeria, with the ubiquitous Nigerian factor, it has often resulted in prolonged delays and has often been abused.

d) Undue Reliance on Technical Rules

Law is an inherently technical subject and this technicality is manifested in the various rules and procedures in place. For a litigant to be able to approach the

courts, he has to retain the services of a legal practitioner who will initiate the appropriate action, on his behalf. The litigant, however well educated he may be, is usually unable to understand the intricate processes and rules applicable to his case. The situation is certainly worse for an illiterate Nigerian, and when one realizes that a vast majority of Nigerians are illiterate then the actual picture can better be appreciated. Add to this the procedural problems that are often encountered in the filing of suits for the enforcement of fundamental rights, and the picture is complete. In the case of fundamental rights enforcement, litigants had to battle with several technicalities such making ex parte application and mode of commencement. There were several contentions as to the appropriate means of commencement. This commencement was however settled in Alhaji Dahiru Saude v. Alhaji Halliru Abdullahi where the court held that any mode of commencement recognized by law can be used to commence a fundamental rights matter. However, even with this decision, litigants still need to use one of the four methods of commencement of action, to wit: writ of summons, originating summons, originating application or petition. It therefore means litigants will still require the services of a legal practitioner as the preparation of these modes of commencement of action require the expertise and skills of a legal practitioner.

e) *Locus Standi*

One other factor that is often used to preclude access to courts in Nigeria is the overused concept of locus standi. Locus standi is not an easy concept to define but one can say that it basically means the standing to sue. It refers to the right of a party to an action to be heard in a litigation before a court of law or tribunal or the legal capacity of instituting, initiating or commencing an action

in a competent court of law or tribunal without any inhibition, obstruction or hindrance. In other words, "for a person to have locus standi in an action he must be able to show that his civil rights and obligations have been or are in danger of being infringed. Thus, the fact that a person may not succeed in an action does not have anything to do with whether or not he has standing to bring the action". Since locus standi will extensively discussed later, suffice it to say the doctrine has been used to inhibit access to justice in several aspects of law.

2.4 Public Interest Litigation

Public Interest Litigation is derivative of three independent words: 'Public', 'Interest' and 'Litigation'. 'Public' literally deals with issues not private, issues extending beyond individualism to include a community of people.[184] 'Interests' connotes different things including benefits, connections rights, concerns and involvement in something; and litigation pertains to suits or actions before a law court.[185]Collectively 'Public Interest' has been defined in the Black's Law Dictionary[186] as follows:-

> Public Interest - Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question…. Interest shared by citizens generally in affairs of local, state or national government….

[184] Weiner, ed. Oxford Advanced Learners' Dictionary (6th edn)
[185] *Ibid*
[186] (6th edn)

Black's Law[187]also defines PIL as:

> (1) The general welfare of the public that warrant recognition and protection;
>
> (2) Some things in which the public as a whole put in stake; especially an interest that justifies governmental regulation.

Litigation is defined by the Black's law Dictionary as "a judicial controversy, a contest in a court of justice, for the purpose of enforcing a right" or "the process of carrying on a law suit." [188]

When combined, 'Public Interest Litigation' would therefore mean a judicial controversy initiated by a public-spirited individual or group for the enforcement of rights shared by citizens or a group for the purpose of advancing public welfare.

The Advanced Law Lexicon has defined `Public Interest Litigation' as follows:-

The expression `PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.

The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows: "Public Interest Law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services

[187] *Ibid*, 744
[188] (7th end), p. 994

to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."[189]

In *People's Union for Democratic Rights & Others v. Union of India & Others*,[190] the Supreme Court of India defined `Public Interest Litigation' thus: "Public interest litigation is a cooperative or collaborative effort by the petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society".

In the same vein, Public Interest Litigation has been defined as "litigation filed in a court for the protection of "Public Interest", such as pollution, terrorism, road safety, construction hazards, etc."[191] It has also been defined as:

Litigation usually by 'unaffected' person who in the public interest commences an action in court in most cases, on behalf of some victims or potential victims who may not be able to commence the action by themselves, for one reason or the other.[192]

From the above definitions, it is discernible that the major rationale for PIL is curving the state power against some illegalities or *ultra vires* acts which consequently will affect the overall interest of the public. It is often instituted to compel public authorities to do or abstain from an action, for the benefit of the whole society, do or abstain from that which they are obliged to perform or abstain from but illegally refuse to. It may also be instituted against legal persons – natural persons, corporate bodies and other artificial persons –

[189] M/s Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Ors. - AIR 2008 SC 913, para 19)
[190] (1982) 3 SCC 235
[191] Help Line Law, available on http://www.helplinelaw.com/docs/pub-i-litigation/index.php, accessed on 25th August, 2015
[192] Sule, I., *supra* (n 17) pp. 38 - 39

whose acts or omissions have, are or are likely to cause damage or injury to the entire public or a section of it. In some jurisdictions, PIL is only restricted to human rights litigation. In some it relates to human rights and environmental litigations. Yet, in others, notably India, the concept has been broadened to cover every interest affecting the public or a section of it. The areas include health and safety, human and environmental rights and morality, accountability, responsibility and responsiveness of the government to the people.

2.4.1 The Debate over Label: Public Interest Litigation (PIL) or Social Action Litigation (SAL)?

Public Interest Litigation (PIL) essentially evolved in the United States and was nurtured there. The concept was imported into India and became more developed than the United State where it first started. In India, PIL developed into what came to be known as Social Action Litigation (SAL). Thus, SAL is the Indian model which is in effect the matured product of the seed of public interest litigation. In other words, public interest litigation represents the mustard seed while public action litigation represents the oak tree.[193]

Given that the birth of PIL in India was connected to the evolution of PIL in the United States, it was natural for scholars to draw comparisons between the US experience and the Indian experience. One result of this comparison was that it was argued that PIL in India should be labeled as social action litigation (SAL).[194] Baxi was the key scholar who mooted for such indigenous labeling of PIL because of its distinctive characteristics. He contended that whereas

[193] Orbih, F. O., "Public Interest Litigation" Being A Paper Presented at the Nigerian Institute of Advanced Legal Studies on the 7th of July, 2010

[194] Baxi, U., (1985) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" Third World Legal Studies, vol. 4 (6) p. 107; Bhagwati, P. N., (1984) 'Judicial Activism and Public Interest Litigation' 23 Columbia Journal of Transnational Law, p. 561

PIL in the United States has focused on ‘‘civic participation in governmental decision making’’, the Indian PIL discourse was directed against ‘‘state repression or governmental lawlessness’’ and was focused primarily on the rural poor. Baxi highlighted another contrast: that unlike India, PIL in the United States sought to represent ‘‘interests without groups’’ such as consumerism or environment.

J. C. Otteh[195] brought out the distinction between the two models as follows:

> The idea of providing representation for un-represented causes or people is often subsumed under the rubric of “public interest litigation” a term probably developed in the United States with a robust tradition of public interest lawyering. But the United States model suffers from some of the handicaps associated with private lawyering. It is often resource intensive, in terms of manpower and capitals. Marginalized causes or people will often be represented by paid attorneys, and in deciding questions which these parties bring to law courts will simply choose from the range of available remedies to redress them. But in a society afflicted by large scale misery and ignorance like ours, can we afford to choose the America Model? Legal Scholars in India have sought to rebrand their own model of public servicing lawyering differently. Terms like “Social Action Litigation” are employed to show the difference between what they do and what America does. In the SAL model anyone can represent causes and under privileged people, and for that purpose, take action to

[195] Otteh, J. C., Executive Director, Access to Justice Made this opening remark at a symposium organized by Access to Justice on 7th August, 2009

enforce the rights of these people. This enables a broad variety of people to become social justice agents and not just lawyers. They do not file lengthy processes. They just write a letter which the court accepts under its "epistolary jurisdiction". The Chief Justice regards this as a writ/petition, and takes it up under the courts fundamental rights enforcement jurisdiction.

In the final analysis, the Indian model of PIL called SAL is more developed, more encompassing and simpler. However, both PIL and SAL are designed to achieve the same purpose – using the law more for the benefit of collective, not just individual or private interest. Even though the goal of both may be the same or at least similar, but the methodology used by the adherents of both systems is different and this is a result differences in politico-legal and socio-cultural realities of the two jurisdictions.

2.4.2 Evolution and Trends of Public Interest Litigation in Some Jurisdictions

Like other areas of human endeavour, PIL did not evolve and develop at the same time and phase in different countries of the world. The concept evolved at different times and is right at different stages of development. This section presents the initial roots of coinage "PIL" and its development in some select jurisdictions.

In 1976, Professor Abram Chayes of the Harvard Law School coined the phrase "public law litigation" to refer to the practice of lawyers in the United States seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms.[196] Sometimes taking the class action form, public law cases often involved the

[196] Chayes, A., (1976) 'The Role of the Judge in Public Law Litigation' 89 HARV. L.REV. 1281

restructuring of important government institutions, including public schools, mental hospitals, welfare agencies, and prisons, and affected many thousands of individuals. Although Professor Chayes limited his discussion to the United States, variegated forms of "cause lawyering" or "social activist" litigation also exist in the courts of many other countries, presenting localized strategies that draw on separate traditions and function within specific contexts.[197]

In the courts of India and South Africa, of Israel and Nigeria, in international tribunals and before regional commissions, law and litigation are important mechanisms for enforcing human rights, extending public participation, improving economic conditions, encouraging grassroots empowerment, reforming laws and legal systems, and fostering government accountability -- aspects of what some commentators loosely refer to as "rule of law" values.[198]

Australia

In Australia, Public Interest Litigation has been a method of protecting the environment. The courts have not given a definition of `Public Interest Litigation', but in Oshlack v Richmond River Council,[199] the High Court of Australia (apex court) upheld the concept and pointed out its essential requirements. McHugh J., quoted Stein J., from the lower court:

> In summary, I find the litigation to be properly characterized as public interest litigation. The basis of the challenge was arguable, raising serious and significant issues resulting in important interpretation of new provisions relating to the protection of endangered fauna. The application concerned a publicly

[197] Sarat, A. & Scheingold, S., (1998) 'Cause Lawyering and the Reproduction of Professional Authority: An Introduction' in Sarat, A. & Scheingold, S. (eds) 'Cause Lawyering: Political Commitments and Professional Responsibilities

[198] See Hershkoff, H., 'Public Interest Litigation: Selected Issues and Examples' http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/PublicInterestLitigation%5B1%5D.pdf accessed 26/8/2015

[199] (1998) 193 CLR 72: (1998) 152 ALR 83

> notorious site amidst continuing controversy. Mr. Oshlack had nothing to gain from the litigation other than the worthy motive of seeking to uphold environmental law and the preservation of endangered fauna.

Thus, the Australian court has diluted the principle of `aggrieved person' in relation to cases for protecting environment. To the court it was important that the petitioner did not have any other motive than the stated one of protecting the environment. The test therefore in Australia seems to be that the petitioner when filing a public interest litigation, should not stand to gain in any or some way.

Canada

In assessing whether to grant public interest standing to a litigant, Canadian courts consider three criteria: Is the matter a serious legal issue? Does the party bringing the case have a stake in the outcome? And, is the proposed suit a reasonable and effective way of bringing the matter before the court? The courts acknowledged that public interest litigation can provide access to justice to the disadvantaged whose legal rights are affected. But the courts have been criticized for an inconsistent approach on public interest standing, as in the words of Martha Jackman, "there were conflicting decisions that were hard to reconcile.'[200]

The Supreme Court's 1992 decision on public interest standing in *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)* promoted the view that the third test should be interpreted rigidly. The ruling said that to get public interest standing, you have to demonstrate there's no

[200] Dunn, K., (2013) 'A Pathway to Justice?' http://www.nationalmagazine.ca/Articles/January-February_2013/A_pathway_to_justice.aspx accessed 18/12/2015

other way to bring an issue before the courts. However, Jackman argued that subsequent court decisions on public interest standing "often had the air of unreality" in expecting extremely vulnerable, impoverished individuals (such as refugees) to directly challenge entities (such as the immigration department) on whom their lives in Canada depend.[201]

And yet the top court has strayed from the approach to standing laid out in the Canadian Council of Churches decision. In particular, the 2005 Chaouilli decision interpreted public interest standing very liberally, granting it to two individuals challenging restrictions on private medical practice in Quebec.[202] In that case, standing was granted without regard to whether the individuals actually represented the public interest.

One of the landmark cases in which Public interest litigants faced a tough battle for standing is the long fight to strike down Canada's prostitution laws. In 2008, the Supreme Court of British Columbia denied anti-violence advocate Sheryl Kiselbach and a group representing Vancouver sex workers the right to bring a suit challenging the prostitution-related provisions of the Criminal Code.[203] Neither party was at risk of being charged under the provisions in question, the government argued.

In 2007, when Downtown Eastside Sex Workers United Against Violence (SWUAV) first launched its Charter challenge in B.C.'s Supreme Court, the trial judge held that the advocacy group met the first two tests for standing, but not the third.[204] The group was denied public interest standing. The chambers

[201] *Ibid*
[202] (AG) [2005] 1 S. C. R. 791, 2005 SCC 35
[203] R. S. C., 1985, c. C-46
[204] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524 available on http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10006/index.do accessed 18/12/2015

judge ruled that individual sex workers affected by the laws should bring the Charter challenges forward, rather than their advocacy group.

But Kiselbach and the SWUAV took their case to the Supreme Court of Canada, the Court upheld the appeal granting them public interest standing to pursue their Charter challenge.[205]The BCSC decision was overturned by the British Columbia Court of Appeal in 2010; that ruling, in turn, was challenged by the federal attorney-general before the Supreme Court of Canada. The Supreme Court held that courts should take a "flexible and generous" approach to public interest standing by taking into account the "practical realities" of litigation. It accepted SWUAV's contention that it was highly unlikely that anyone charged under the prostitution-related provisions of the Criminal Code would challenge their validity under the Constitution.

The Supreme Court acknowledged that public interest litigation can provide access to justice to the disadvantaged whose legal rights are affected. It concluded that SWUAV's role in litigating the issue was an effective way of bringing the issue to court. "A challenge of this nature," wrote Justice Thomas Cromwell, "may prevent a multiplicity of individual challenges in the context of criminal prosecutions."

The decision has implications far beyond SWUAV's constitutional challenge to the Criminal Code. The Supreme Court ruled that the public benefit of having appropriate interest groups test such laws in court outweighs concerns that a liberal interpretation of standing might encourage frivolous legal challenges."It's a comprehensive constitutional case," says Melina Buckley. A member of the class-action practice group at Vancouver firm Camp Fiorante

[205] *Ibid*

Matthews Mogerman, she represents one of the intervenors in the SWUAV case, the West Coast Women's Legal Education and Action Fund. She has also been retained on other public interest cases before the top court. The Supreme Court "was clearly trying to give guidance to courts across the country and to litigants," she says.[206]

England

The use of PIL in England has been comparably limited. The limited development in PIL has occurred through broadening the rules of standing. In *Re. Reed, Bowen & Co.*[207] to facilitate vindication of public interest, the English judiciary prescribed broad rules of standing. Under the traditional rule of standing, judicial redress was only available to a `person aggrieved' - one "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." However, the traditional rule no longer governs standing in the English Courts.

One of the most distinguished and respected English Judge Lord Denning initiated the broadening of standing in the English Courts with his suggestion in *Attorney-General of the Gambia v. Pierre Sarr N'Jie*[208] that the "words `person aggrieved' are of wide import and should not be subjected to a restrictive interpretation."

The Blackburn Cases broadened the rule of standing in actions seeking remedy through prerogative writs brought by individuals against public officials for breach of a private right. (e.g., mandamus, prohibition, and

[206] Dunn, K., *supra* (n 145)
[207] (1887) 19 QBD 174
[208] (1961) AC 617

certiorari). Under the Blackburn standard, "any person who was adversely affected" by the action of a government official in making a mistaken policy decision was eligible to be granted standing before the Court for seeking remedy through prerogative writs.[209]

In Blackburn I, the Court of Appeal granted standing to Blackburn to seek a writ of mandamus to compel the Police Commissioner to enforce a betting and gambling statute against gambling clubs.

In Blackburn II[210], the Court of Appeal found no defects in Blackburn's standing to challenge the Government's decision to join a common market.

In Blackburn III[211], the Court of Appeal granted standing to Blackburn to seek a writ of mandamus to compel the Metropolitan Police to enforce laws against obscene publications.

In Blackburn IV[212], the Court of Appeal granted standing to Blackburn to seek a writ of prohibition directed at the Greater London Council for failing to properly use their censorship powers with regard to pornographic films.

The English judiciary was hesitant in applying this broadened rule of standing to actions seeking remedy through relator claims - Relator claims are remedies brought by the Attorney General to remedy a breach of a public right. (e.g. declaration and injunction). Initially, Lord Denning extended the broadened rule of standing in actions seeking remedy through prerogative writs to actions seeking remedy through relator claims. In *Attorney General Ex rel McWhirter v. Independent Broadcasting Authority*,[213] the Court stipulated that, "in the last resort, if the Attorney-General refuses leave in a proper case, or improperly or

[209] *Regina v. Commissioner of Police of the Metropolis, Ex parte Blackburn* [1968] 2 W.L.R. 893 ("Blackburn I")
[210] *Blackburn v. Attorney-General* [1971] 1 W.L.R. 1037)
[211] *Regina v. Commissioner of Police of the Metropolis, Ex parte Blackburn* [1973] Q.B. 241
[212] *Regina v. Greater London Council ex parte Blackburn* [1976] 1 W.L.R. 550
[213] (1973) Q.B. 629

unreasonably delays in giving leave, or his machinery works too slowly, then a member of the public who has a sufficient interest can himself apply to the court." This rule was promptly overturned by the House of Lords in *Gouriet v. Union of Post Office Workers.*[214] In this case, the House of Lords held that in relator claims, the Attorney General holds absolute discretion in deciding whether to grant leave to a case. Thus, the English judiciary did not grant standing to an individual seeking remedy through relator claims.

Finally, an amendment to the Rules of the Supreme Court in 1978 through Order 53 overcame the English judiciary's hesitation in applying a broadened rule of standing to relator claims. Order 53 applied the broadened rule of standing to both actions seeking remedy through prerogative writs and actions seeking remedy through relator claims. Rule 3(5) of Order 53 stipulates that the Court shall not grant leave for judicial review "unless it considers that the applicant has a sufficient interest in the matter to which the applicant relates."[215]In *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd*.,[216] the Court explained that "fairness and justice are tests to be applied" when determining if a party has a sufficient interest.

In *Regina v. Secretary of State for the Environment, Ex parte Rose Theatre Trust Co*.,[217] the Court elaborated that "direct financial or legal interest is not required" to find sufficient interest. Thus, under the new rule of standing embodied in Order 53, individuals can challenge actions of public officials if they are found to have "sufficient interest" - a flexible standard.[218]

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[214] [1978] A.C. 435
[215] Order 53, Rules of the Supt. Ct. (1981).
[216] [1982] A.C. 617
[217] (1990) 1 Q.B. 504
[218] See more at: http://www.legalblog.in/2011/02/public-interest-litigation-definition.html#sthash.Sn9TsYC8.dpuf

United States

The US Supreme Court realized the constitutional obligation of reaching to all segments of society particularly the black Americans of African origin. The courts' craftsmanship and innovation is reflected in one of the most celebrated path-breaking judgment of the US Supreme Court in *Oliver Brown v. Board of Education of Topeka*.[219]In this case, the courts have carried out their own investigation and in the judgment it is observed that "armed with our own investigation" all Americans including Americans of African origin can study in all public educational institutions. This was the most significant development in the history of American judiciary.

Furthermore, the US Supreme Court dismissed the traditional rule of Standing in *Association of Data Processing Service Organizations v. William B. Camp*.[220] The court observed that a plaintiff may be granted standing whenever he/she suffers an "injury in fact" - "economic or otherwise".

In another celebrated case *Olive B. Barrows v. Leola Jackson*[221] the court observed thus:

> But in the instant case, we are faced with a unique situation in which it is the action of the state court which might result in a denial of constitutional rights and in which it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court. Under the peculiar circumstances of this case, we believe the reasons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the

[219] 347 U.S. 483, 489-493 (1954)
[220] 397 U.S. 150 (1970)
[221] 346 U.S. 249 (1953), 73 S. Ct. 1031

fundamental rights which would be denied by permitting the damages action to be maintained.

In environment cases, the US Supreme Court has diluted the stance and allowed organizations dedicated to protection of environment to fight cases even though such societies are not directly harmed by the action. In *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*[222], the court allowed a group of students to challenge the action of the railroad which would have led to environmental loss.

In ***Paul J. Trafficante v. Metropolitan Life Insurance Company***,[223] the Court held that a landlord's racially discriminatory practices towards non-whites inflicted an injury in fact upon the plaintiffs, two tenants of an apartment complex, by depriving them of the "social benefits of living in an integrated community."

Similarly, the Supreme Court of the United States has granted standing in certain situations to a plaintiff to challenge injuries sustained by a third party with whom he/she shares a "close" relationship. In *Thomas E. Singleton v. George J. L. Wulff*,[224] the Court granted standing to two physicians challenging the constitutionality of a state statute limiting abortions. Similarly, in *Caplin v. Drysdale*,[225] the Court granted standing to an attorney to challenge a drug forfeiture law that would deprive his client of the means to retain counsel.

The Supreme Court has also granted organizational standing. In ***Robert Warth v. Ira Seldin***,[226] the Court declared that "even in the absence of injury to itself,

[222] 412 US 669 (1973)
[223] 409 U.S. 205 (1972)
[224] 428 U.S. 106 (1976)
[225] 491 U.S. 617, 623-24 n. 3 (1989)
[226] 422 U.S. 490, 511 (1975)

an association may have standing solely as the representative of its members." This judgment had far reaching consequence. In ***James B. Hunt v. Washington State Apple Advertising Commission***,[227] the Court elaborated the parameters for organizational standing where an organization or association "has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the law suit".

2.4.3 Situating Public Interest Litigation within Access to Justice

N. I. Quakers Esq. opines that litigations generally and particularly public interest or strategic impact litigations, are relevant as they provide the tool or machinery for individuals or group of persons to approach or have access to the judiciary to seek redress for human rights violations or constitutional infractions. Although litigation is not the only means, but one of the various important tools of achieving change in the society, it provides a catalyst for change so that its application can reach beyond the individual case in such a way that its outcome affects a large number of people. Public Interest Litigation is thus, a veritable tool for revolutionary change especially if applied judiciously.[228]

Sule, I.[229] itemizes some of the positive things PIL can help engender. He posits that PIL can serve a 'great tool for reform', can be used to hold government accountable to the people and also provide awareness and

[227] 432 U.S. 333, 343 (1977)
[228] Quakers, N. I., 'Litigation as Machinery for Political Economy and social reforms in Nigeria' A paper presented at a symposium on Public Interest Lawyering organized by Access to Justice on 7th August, 2009
[229] Sule, I., *supra* (n 17) pp. 39 - 40

facilitate access to justice. Under the first head, he argued that law as living thing grows and develops with the society and that sophisticated societies necessarily require sophisticated laws. He then argued that since PIL can be used to expose lacuna in the extant laws, it then can be used to trigger the reform of our laws to reflect increasing sophistication in the society just as PIL could be used to challenge obnoxious laws and test untested principles of law. Under the second head, he argued that PIL can be used to challenge government's bad policies and unreasonable procedure much as PIL can be used to hold the government accountable to the people and challenge *ultra vires* acts of those in the corridors of power. Under the final head, he argued that PIL can be used as a ladder for justice for the poor, ignorant and other less-privileged members of the society and could be used to spread awareness. Otteh, J. C. [230] could not have been more succinct in his exposition of the nature and importance of PIL when he remarked:

> Public Interest Litigation is about using the law to empower people, to knock down oppressive barriers to Justice to reclaim and restore the right of Social Justice for the majority of the people. To attack oppression and denial that disenfranchise our people, and about winning back human dignity of the people, it is about caring for the rights of the others, besides oneself. It is about getting Lawyers and Judges committed to this struggle, and using the law more for the benefit of collective, not just individual or private interest.

[230] Otteh, C. J., *op. cit* (n 145)

In the same vein, it has been opined that Public Interest Litigation makes 'justice quickly and readily available to the masses when their fundamental rights are threatened'[231]

It should be clear from the foregoing discourse that PIL provides a ladder for justice to the disadvantaged sections of the society such as children, women, labourers, the poor, illiterates and other socially, politically and/or economically less advantaged members of the society. It also provides an avenue for the enforcement of collective and diffused rights and enables civil society organizations not only to spread awareness about human rights, but also to participate in government decision making. In fact, PIL contributes to good governance by keeping the government accountable to the people.[232] In some jurisdictions like India, PIL has become a veritable tool in the civil justice system and has been used to achieve those objectives that can hardly be achieved by conventional private litigation.

2.4.4 Criticisms against PIL

Despite the usefulness of PIL highlighted above, like all other concepts in the academia, PIL has its own share of critics. These critics hold that litigation cannot in itself reform social institutions and that over-reliance on court on issues that affect the public diverts efforts from potentially more productive political strategies and dis-empowers the groups that lawyers are seeking to assist. The result is too much law and too little justice.[233]

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[231] Adedayo, A., (ud)"X-ray of Public Interest Litigation in Nigeria" http://www.punchng.com/feature/the-law-you/x-ray-of-public-interest-litigation-in-nigeria 25/8/2015

[232] Deva, S., *op. cit upra* (n 4)

[233] Falana, F., 'Public Interest Litigation in West Africa (2)' Vanguard Newspaper (Nigeria, December 31st, 2009) http://www.vanguardngr.com/2009/12/public-interest-litigation-in-west-africa-2 accessed 25/8/2015

However, Falana F.[234] contends that the above arguments, although powerful in their analysis of the limits of litigation, have generally failed to acknowledge its contributions and the complex ways in which legal proceedings can support political mobilization. He said:

> Litigation must not divert attention from the need to tackle political and social problems. Litigation should be used as a complementary strategy with collective political struggle to challenge structural inequality and injustice and abuse of human rights. Litigation used strategically, can stimulate meaningful change and complement other political efforts; whether litigation "works" or not must be judged in relation to available alternatives. And in order to evaluate the social change potential of litigation in a given circumstance, it is necessary to examine the conditions – political, economic, cultural and organizational within which a law suit operates. For example, when deployed strategically law suits can destabilize entrenched institutional structures and subject them to greater accountability. A law suit that receives widespread attention may raise public consciousness and stimulate movement activity by revealing the vulnerability of structural arrangements that once seemed impervious to change.

The above is powerful reply to the major criticisms of PIL set our above. It is also important to point out that what is presented as criticisms are rather concerns and they can only be true if PIL is treated in isolation to other

[234] *Ibid*

struggles, political, economic and economic going on in the society in addition to litigations. It is only if and when litigation and other reformation tools are given their rightful attention that an egalitarian and prosperous society may be established.

2.5 Conclusion

It should be clear from the foregoing that *locus standi* which originally started as a private common law concept has become a cliché and has assumed much significance in a number of jurisdictions. Even though its interpretation differs from one jurisdiction to the other, it generally requires that a party instituting an action before a court of law must establish some personal connection with the matter in question before he can be heard. This interpretation has changed in the course of time due to socio-economic and politico-legal realities. Although a good use of the doctrine may help to filter real cases from hypothetical ones and genuine litigants from busybodies, too strict interpretation of same may bar public-spirited members of the society from accessing the courts.

That access to justice refers to ability to set legal machineries in motion with ease. It also deals with the just and expeditious dispensation of justice. As seen above, access to justice is inhibited by such factors crass technicalities and legalism in the legal profession, certain constitutional provisions, delay in dispensation of justice and *locus standi*.

It should also be clear that PIL evolved as a departure to the traditional private litigation and thus its features markedly differ from private litigation. It plays an important role in the civil justice system of different countries of the world as it affords a ladder for justice to the disadvantaged sections of the society.

There are some criticisms against PIL which have been presented and discussed. But it seems that PIL could be employed to enhance access to justice while flexibly expanding *locus standi* for the citizens.

CHAPTER THREE

LOCUS STANDI IN NIGERIA

3.1 Introduction

This chapter discusses Nigeria's judicial attitude to *locus standi*. The interpretation and application of *locus standi* in Nigeria will be x-rayed. The chapter begins with a discussion on the origin of the problem of *locus standi* and examines how *locus standi* has been and is now being interpreted and applied in Nigeria. It discuss how *locus standi* is determined and its relationship with the jurisdiction of the court. Some legislative measures taken to expand the doctrine are also briefly discussed in the chapter and, at the end, the chapter rounds up with a conclusion.

3.2 The Test *Locus Standi* in Nigeria

In Nigeria, the issue of *locus standi* does not depend on the success or merit of the case but on whether the plaintiff has *sufficient interest* in the subject matter of a dispute.[235] It therefore follows that if the plaintiff cannot establish his *locus standi* in the matter at stake, it is not necessary, nay not permitted, to consider whether there is a genuine case on the merit;[236] once there is no *locus standi*, the worthiness of the case will not even be considered. The determination of *locus standi* of a party zeros on two major and telling words, one is 'sufficient' and the other is 'interest'. They both make up the 'sufficient interest' concept. The term, *sufficient interest*, is broad and generic. It is also vague and nebulous. It lacks a precise and apt legal meaning.[237] The question of what constitutes sufficient interest is one of mixed law and fact. In other

[235] *Owodunmi v. Reg. Trustees of CCC (2000) 10 NWLR (Pt. 675) p. 315*
[236] There are many decisions on this. See, for example, the case of *Baido v. INEC (2008) 12 NWLR (Pt. 1101) p. 379 @ pp. 397 – 398, paras. H – A; 403, paras. G - H*
[237] Orbih, F. O., *supra* (n 138)

words, it is not only a matter of law alone or a question of fact only but both. That is to say when the issue of locus is raised in a matter the court will look at both the law under which the purported claim is brought and the facts surrounding the action in question.

In determining *locus standi*, the court is faced with the challenge of balancing two apparently conflicting duties. First, the duty to vindicate the right of the plaintiff to set the litigation process in motion and secondly, the concomitant right of the defendant not to be dragged into unnecessary litigation by a person who has no *locus* in the dispute at hand.[238] By and large, the trial judge, in determining *locus standi* will be involved in the delicate balancing of divergent interests, which are diametrically opposed in the enforcement of the judicial process. It is a very complex exercise based on the pleadings of the plaintiff.[239]

In addition, a plaintiff or litigant who says he has *locus standi* must show that such special interest he lays claim to, has been adversely affected by the act or omission, which he seeks to challenge.[240] In ***K. Line Inc. v. K.R. Int. (Nig.) Ltd.,***[241]***Aderemi*** J.C.A. (as he then was) described special or sufficient interest in the following words:

> One test of sufficient interest in a matter is whether the plaintiff who instituted the action could have been joined as a party to the suit if some other party commenced the action. Another test is whether the plaintiff seeking the redress or remedy will suffer

[238] *Ibid*
[239] See *Busari v. Oseni (1992) 4 N.W.C.R. (Part 237) 557 at 587 Per Tobi J.C.A.* (as then was)
[240] See *Re Ijelu & Ors. v. L.S.D.P.C. (1992) 9 N.W.L.R. (Pt. 226) 414*
[241] (1993) 5 N.W.L.R. (Pt. 292) 159 at 176

> some injury or hardship arising from the litigation if some other person instituted it.

Generally, under Nigerian jurisprudence, the concept of *locus standi* is given a restricted interpretation. This restrictive interpretation emerged from the *Locus Classicus* case of ***Senator Adesanya v. The President of the Federal Republic of Nigeria***.[242]This case which has been described as the origin of the problem of *locus* in Nigeria[243]seriously impacted on Nigerian courts' understanding, interpretation and application of the doctrine to cases brought before them subsequent to this decision. It has been argued that the doctrine has been misunderstood and misapplied by Nigerian courts and that same now works injustice on the entire legal system.[244]

In *Bolaji v. Bamgbose*,[245] it was held that:

> Failure to disclose any *locus standi* is as fatal to the action as failure to disclose any reasonable cause of action. The court went further to say in the issue of *locus standi* the statement of claim alone has to be looked into.

The court in ***Adefulu v. Oyesile***[246]

A Constitutional requirement in order to enable a person to maintain an action is limited to the prosecution of matters relating to the civil rights and obligations of the plaintiff, be that plaintiff a person or persons, a group of persons, a statutory body, a government, an authority or any other Juristic person....

[242] (1981) 2NCLR 358
[243] Ilofulunwa, O., *supra* (n 37)
[244] *Ibid*
[245] (1986) 4 NWLR (Pt 37) at 632
[246] (1989) 5 NWLR (Pt 122) p. 377 at 418

Nnaemeka - Agu J.S.C went further to say in the case that:

> Thus in Nigeria the requirement of *locus standi* is Constitutionally defined in civil cases by reference to the criterion that only the persons whose rights or obligations are in issue can institute any particular suit. It is thus a threshold issue in that the fact showing that right of the plaintiff to sue must be disclosed in the statement of claim.

The court in ***Fawehinmi v. I.G.P***[247] held that:

> Section 6 (6) (b) of the 1999 Constitution does not confer *locus standi* on any litigant but merely allows the court to determine any question as to his civil rights and obligations. But he must show that his civil rights and obligations have been infringed before section 6(6) (b), which vests judicial powers in the court and provides forum for litigation, will enable the court to look into a person's grievances.

The above cases seem to have decided using the opinion of Bello JSC which opinion was supported by Justices Nnamani and Idigbe that Section 6 (6) (b) of the 1979 Constitution which is re-enacted as Section 6 (6) (b) of the 1999 Constitution laid the test for *locus standi* in Nigeria. Using this approach, the Courts found it easier to strike out cases on this preliminary issue of *locus standi* without going into the merits to determine whether there is actually a just case for the citizenry.

[247] (2002) 7 NWLR (pt. 767) at 689

However, in ***Adediran vs. Interland Transport Ltd,***[248] the same Supreme Court gave a different if not contradictory opinion when Karibi - Whyte, J.S.C. held:

> . . . the restriction imposed at common law on the right of action . . . is inconsistent with the provisions of section 6 (6) (b) of the Constitution, 1979 and to that I think the high constitutional policy involved in s. 6 (6) (b) is the removal of the obstacles erected by the common law requirements against individuals bringing actions before the court against the government and its institutions….

Albion Construction Ltd. v. Rao Investment & Properties Ltd,[249] Niki Tobi JCA (as he then was) observed that:

> Since standing on the part of the plaintiff to sue does not only edify or recuperate the jurisdiction of the Court but really affects it mandatorily, Courts of law do not take the issue lightly, so also should the parties. They cannot afford to gamble with the issue.
>
> While the doors of the Court are open all through the day for the litigants with genuine grievance to pursue their legitimate claims, the same doors will be shut against litigants who are mere busy bodies agonizing the judicial process in precipitation and for the fun of it. Certainly, the administration of justice will encourage a plaintiff who has so much gluttony for litigation but who in real fact has no genuine complaint.

[248] (1991) 9 NWLR (Pt. 214) 155
[249] (1992) 1 NWLR (Pt. 219) p. 583 @ 594

In ***Ladejobi v. Oguntayo,***[250] the court held par Pats - Acholonu J.S.C (of blessed memory) that:

> That it is important to bear in mind that ready access to the court is one of the attributes of a civilized legal system and it will amount to setting the clock back at this stage for any court to dismiss or strikeout an action based on the pleading without carefully analyzing the averments and ensuring that there is no nexus.

The two cases cited above support the view of Williams JSC which view was supported by Justices Sowemimo and Obaseki which holds that cases should be dismissed on the ground of lack of locus without considering their merits.

As if to make matters worse, Ayoola JCA (as he then was) made a dissenting pronouncement which looked like an oasis in the desert of the confusion on *locus standi* in ***F.A.T.B. v. Ezegbu***[251] when he stated thus:

> I do not think section 6(6) (b) of the Constitution is relevant to the question of *locus standi*. If it is, we could as well remove any mention of *locus standi* from our law book. Section 6 (6) (b) deals with judicial powers and not with individual rights. *Locus standi* deals with the rights of a party to sue. It must be noted that standing to sue is relative to a cause of action.

Ayoola JCA (as he then was) was neither with the Bellos nor with Williams. He seemed to be on his own with this his new found position as most other cases that came after that did not give this line of thought a consideration.

[250] (2004) 18 NWLR (PT 904)p. 149 at 173
[251] (1994) 9 NWLR 149 at 236

However, four years after, in a judgment that attracted the concurring opinion of the other Justices that heard the case, Ayoola properly put in perspective section 6 (6) ((b) of the Constitution of Nigeria when he held in ***NNPC v. Fawehinmi***[252] that:

> In most written Constitutions, there is a delimitation of the power of the three independent organs of government namely: the Executive, the Legislature, and the Judiciary. Section 6 of the Constitution which vests judicial powers of the Federation and the States in the courts and defines the nature and extent of such judicial powers does not directly deal with the right of access of the individual to the court. The main objective of section 6 is to leave no doubt as to the definition and delimitation of the boundaries of the separation of powers between the judiciary on the one hand and the other organs of government on the other, in order to obviate any claim of the other organs of government, or even attempt by them, to share judicial powers with the courts. Section 6 (6) (b) of the Constitution is primarily and basically designed to describe the nature and extent of judicial powers vested in the courts. It is not intended to be a catch-all, all-purpose provision to be pressed into service for determination of questions ranging from *locus standi* to the most uncontroversial questions of jurisdiction.

Interestingly, the Nigerian Supreme Court in the case of ***Owodunmi v. Registered Trustees of Celestial Church & Ors***[253] has accepted this position

[252] (1998) 7 NWLR (pt. 559) 598 at 612
[253] (2000) 10 NWLR (Pt. 675) 315

of Ayoola JCA on the exact effect of section 6 (6) (b) of the Constitution. The Supreme in Owodunmi's case held that the Supreme Court in *Adesanya's* case did not after all by a majority decision subscribe to Bello's view on section 6 (b) (b) laying down a requirement of standing. Ogundare JSC who delivered the lead judgment with no dissenting judgment, after reviewing Adesanya's case said at page 341 F - H:

> A word or two on Adesanya v. President of the Federal Republic of Nigeria (*supra*). It appears that the general belief is that this court laid down in that case that the law on *locus standi* is now derived from Section 6 (6) (b) of the Constitution of the Federal Republic of Nigeria, 1979 (re-enacted in section 6 (6) (b) of the 1999 Constitution).... I am not sure that this general belief represents the correct position of the seven Justices that sat on that case only 2 (Bello and Nnamani JJ.SC) expressed view to that effect.

Ogundare JSC stated further in the judgment that:

> From the extracts of their Lordship's judgments I have quoted above one can clearly see that there was not majority of the court in favour of Bello JSC's interpretation of Section 6 subsection (6)(b) of the Constitution.

On the interpretation of Section 6 (6) (b) of the Constitution, Ogundare JSC stated that "In any respectful view, I think Ayoola JCA (as he then was) correctly set out the scope of section 6 subsection (6) (b) of the Constitution…. in NNPC v. Fawehinmi & Ors."

The issue of *locus standi* has been raised in recent cases and the Courts virtually reiterated their position.

In ***Francis v. Citec Int'l Estate Ltd.,***[254]the Court of Appeal held on the nature of interest that confers *locus standi* as follows:

> The interest of the plaintiff must be real and tangible in law and without least equivocation. It must not be a caricature of an interest, not make-believe interest, not one of the personal or self aggrandizement but one which clearly unequivocally donated to the plaintiff in the light of the facts of the case and the law. A person who is in imminent danger of any conduct of the adverse has the *locus standi* to commence an action.[255]

In the case of Osigwelem v. I. N. E. C.,[256] the question of *locus standi* of the petitioner who was the candidate of ANPP in the election being questioned was raised. The trial court held that being a candidate in the election in question, the petitioner prima facie has locus standi to sue in respect of the election. The court held however that a litigant can only maintain a suit where the reliefs sought can confer them some benefits. That the petitioner does not stand to draw any benefit from the suit as he admitted in cross-examination that he was not the candidate that had the majority of lawful votes cast at the election. He admitted that he neither came 2nd, 3rd or 4th. Thus, the court held that since he cannot benefit from the reliefs he sought, he has no *locus standi* to maintain the action. This decision of trial court was affirmed by the Court of Appeal.[257]

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[254] (2010) 16 NWLR (pt. 1219) p. 243
[255] *Ibid*, pp. 265 266, *paras* G - B
[256] (2011) 9 NWLR (pt 1253) p. 425
[257] *Ibid*, pp. 447 – 448, *paras* E - D

3.3 Relationship between *Locus Standi* and Jurisdiction

Jurisdiction is the power of the court to hear and determine a matter before it. It has been defined as the "limits imposed on the power of a validly constituted court to her and determine issues between persons seeking to avail themselves of its process by reference to the subject of the issues or to the person between whom the issues are founded or the kind of the relief sought."[258] It has also been "legal capacity, power or authority vested in it by the Constitution or statute creating the court"[259] It is the life-blood of any adjudication without which the court cannot proceed.[260] It has been held that once a court has no jurisdiction, it is a waste of valuable time to embark on hearing and determination of the suit, matter or claim[261] as such proceedings will amount to a nullity no matter how well conducted.[262] The relationship between *locus standi* and jurisdiction has been raised and resolved in a plethora of cases.[263] It was pronounced upon by the Supreme Court in ***Dada v. Ogunsanya***[264] when it held that:

> It is settled law that *locus standi* is the legal capacity to institute an action in a Court of law and if a person has no legal capacity to institute an action, the Court will have no jurisdiction to entertain his claims.[265]

Similarly, in ***Ajay v Adebiyi***,[266] the Supreme Court discussed this issues where it observed that *locus standi* and jurisdiction are interwoven in the sense that *locus standi* goes to affect the jurisdiction of the court before which an action

[258] Goldmark (Nig.) Ltd. v. Ibafon Co. Ltd (2012) 10 NWLR (Pt. 1308) 291 at 335, paras. D - E
[259] PDP v. Okorocha (2012) 15 NWLR (Pt. 1323) p. 205 at 256, paras A - B
[260] Gwede v. INEC (2014) 18 NWLR (1438) p. 56 at p. 145
[261] Ansa v. R. T. P. C. N. (2008) All FWLR (405) p. 2681 at pp. 1697 - 1698
[262] Gwede v. INEC (*supra*)
[263] See for instance *Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) p. 669,*
[264] (1992) 3 NWLR (Pt. 232) p. 754
[265] *Ibid*, 764, *paras* F - G
[266] [2012] 11 NWLR (Pt. 1310) 137 at 176 per Adekeye JSC

is brought. Thus, where there is no *locus standi* to file an action, the court cannot properly assume jurisdiction to entertain the action, it is a condition precedent to the determination of a case on the merit.[267] It held as follows:

> *Locus standi* and jurisdiction are interwoven in the sense that *locus standi* goes to affect the jurisdiction of the court before which an action was brought. Thus, where there is no *locus standi* to file an action, the court cannot properly assume jurisdiction to entertain the action.[268]

In ***Uwazuruonye v. Gov., Imo State***[269], the Supreme Court held that the position is the same regardless of the public importance of the case in question. It said "where a party lacks *locus standi*, the court lacks jurisdiction to hear and determine the party's suit, no matter the public importance of the issues raised in the suit"[270]

Furthermore, being an issue of jurisdiction *locus standi* can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal or Supreme Court by any party without leave of court or by the court itself *suo motu*.[271] Where the question of the *locus standi* of a party to initiate civil claims is raised it should be settled first and decisively and not shelved.[272]

3.4 *Locus Standi* in the Enforcement of Fundamental Rights

It should be clear from the foregoing discussion that the doctrine of *locus standi* rears its head in all kinds of litigations, including litigation for the enforcement of the rights contained under chapter IV of the 1999 Constitution. It goes without saying that the decision of the courts reviewed above which

[267] *Ibid*, p. 176 per Adekeye JSC
[268] Ibid, p. 175, *paras* C - G
[269] (2013) 8 NWLR (1355) p. 28
[270] Ibid, p. 52, *paras* D - E
[271] *Ajay v Adebiyi* (supra)
[272] *G & C Lines v. Olaleye* (2000) 10 NWLR (Pt. 676) p. 613

make it a condition to establish locus in order to maintain any suit does except human right litigations.

Consequently, in human rights litigations the issue of *locus standi* or sufficient interest is not only relevant but paramount. Thus, for a person to sustainably activate the judicial process to redress human rights violation, he must show that he is a person interested, being one whose right has been, is being or is in imminent danger of being violated or invaded. Where a public injury or infraction of a fundamental right affecting an indeterminate number of people is involved, to be competent to sue, a plaintiff must show that he has suffered more or is likely to suffer more than the multitude of individuals who have been collectively wronged. Thus, the doctrine was a formidable albatross in human rights litigation in Nigeria because a number of cases have been lost on the ground of absence of sufficient interest.[273] The insistence on *locus standi* discourages litigations by public spirited persons to fight the cause of indigent victims of human rights violations and this greatly affected public interest fundamental right litigation.

Commendably, the new Fundamental Rights (Enforcement Procedure) Rules which was enacted in 2009 contained a highly generous provision with far reaching positive innovations which broadened/relaxed the requirement of *locus standi*, encouraged PIL and provided for expeditious determination of fundamental right actions. Paragraph 3(d) of the Preamble to the Rules requires Nigerian courts to proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented. Related to this is the

[273] See for example *Chief Irene Thomas v. Timothy Olufosoye(1986)1 NWLR (Pt. 18) 669*

requirement in Preamble 3(e) which provides that a court shall encourage and welcome public interest litigation in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates or groups as well as any non-governmental organisation may institute a human rights application on behalf of any potential applicant. The Rules provide further that the applicant in human rights litigation may include any of the following: anyone acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of, a group or class of persons; anyone acting in the public interest, and associations acting in the interest of its members or other individuals or groups. The standing rules set out above represent a departure from the position under the 1979 Rules of which enough evidence exists to suggest that the standing principle set out in *Adesanya* was no longer good law. The 2009 Rules therefore captures the correct mode in the country and this may be the reason why one of its provisions is eagerly and happily embraced and cheered.

It is however to be noted that the generous provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009 is on the issue of *locus* contained in the preamble to the rules. The vexed issue is whether the provisions contained the preamble of a law have the force of law? The law is that the use/role of preambles in legislation is like that of a recital in deed. The preamble does not normally constitute an operative part of the statute[274]. However, preambles are relevant to interpretation of statutes where there is ambiguity or difficulty in ascertaining the intention of the statute.[275] Thus, the

[274] *Eramus Osawe & Ors v. Register of Trade Unions (1985) INWLR (pt. 4) 755*
[275] *Ibid,* p. 143; *Income Tax Commissioners v. Persel (1981) AC 531 at p. 542, Commissioner of Lands v. Oniru (1961) 2 NLR 72*

preamble to the 2009 Rules on the position of *locus standi* in fundamental rights cases may still be used to rule in favour of the relaxation of the doctrine since the clear intendment of that piece of legislation was to liberalize enforcement fundamental rights proceedings. However, there is the need for the apex court make a definite pronouncement on this issue.

The last point to be discussed here is whether it is possible for procedural rules to overturn decisions of Nigerian courts, including the Nigerian Supreme Court? This question is pertinent here because some Nigerian courts have persistently held that *locus standi* is not only important and paramount, but is also a constitutional requirement rooted out of 6 (6) (b) of the 1979 and 1999 Constitutions,[276] while the Rules which abolishes it is a rule of procedure enacted by the Chief Justice of Nigeria (CJN) using his powers conferred by and under section 46 (3).

It is submitted that since the 2009 Rules were made by the CJN pursuant to the powers conferred upon him by the constitution, it is considered to be a rule with 'constitutional flavour' and is therefore equal to other principles, like *locus standi* , derived from the constitution. Furthermore, the view that *locus standi* originated from 6 (6) (b) of the Constitution has not been expressly overruled by the Supreme Court. On the other hand, it is easy to see how ambitious the 2009 Rules are and that, while they may be commendable, it may need the Supreme Court to expressly affirm the overriding objectives so that the precedential weight of Supreme Court judgments would erase whatever doubts exist of the impact of the 2009 Rules. Only this will hammer the final nail on the coffin of this issue.

[276] This was first held in *Adesanya v. President* (Supra {n 9}). It was overturned in *Owodunmi v. RTCCC* (Supra {n 180}). However, the issue was re-introduced in *Fawehinmi v. President* (Supra{n 9})

3.5 *Locus Standi* under some Statutes

Even at a time when statutes and courts restrictively provide for and interpret locus in elections cases, some important statute make more generous commendable provisions on the issue. Some these major statutes are discussed hereunder:

3.5.1 Fiscal Responsibility Commission Act

This Act which is enacted in 2007 and entered into force on the 30th of July, 2007 aims to provide for prudent management of the Nation's Resources, ensure Long-Term Macro-Economic stability of the National Economy, secure greater accountability and transparency in Fiscal operations within the Medium Term Fiscal Policy Framework, and the establishment of the Fiscal Responsibility Commission to ensure the promotion and enforcement of the Nation's Economic objectives; and for related matters.

The Act after making very important provisions for the achievement of its objectives provided for its enforcement under section 51 thereof which provides:

> A person shall have legal capacity to enforce the provision of this Act by obtaining prerogative orders or other remedies at the Federal High Court, **without having to show any special particular interest**. (Emphasis supplied).

3.5.2 Freedom of Information Act

This Act was enacted by the National Assembly in 2011 and entered into force on the 28th day of May, 2011. It is aimed to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent

consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.

The Act provides under section 1 (1) that:

> Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.

Section 1 (2) provides that "**An applicant under this Act needs not demonstrate any specific interest in the information being applied for**."

Section 1 (2) provides further that "Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act"

It should be clear from the sections of the Acts cited above that the Acts abolish the requirement of *locus standi* as far as their enforcement is concerned. The Fiscal Responsibility Commission Act specifically provides that a person shall have the *locus* to enforce its provisions without having to show any special particular interest. The Freedom of Information Act specifically provides that an applicant needs not demonstrate any specific interest in the information being applied for and that any person entitled to the right to information under the Act, shall have the right to institute proceedings

in the Court to compel any public institution to comply with the provisions of this Act.

From the foregoing it is clear that any member of the public has the locus to institute and maintain a law suit for the enforcement of the provisions of these Acts. This marks a positive statutory departure from the traditional common law requirement of locus which a positive development to the development of PIL in areas of law they deal with. However, if the supposition that *locus standi* that *locus standi* is a constitutional requirement were to be true, then there may some constitutional issues with the provisions of these Acts in relation to the doctrine.

3.6 Conclusion

As seen above, Nigerian courts' interpretation and application of the doctrine of *locus standi* is very stringent. The doctrine has been used over the years to throw out cases that would have benefited the society without going into their merits. However, the issue has been and is still ambiguous if not in its meaning, at least, in its practical details and there is yet no well articulated exposition of the doctrine and clearly spelt out guidelines for its determination.

CHAPTER FOUR

PUBLIC INTERST LITIGATION IN NIGERIA

4.1 Introduction

This explores PIL in Nigeria. It begins from the evolution of the concept raging from colonial era, military era up to the 4th Republic. It gives examples of PIL cases in the country after which it discusses the impact of locus standi to PIL cases. it also highlights other factors militating against PIL in Nigeria and ends with a conclusion.

4.2 History of PIL in Nigeria

The history of PIL in Nigeria is relatively recent, notwithstanding the emergence of a legal system that dates far back to the British colonial rule in the 19th century, and in spite of the peculiar challenges of colonialism. This is no surprising given that until the Independence Constitution of 1960, there really was no constitutional protection of human rights in Nigeria and the struggles for independence were mostly waged on the political platform. The reason is not farfetched as the idea of a constitutional Bill of Rights only emerged in 1957 when the Willink's Minorities Commission of 1957 made recommendations for the inclusion of a bill of rights in the Independence (Nigerian) Constitution of 1960 - in line with the provisions of the European Convention on Human Rights.[277] The period between 1957 and 1979 did not witness any remarkable breakthroughs in the use of PIL to demand governmental accountability, respect for the rule of law or to secure other social benefits for the people.[278] In spite of the existence of a Bill of Rights in both federal and regional Constitutions, early efforts drew blank

[277] Abiola, O., (1989) Constitutional Law and Military Rule in Nigeria (Ibadan: Evans Brothers (Nigeria Publishers Ltd), p. 247 – 248

[278] Otteh, J., *op. cit* (n 90)

because of the effect of the doctrine of *locus standi*.[279] Attempts by few litigants to challenge the constitutionality of statutory and subsidiary legislations on the premises that they violated human rights were thrown out *locus standi* doctrine as the Federal Supreme Court (as it then was) had no hesitation deciding that the applicants showed no "peculiar" or "sufficient" interest or suffered no peculiar injury as to warrant judicial review of the legislative and executive actions in question.[280] The oppression of the doctrine of *locus standi* continued to barricade access to the courts, with the courts narrowly defining their own role until the 1970's. At this time, suits against the government could only proceed with the consent of the government itself, by virtue of the Petition of Rights Act of 1958 (as Amended) in 1964.[281]

4.2.1 PIL in the Military Era

Apathy for litigations in the public interest was tempered by an increasingly assertive Supreme Court. In the celebrated case of ***Lakanmi and Anor v. the Attorney-General (Western State) and Ors***,[282] the Supreme Court attempted to establish the supremacy of the unsuspended parts of the 1963 Constitution over decrees promulgated by the then military government. The appellants in the case contended that their assets were unlawfully confiscated under the Forfeiture of Assets (Release of Certain Forfeited Properties, Etc). (Validation) Decree, which decree, they argued, was in effect a legislative judgment, violating the provisions of the 1963 Constitution. The respondents

[279] *Ibid*
[280] See for example *Olawoyin v. Attorney-General of Northern Nigeria (1961) A11 N.L.R. 269*. This case has been extensively discussed in 3.3 above
[281] *Chief Aminu Are v A. G., Western Region (1960) WNLR, p. 108;* see also *Mezville Roberts v. Alhaji Sule Katagum (1968) NILQ, Vol. 3, p. 113*
[282] (1971) UILR 201

relied on the Constitution (Suspension and Modification) Decree 1966.[283] The Second Schedule to the Decree provided that the provisions of decrees 'shall prevail over those of the unsuspended parts of the Constitution'. Justice Ademola CJN, delivering the judgment of the Court, gave judgement in favour of the appellants. His Lordship held that the decree violated the principle of separation of powers enshrined in the 1963 Constitution. His Lordship concluded that '[t]he Decree is nothing short of legislative judgment, an exercise of judicial power. It is in our view *ultra vires* and invalid.' [284]

The military did not react well to this decision. Another decree was immediately promulgated, which not only proclaimed the supremacy of decrees over the Constitution, but also nullified the effect of the judgment in the case.[285] The judiciary has since disowned Lakanmi's case and from 1970 onwards, the supremacy of decrees over all other laws became a well-established fact in Nigeria.

Even though this case would not pass for a PIL in the way we presently understand the concept, but it signaled the emergence of a Supreme Court that was ready to take on government and reaffirm the supremacy of the rule of law; to awaken courts to a new possibility of utilizing law to confront the excesses of absolutist or authoritarian government and uphold such rights of citizens as are afforded by law.

In another case,[286] Supreme Court insisted that the courts have the power to question the validity of a military edict). The resoluteness with which the Supreme Court asserted its constitutional powers of judicial review to uphold

[283] Decree No 1 of 1966
[284] *Lakanmi v. A. G., Western States* (*supra*), 222
[285] Federal Military Government (Supremacy and Enforcement of Powers) Decree No 28 of 1970
[286] *Ademolekun v. Council of the University of Ibadan* (1970) NSCC, Vol. 9, p. 143

the civil right of a citizen served as a rebuke to the notion that military dictatorship was unaccountable to law.

These decisions undoubtedly stimulated resurgent thinking about what Nigerian courts can do towards securing governmental accountability and social justice if moved to do so. Thus, when ouster clauses were relied upon by subsequent military governments between 1984 to 1998 to forestall judicial inquiry into actions of those governments, courts were often well disposed to avoiding the harshness of those decrees, side-stepping a complex labyrinth of harsh ouster clauses in order to do so.

In *Abacha v. Fawehinmi*,[287] the Supreme Court inventively asserted courts' jurisdiction to hear a challenge to the military government's detention powers by relying on the African Charter on Human and Peoples' Rights supremacy over the ouster provisions of Decree No 2 of 1984. Again, although the case was not canvassed strictly on a public interest platform, it reinforced the view that the courts would take a liberal view of civil liberties and while subjecting government to the rule of law and would be ready to extend that liberalism outwards when public law litigations were in issue. It was not only the Supreme Court that was making serious judicial effort to resist tyranny: courts lower in hierarchy too, like the Court of Appeal and the High Courts were, likewise. In 1993, for example, a High Court was asked to stay execution of seven persons sentenced to death by a tribunal whose constitution and trial failed to satisfy key due process standards, pending the consideration of a Communication filed by a civil rights group – the Constitutional Rights Project (CRP) - to the African Commission on Human and Peoples' Rights on

[287] (2000) 6 NWLR (Pt. 660) 228

the conviction. The injunction imposed by the Court prevented the execution of the seven persons until they were subsequently released by the military government.[288]

The history of PIL in Nigeria will incomplete without mentioning the unrelenting vigour with which the late Chief Gani Fawehinmi (SAN), a renowned human rights and constitutional lawyer, resisted arbitrary actions of government that were arguably inconsistent with the rule of law using PILs. These included litigations to compel military governments to render an account of oil export earnings, or to challenge the misuse of public funds by the wife of a military president, her 'office' not being created by law, or to declare unconstitutional, the setting aside of 5% of the Federal Government allocation to all Local Government Authorities for the maintenance of traditional rulers. PILs brought by him, it has been said, were over three hundred cases.[289]

4.2.2 Public Interest Litigation under the 1979 and 1999 Constitutions

Following Nigeria's return to democratic governance in 1979, new space emerged, both for civic activism and for judicial review of governmental actions: civil rights and rule of law activists took advantage of that space quickly, leading to a significant amount of PILs coming to court. Beginning with the case of Adesanya v. President,[290] public-spirited litigants took on what they perceived as unconstitutional governmental actions, and urged courts to invalidate them. As discussed above,[291] in Adesanya's case, the question was raised whether a Senator who had participated in proceedings in

[288] The Registered Trustees of Constitutional Project v. Nigeria 3 International Human Rights Reports (1996) 137
[289] Popoola, A. (2009) "Public interest Lawyering in Nigeria" being a paper delivered at Access to Justice Sensitization Workshop on Public Interest Litigation in Nigeria.
[290] *Supra*
[291] See 3.3 above

the Senate for the confirmation of the Chairman of the Federal Electoral Commission (but had objected to the confirmation), had *locus standi* to bring a legal action afterwards complaining that the appointment was unconstitutional. The Supreme Court held that he did not have *locus standi* to maintain the suit.

However, in ***Mom & Lawyers Alert v. Benue State INEC***,[292] Tur. J of the Benue State High Court recognized the *locus standi* of a non- governmental organization to sue for the people of the State challenging the suspension of local government elections by the state government in 2003. The 2007 decision of the Court of Appeal in Akaegbu v. Nigerian Broadcasting Corporation[293] complicated public interest groups' search for *locus standi* because the court formulated a distinction between the right of access to court and the right to establish a right of action that is personal to the litigant. A number of subsequent decisions employed this distinction to throw out public interest litigations on the grounds that the lead representatives of such actions were not the personal possessors of the rights they canvassed, and that they did not show harm or injury over and above any other citizen in Nigeria which consequently meant they do not have *locus standi*.[294]

4.2.3 The Test *Locus Standi* in PIL Cases in Nigeria

The issue of *locus standi* has been raised and determined in several PIL cases.[295] It was held in these cases that the test of *locus standi* applies to PIL cases and several PIL cases were struck out on that ground.[296] The courts have

[292] [2007], Cases on Human Rights (CHR), p 279
[293] [2007] 14 NWLR (Pt 1055), p. 551
[294] See for instance the decision of Archibong. J in Rita Dibia v NBC (FHC/L/CS/492/2004) - where he relied squarely on Okaegbu's case
[295] See for instance the cases of *Olawoyin v. A. G., Western Region* (supra), *Adesanya v. President* (supra) and *Fawehinmi v. President* (supra)
[296] *Ibid*

in several cases strictly interpreted and applied locus standi to PIL. This negatively impacted on the development of PIL and restricted access to justice. A review of landmark cases will reveal the picture.

Olawoyin v. Attorney-General of Northern Nigeria[297]

In this case, the court was asked to rule on the constitutionality of a law which made it an offence to enroll or take children to schools run by political, state or religious agencies, and prohibited children from engaging in political activities. The Plaintiff had children of school age whom he wished to enroll in a proscribed school and he alleged that the prohibition violated the Constitution. The trial court dismissed the claim on the ground that no right of the plaintiff was alleged to have been infringed and that it would be contrary to public principle to make the declaration asked for in vacuo. The court claimed to have arrived at the decision after a wide survey of the Indian and the United States legal systems. He appealed to the Federal Supreme Court which dismissed the appeal on the same ground of absence of sufficient interest.

This decision raises several critical issues; was it judicious and was it just to adopt a procedural rule which requires a person to break the law before knowing or learning from the courts whether or not the law is applicable? From the facts, the plaintiff had children of school age to whom he owed a moral, if not legal duty, to give education of his choice taking their welfare into cognizance. But the law forbade him to have a choice of sending his children to schools run by political agencies even if they are in his opinion the best for his children. Unless it is expected that children would send themselves

[297] (1961) A11 N.L.R. 269

to school, we cannot but conclude that the right of the plaintiff in this case was being infringed. However, the court found and held the contrary. In a newly independent and developing country like the Nigeria of that age, would such a restrictive approach be appropriate having regards to the fact that vindication of political rights by Constitutional litigation is something new to the citizenry?

True to the court's claim, this approach to locus had been earlier propounded by the Supreme Court of the United States in ***United States v. Raines***.[298]In this case, under authority of R.S. S. 2004, as amended by the Civil Rights Act of 1957, the Attorney General brought this civil action on behalf of the United States in a Federal District Court to enjoin certain public officials of the State of Georgia from discriminating against Negro citizens who desired to register to vote in elections in Georgia. The District Court dismissed the complaint on the ground that subsection (c) of the Act, which authorizes the Attorney General to bring such an action, is unconstitutional. Although the complaint involved only official actions, the Court construed subsection (c) as authorizing suits to enjoin purely private actions, and held that this went beyond the permissible scope of the Fifteenth Amendment, and that the Act must be considered unconstitutional in all its applications. On direct appeal to Supreme Court, it was *held that* the judgment is reversed based on the ground *inter alia* that the Defendant lacked the standing to attest that the statute was unconstitutional.

It would appear from the pronouncements in the above case that the U. S. Supreme Court took the position that as a general rule a party does not have

[298] 362 U. S. 17 (1960)

the standing to assert to unconstitutional application of the statute to another party. The court in *Olawoyin*'s case was swayed by this reasoning. However, a careful reading of the case reveals that such a rule admits of exceptions. One of such exceptions implied, is that a criminal statute may be assailed as unconstitutional as applied to third parties. This exception would have justified the claim of *Olawoyin*.

In the later case of ***Gamioba & Ors.v. Esezi II,***[299]the Supreme Court restated their decision in *Olawoyin*'s case although as an obiter:

> It is always necessary, where the plaintiff claims a declaration that a law is invalid, that the court should be satisfied that the plaintiff's legal rights have or are in imminent danger of being invaded in consequence of the law. We dealt with this point at length in Olawoyin v. Attorney-General Northern Nigeria (FSC 290/1961 (1961) All N. L. R. 269), and it will be enough to say here that since the validity of law is a matter of concern to the public at large the court has a duty to form its own judgement as to the plaintiff's *locus standi* , I should not assume it merely because the defendant admits it or does not dispute it. The plaintiff's *locus standi* in present has not yet been disclosed, and if he has none, his claim must be dismissed on that ground and it will be unnecessary to decide the question involved in the declaration he claims.

[299] (1961) All N. L. R. 584

Adesanya vs. President of Nigeria & Another[300]

In this case, the appellant brought action challenging the appointment of the second respondent by the President to the chairmanship of the Federal Electoral Commission. The latter was at the time of the appointment the Chief Judge of Bendel State and was, therefore disqualified from being appointed a member of the Commission. When the matter came up for final disposal before the Supreme Court, it was unanimously held that the appellant had no *locus standi* to bring the action on the ground that he had not demonstrated the appointment and subsequent confirmation by the Senate of the second respondent had in any way infringed his civil rights and obligations or affect him. Of particular importance in this regard is the judgement of Muhammad Bello JSC (as he then was) who, in a seven page judgement, read *locus standi* into the innocuous section 6 (6) (b) of the 1979 Constitution when he held:

It seems to me that upon the construction of the subsection, it is only when the civil rights and obligations of the person who invokes the jurisdiction of the court, are in issue for the determination that the judicial powers of the court may be invoked. In other words, standing will only be accorded a plaintiff who shows that his civil rights and obligation have been or are in danger of being violated or adversely affected by the act complained of.[301]

In the case, Fatayi - Williams, C.J.N. who delivered the lead judgment had these interesting remarks to make:[302]

> I take significant cognisance of the fact that Nigeria is a developing country with a multi-ethnic society and a written Federal Constitution, where rumour mongering is the pastime of

[300] (1981) 1 A11 N.L.R.I
[301] *Ibid*, pp. 385 - 386
[302] *Ibid*, p. 20

> the market places and the construction sites. To deny any member of such a society who is aware or believes, or is led to believe, that there has been an infraction of any of the provisions of our Constitution, or that any law passed by any of the Legislative Houses, whether Federal or State, is unconstitutional, access to a Court of law to air his grievance on the flimsy excuse of lack of sufficient interest is to provide a ready recipe for organised disenchantment with the judicial process.

Obaseki, J.S.C., who was a party to the decision in *Adesanya*, came around to say:

> The constitution has opened the gates to the courts by its provisions and there can be no justifiable reasons for closing the gates against those who do not want to be governed by a law enacted NOT in accordance with the provisions of the constitution.

The decision of the Supreme Court in the above case triggered off the problem bedeviling *locus standi* in Nigeria. While some courts, authors and commentators hold the view that the opinion expressed by the Muhammad Bello JSC above forms the decision of the Supreme Court on the issue and therefore binding precedent, others contend that the Supreme Court was not unanimous on the issue and that Bello's opinion did not even represent the majority opinion of the Justices of the Supreme Court that decided the matter.[303] A review of some of the cases that followed *Adesanya*'s case as presented hereunder suffices to show us the confusion the decision in the case has caused.

[303] Ilofulunwa, O., *supra* (n 37) p. 1

Chief Gani Fawehinmi v. Colonel Halilu Akilu[304]

Gani Fawehinmi, legal counsel of the late Dele Giwa, a journalist and the Editor in Chief of a magazine (and who was allegedly assassinated by a parcel bomb suspected to have been delivered by agents of the military government) submitted to the Director of Public Prosecution (DPP) a 39 page document containing all details of the investigation he had conducted which, he averred, implicated two serving army officers in the assassination - the Director of Military intelligence and the Deputy Director of the State Security Service (SSS). Acting pursuant to section 342 of the Criminal Procedure Code, Gani Fawehinmi requested the Lagos State Director of Public Prosecution to exercise his discretion whether or not he would prosecute the respondents for the murder of Dele Giwa and, if he declined to prosecute, to endorse a certificate to that effect on the information submitted to him by Fawehinmi to enable him (Fawehinmi) prosecute the respondents for the murder. The DPP in his reply stated that he could not yet decide whether or not to prosecute until he receives a report of police investigation into the matter. Consequently, the Appellant filled an application to the High Court of Lagos state for leave to apply for an order of Mandamus to compel the DPP to make a decision. The application was refused on the ground that he had no *locus standi* to make the application as he did not fall into recognizable consanguinity with the deceased as to constitute "sufficient" or "peculiar" interest affected by the death of Dele Giwa. His appeal to the Court of Appeal was refused, with the court calling him a 'busybody'. On further appeal to the Supreme Court, his appeal was allowed on the premise that the

[304] (1987) PART 2, NSCC, VOL 18, P. 1265

rights of a private prosecutor created by section 342 of the Criminal Procedure Law of Lagos State made every citizen his brother's keeper, and qualified anyone to protect any other person against crime. The Supreme Court unanimously expanded the meaning of consanguinity to include intimate friendship that is reinforced by a professional client /counsel relationship. Justice Kayode Eso said:

> My Lords, the issue of *locus standi* has always been held as one of the utmost importance by this Court for in effect, it is one that delimits the jurisdiction of the Court, for in the interpretation of the Constitution, it is hoped that the courts would not possess acquisitive instinct and garner more jurisdiction than has been ascribed to it by the organic law of the land. It is this, I think, that has inhibited your Lordships, and rightly too, in being careful, as your Lordships should be, in threading carefully on the soil of *locus standi*. This is well and good. I hold the view, with utmost respect that as the Court has been made, by the Constitution itself, to be the guardian of that Constitution. The court has a constitutional responsibility, also legal and sociological, to interpret the provisions of the Constitution in the light of the socio economic and cultural background of the people of this country.
>
> For it is for those people's background that the Constitution is fashioned. Certainly, with respect, my Lords, this must be a major part of the functions of this court. What I am now urging is therefore an extension of what I had respectfully urged (in regard

to fundamental rights) in *Ariori v. Elemo* (1983) 1 SCLR 1 when I said "when I said "The courts in this country, especially this Court, being a court of last resort have a duty to safeguard fundamental rights". The extension should be from fundamental rights to the Constitution generally and criminal law. My reason in case for broad interpretation was "Having regard to the nascence of our Constitution, the comparable educational backwardness, the socio-economic and cultural background of the people of the this country and the reliance that is being placed and necessity have to be placed as a result of this background on the courts, and finally, the general atmosphere in the country".[305]

A. M. Bello v. The Governor of Kano State[306]

In this case, the plaintiff who is a Nigerian, an indigene of Kano State and legal practitioner based in Kano, instituted an action at the High of Court of Kano State seeking, *inter alia*, an order that the defendant be compelled to appoint and swear in a substantive Chief Judge for the State in accordance with the provisions of Section 270 (2) (a) of the 1999 Constitution of the Federal Republic of Nigeria. The defendant challenged the *locus standi* of the plaintiff. After arguments, the Court held per Aboki J (as he then was) that:

> A careful construction of the provision of section 6 (6) (b) of the Constitution of Nigeria 1999 seems to indicate that the plaintiff will only be entitled to invoke the judicial power to determine the constitutionality of the action of the Defendants complained of, if the plaintiff shows that either his personal interest will

[305] *Ibid*, pp. 1300 – 1301
[306] (2002) NNLR p. 560

> immediately be or has been adversely affected by the action of the Defendants or that he has sustained an injury to himself or that his civil rights and obligations have been or are in danger of being violated or adversely affected by the acts complained of which interest or injury is over and above that of the general public.

Citing and relying on ***Albion Construction Ltd. v. Rao Investment & Properties Ltd,***[307] the court further held that:

> In obedience to the doctrine of stare decisis or judicial precedence, I will also shut the door of this Court against the plaintiff in this action, who in real fact has no genuine complaint or sufficient legal right in this matter which he has initiated and for which he wants this Court to desperately hear him. It is equally necessary to shut the door of this Court so as to protect the Defendants not to be dragged into unnecessary litigation by the plaintiff.[308]

The above ruling slammed the doors of justice against a legal practitioner who complained that the constitution has been violated by the defendant and asked the court to compel the defendant to discharge his duty under the constitution. The decision was based on the principles enunciated in *Adesanya*'s case ignoring the later case of *Fawehinmi v. Akilu*. Except for the fact that there was no record to show that *Akilu*'s case was referred to before the court, the decision would have been said to have turned the law on its head. Consequently, it could be concluded that the decision is at best *per in curium*.

[307] *Supra* (n 202)
[308] See p. 573

Interestingly, the same judge realized perversity of this decision and reversed same in *Fawehinmi*'s case discussed below.

Fawehinmi v. President, FRN[309]

The brief facts of this case is that the appellant who was at the time of instituting the suit, the Chairman of National Conscience Party, a taxpayer and a Senior Advocate of Nigeria, instituted the suit at the Federal High Court, Abuja challenging the decision and action of the 1st Respondent, the President of the Federal Republic of Nigeria, paying the 3rd and 4th Respondent, Dr. (Mrs.) Ngozi Okonjo-Iweala, the then minister of finance and Ambassador Olufemi Adeniji, the then minister of external affairs, outside and above the amount specified in the Certain Political, Public and Judicial Office Holders (Salaries and Allowances etc.) Act No. 6 of 2002 as the emolument of a minister in the federal republic of Nigeria and in a currency different from the one prescribed by the Act.

At the trial court, the locus of the Appellant was challenged. After arguments on the issue, the trial judge, B. F. M. Nyako J. struck out the appellant's suit on the ground that the appellant has no locus to maintain the action. The tri al Judge held at page 50 of the printed record that:

> A challenge of the Constitution which is the general law governing all Nigerians is quite different from a challenge of a specific law governing a specific class of people. It may well be true that the specific law takes its life from the general law, in this case, the Constitution. It is in such a situation to my understanding that Adesanya's case and Owodunmi's case apply, same as the Busari's

[309] *Supra* (n 9)

> case. In such a situation, the plaintiff needs to show his interest and how it is affected or infringed upon as it relates to the situation at hand, the plaintiff would need to show how he has been or is likely to be affected by the non adherence to the provisions of the Certain Political, Public and Judicial Office Holders (Salaries and Allowances etc.) Act No. 6 of 2002.

On appeal to the Court of Appeal, the court allowed the appeal, found that the appellant's has the requisite locus to institute the action and quashed the ruling of the trial court striking the action. Pronouncing on the *locus standi* appellant and any taxpayer to challenge how government spends funds, the court held that:

It will definitely be a source of concern to any tax payer who watches the funds he contributed or is contributing towards the running of the affairs of the State being wasted when such funds could have been channeled into providing jobs, creating wealth and providing security to the citizens. Such an individual has sufficient interest of coming to court to enforce the law and ensure that his tax money is utilized prudently.[310]

The court went further to lament on the efficacy and practicability of the current law that in an action to assert or protect a public right or to enforce the performance of a public duty, it is the Attorney-General of the Federation that has the requisite locus to sue. It observed:

In our present reality, the Attorney-General of the Federation is also the Minister of Justice and a member of the Executive Cabinet. He may not be disposed to instituting an action against the Government in which he is part of,

[310] *Ibid*, p. 341

it may tantamount to the Federal Government suing itself. Definitely he will not perform such a duty. Importantly too, there is no provision in the 1999 Constitution for the State to sue itself.

Since this country attained Independence from the British Colonial Administration almost forty seven years ago, I know of no reported case of any superior court in Nigeria where the Attorney-General of the Federation has instituted an action against the Federal Government, or an Attorney-General of a State suing his State Government on account of a violation of the provisions of the Constitution. I may however be wrong in this historical assessment.

The question now is who will approach the court to challenge the Government where it violates or fails to enforce any provisions of the Constitution or the Laws where an Attorney-General will not.

In this country where we have a written constitution which establishes a constitutional structure a tripartite allocation of power to the Judiciary, Executive and Legislature as the co-ordinate organs of Government, Judicial function must primarily aim at preserving legal order by confining the legislative and the executive within their powers in the interest of the public and since the dominant objective of the rule of law is to ensure the observance of the law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria whereby any citizen could bring an action in respect of a public derelict. Thus, the requirement of *locus standi* becomes unnecessary in constitutional issues as it will merely impede judicial function.

Finally, Aboki JCA eloquently advocated the need to amend the Constitution to allow unrestricted access to justice thus:

It will be appropriate at this point to proffer that for this country to remain governed under the rule of law and in view of the controversies the problem of *locus standi* has generated especially in constitutional matters, it is suggested that any future constitutional amendment should provide for access to court by any Nigeria in order to preserve, protect and defend the Constitution.

No doubt, the decision of the Court of Appeal in this case vindicates the right of every taxpayer to challenge the disbursement of public funds. This also marks a sharp departure from the former narrow approach of our courts to the issue of *locus standi* portrayed in *Adesanya* and later case. It should be noted that this departure started in ***Fawehinmi v. Akilu.***[311]

However, the decision in the matter deals with suits by taxpayers on the waste of funds he has or is contributing to the running of the government. It therefore appears that where the infraction of public right does not deal with disbursement of public funds or the plaintiff is not a taxpayer, locus cannot be established.

Similarly, the court has turned the clock of the development of *locus standi* backward when it held that:

> The term *locus standi* cannot be divorced from the provisions of section 6 (6) (b) of the 1999 Constitution since it provides that the constitutional right of a citizen to institute an action in court can only be exercisable by a person who has complains touching on his civil rights and obligation. Where a Plaintiff fails to raise in his statement of claim or in the affidavit in support of his originating summons any question as to his civil rights and obligations that

[311] (1987) 4 NWLR (Pt. 67) p. 797

have been violated or injured, the statement of claim or the originating summons as the case maybe will be struck out.

SERAC (For and on Behalf of the Ogoni People) v. Federal Republic of Nigeria[312]

This Communication was filed by the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights before the Africa Commission for Human Rights. The Communication alleged that:

(i) The Nigerian Government: participated in oil, water and soil contamination of oil producing lands, thereby endangering the health of the Ogoni people;

(ii) The Nigerian Government failed to protect the Ogonis from the activities of Nigerian National Petroleum Company and Shell Petroleum Development Company operating in their community and, instead, ordered its security forces to damage their homes, crops, etc,

(iii) The government failed to undertake or permit studies of actual or potential environmental or health risks caused by the oil operations.

The Commission found that the Federal Republic of Nigeria was in violation of Articles 2 of the African Charter on Human and Peoples' Rights (on equality of rights of persons), Article 4 (the right to life), Article 14 (the right to property), Article 16 (the right to health), Article 18(1) (the right to family life), Article 21 (the right to freely dispose of their natural resources) and Article 24 (the right to a healthy environment). The Commission further stated that the State had a duty

[312] Extract from "Training manual on ESC Rights" by The Social and Economic Rights Action Center

to ensure that social and economic rights are respected, protected, promoted and fulfilled.

Keyamo v. House of Assembly, Lagos State[313]

This is another example of the hurdle of *locus standi* which any person who wants to challenge the action of the government in Nigeria must cross before they can institute or maintain an action. In that case, Keyamo filed a suit challenging the constitutionality of the setting up of a panel by the Lagos House of Assembly, to investigate the Governor over allegations concerning the crime of forgery. The *locus standi* of the plaintiff was challenged t the trial court. The court sustained the objection and struck out the plaintiff's case for want of *locus standi*. The plaintiff appealed to the Court of Appeal. While upholding the ruling of the trial court, the Court of Appeal said:

I have carefully perused and considered the entire originating process issued by the appellant in the lower Court. Not only has he woefully failed to disclose his legal authority to demand for the declarations sought but also failed to show what injury or injuries he will or would suffer... Of all the reliefs being claimed by the appellant, none of them relate to him personally or his faceless clients whose future political interest he now seeks to protect. This approach is speculative and untenable in law. It is a mere academic exercise. Merely being a registered voter (even without proof of same) is not sufficient to sustain the prayers of the appellant. The appellant has simply not disclosed his interest in this suit.

The appeal was therefore dismissed and the ruling of the trial high court was affirmed.

[313] (2000) 12 N.W.C.R. 196

Shibkau v. A. G., Zamfara State[314]

In this case, the appellants who are Christians, indigenes and residents of Zamfara State instituted an action by way of Originating Summons challenging the adoption and implementation of Shari'ah through Shari'ah Courts (Administration of Justice and Certain Consequential Changes) Law, 1999 and the Shari'ah Penal Code Law, 2000 both of Zamfara State. The Respondents challenged the locus standi of the Plaintiffs to instate the said action. After arguments, the trial court held that the Plaintiffs who were Christians lacked legal capacity to challenge the provisions of the said laws as they did not apply to them. Consequently, the court struck out the Plaintiffs' action. Aggrieved by the ruling of the trial court, the Plaintiffs appealed to the Court of Appeal. On appeal, the issue of whether section 6 (6) of the constitution confers locus standi on litigants was raised. In resolving the issue, the court held that:

Section 6 (6) (b) of the 1999 Constitution does not confer locus standi on any litigant to free, automatic or unbridled access to the court in order to ventilate any issue whether mundane or other…. Hence a litigant must first and foremost establish by factual circumstances encapsulated in his cause of action, that his obligstions have been infringed upon, seriously jeopardized and/or about to be infringed before Section 6 (6) (b) which vests judicial powers in the court will kick in and provide a forum for litigation cum adjudication…..[315]

On the question of locus standi, the court held after citing *Adesanya* and *Olowoyin* that "A plaintiff on approach a court of law to seek redress, if he has

[314] (2010) 10 NWLR (pt. 1202) 312
[315] *Ibid*, p 338

interest which the law regards as sufficient…."[316] "it is a bounden duty of a Plaintiff to show that he has *locus standi* in suit…."[317]

Consequently, the appellate court upheld the ruling of the trial that since the plaintiffs' lack *locus standi*, their action cannot be sustained and dismissed the appeal.

On when an individual will have *locus standi* to sue under public law, the court held that:

> Under public law, an ordinary individual or a citizen without more, will not have locus standi as a plaintiff. This is moreso because such litigations involve public rights and duties which belong to and are owed to all members of the public with the individual inclusive. Furthermore such litigation pertains to the power of the government and in this case of a State Government, as conferred by Section 4 (7) of the 1999 Constitution, to make laws for peace, order and good government of the state or any thereof. It is only where the individual or plaintiff has suffered special damages or injury which is far and above the one suffered generally by the other members of the public that he can sue personally. Thus, generally interest which is common to all and sundry cannot be litigated upon by an individual who lacks standing to do so.

It appears from the above decision that the Court of Appeal has reversed its judgement in *Fawehinmi*'s case. In Fawehinmi, the court held that every individual has locus standi to institute action where the construction and interpretation of the constitution or of a law is in question. However, in this

[316] *Ibid*, 339
[317] *Ibid*, 341

case, the plaintiffs were denied standing even though the construction of Section 4 of the1999 Constitution and two made by the Zamfara State House of Assembly was in question.

This narrowed and restricted interpretation of the locus standi rule in PIL cases seriously hampered the development of PIL in Nigeria. The result is that cases which would have brought benefits to the society or a part thereof were struck out on the premise of want of *locus standi*. And the result is that Nigeria is deprived those benefits accruing from PIL. In addition *locus standi* however, there are other factors militating against the development of PIL in Nigeria. Some of these factors will be discussed below.

4.3 Other Factors Militating against PIL in Nigeria

It observed in the course of this work that aside of the foregoing, there are other factors militating against the development of PIL in Nigeria. Some of these factors include:

i. Obsolete, archaic procedural laws

We have already seen examples of these in our exposition of the law relating to *locus standi*. More so, even in areas where the strict interpretation and application traditional requirement of locus has been diluted and relaxed like constitutional and fundamental rights litigations, obsolete, archaic procedural rules seriously hamper the development of PIL. For instance, Order II Rule 2 of the Fundamental Rights Enforcement Procedure Rules, 2009 reflects a raging but buried debate as to whether, in view of its urgent nature, an action for enforcement of fundamental right must be commenced by one special mode only. The liberal approach advocated obiter by Eso JSC in *Saude v.*

Abdullahi[318]that any mode recognized by our rules can be used is now clearly stated under the 2009 Rules. Nevertheless, a careful and critical reading of Order II Rule 2 and the appendix to the Rules reveals that although an applicant can commence his action by any mode, he is expected to use a mode acceptable and procedurally recognized by our courts. That is to say the use of any other mode than the conventional mode of "writ of summons, originating summons, petition and originating application" is not allowed even under the extant Rules. Preparation of any of these originating processes requires the skill of a legal practitioner. Thus, members of the public whole rights have been breached and public-spirited individuals and groups who want to institute a public interest litigation will have to engage the services of a lawyer whose professional charges they may not be able to afford. This militates against the development of PIL.

ii. **The inherent conservative bent of the legal profession**

It is this bent that explains why the case of *Adesanya v. President*[319] still reigns supreme on the concept of *locus standi* despite the departure from the same in *Fawehinmi v. Akilu*[320] and other subsequent cases by the Supreme Court. Another example of our courts conservatism is their restrictive interpretation and application of the fundamental rights provisions contained in Chapter IV of the 1999 Constitution. A cursory investigation of the interpretative approach of the court becomes absolutely imperative. It has long been advocated that the interpretative approach of the court in all human rights cases should be generous and purposive. More than three decades ago,

[318] (1989) 4 NWLR (Pt. 116) 387
[319] *Ibid*
[320] *Ibid*

Lord Wilberforce[321] advocated the adoption of "a generous interpretation avoiding what has been called the austerity of tabulated legalism suitable to give individuals the full measure of the fundamental rights and freedoms." This advocacy is a call for exhibition of judicial activism by judges in human rights litigations. Without discounting the attempts by some judges to embrace this commendable approach as exemplified in a number of cases,[322] often times, inexplicable judicial timidity is demonstrated by judges in human rights litigations in Nigeria. To authenticate and justify this conclusion, a few illustrative cases may be cited. In *Shola Abu & 349 Ors v COP, Lagos & ors*[323] the applicants who were arrested and detained, ostensibly on mere suspicions instituted this action seeking damages and public apology. Although the trial court unequivocally found in favour of the applicants declaring their arrest and detention unlawful, it refused the remedies sought on the grounds that they were not specifically stated in the accompanied statement as required by the Enforcement Procedure Rules. The court so held even though it acknowledged that the applicants asked for these reliefs in the affidavit. Similarly, in *Raymond S. Dongotoe v Civil Service Commission, Plateau State &ors*,[324] the Supreme Court allowed itself to be unduly hamstrung by technicality when it held that "where a special procedure is prescribed for the enforcement of a particular right or remedy, non compliance with or departure from such procedure is fatal to the enforcement of the

[321] *Minister of Home Affairs v Fishers* (1980) AC 319. See also, *Attorney General of the Gambia v Mohammed Jobe* (1984)1 AC 689
[322] See, *Adigun v A.G. Oyo State* (1987)1 NWLR (pt 53) 678. *Garuba v University of Maiduguri* (1986)1 NWLR (pt. 18) 550. *Gloria Mowain v Nigerian Army & 3 ors* (1992)4 NWLR (pt 225) 345. *Musa v INEC Shugaba Darman v Minister of Internal Affairs* (1981) 2 NCLR 459
[323] (2006) CHR1,
[324] (2002)2 CHR 95,

remedy.[325] On this reasoning, the merit of the case of the Appellant who challenged the termination of his employment was considered a non-issue. There are a plethora of other cases where judges allowed themselves to be unduly hamstrung by mere technicality.[326] This attitude is, without doubt, injurious to the effectiveness of judicial remedies in human rights litigations.

It is well settled that the efficacy of any remedy, is dependent not only on its availability but its sufficiency and adequacy.[327] It is expected therefore that courts ought to ensure the adequacy of remedies granted to victims of human rights violations. Regrettably, in practice, this legitimate expectation has remained unrealized. For instance, in many cases where damages are asked for, especially against the government being a notorious human rights predator; the courts, in seemingly deliberate and determined effort not to hurt the government, often award ridiculous sums which are not in any way compensatory. In *Blessing Onomeku v Commissioner of Police, Delta State*,[328] the applicant was dehumanized by the police who arrested and detained her. Prior to her detention, she was handcuffed, severely beaten and stripped naked. In her action, she sought for damages of N5, 000, 000.00 but regrettably notwithstanding the gravity of the indignity she suffered, the court awarded her only a paltry sum of N500, 000.00. There are many more cases[329] where the courts failed to award meaningful damages to victims of human rights violations. The above cases are clear indication of the attitude of the courts; which attitude must be deprecated as it does not promote the goal of human rights. It is our view, as rightly noted by the Supreme Court in

[325] *Ibid* at 116
[326] See, for instance, *Comrade Christopher Egwuashi v COP* (2006) CHR 200; *Cletus Madu v J.S. Neboh & Ors* (2002)2 CHR
[327] See Ambatielos Claims (Gr UK) 12 R.I.A.A. 83 (1956) 130
[328] (2007) CHR 173
[329] See for example *Chief Chinedu Eze and Anorv v IGP & ors (2007)* CHR 43; *Otunba Fasewe v Attorney General of the Federation (2007)* CHR 80, *Ijeoma Anazodo v All State Trust Bank Plc& 3ors (2007)* CHR 117

Shugaba Darman v. Minister of Internal Affairs[330] that, an infringement of fundamental rights of Nigerian citizens ought to attract compensatory damages and in appropriate cases, exemplary damages. It is when this is done that infraction of human rights especially by security agents will not only be discouraged but adequately punished and the goal of human rights furthered.

iii. **S.12 of the Constitution of the Federal Republic of Nigeria**

This section provides that "no treaty between the Federation and any other country shall have the force of law in Nigeria except to the extent to which such treaty has been enacted into law by the National Assembly." The obvious implication of this provision is that international treaties which have been duly entered into by Nigeria and which are beneficial to the public at large cannot be enforced unless enacted into law by the National Assembly.

iv. **The various constitutional limitations and qualifications imposed on human rights**

These qualifications and limitations constitute great impediments to the enjoyment of human rights in particular and the development of PIL in general. Section 45(1) of the 1999 Constitution, provides a veritable plank upon which any law invalidating fundamental rights may be justified. The Section provides *inter- alia* that: Nothing in sections 37, 38, 39, 40 and 41 of [this] Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

(a) In the interest of defence, public safety, public order, public morality or public health.

(b) For the purpose of protecting the rights and freedom of other persons.

[330] *Ibid*

By the foregoing provision, the right to private and family life, freedom of thought and religion, freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement may be lawfully circumscribed or limited. Also, other human rights constitutionally guaranteed are not sacrosanct or absolute but are expressly and specifically limited. Admittedly, there may be no absolute right without qualifications, but the constitutional provisions limiting the rights guaranteed[331]are too wide, imprecise, and nebulous. For instance, what law is reasonably justifiable in a democratic society does not enjoy any definition and neither is it capable of any precise articulation.[332] This undoubtedly poses a very grave danger to optimal realization of human rights. This danger becomes apparent from the decision of the Supreme Court in *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu & Anor*[333] where the court held that all freedoms are limited by state policy or overriding public interest.

v. **Ouster Clauses**

By ouster clause, the jurisdiction of courts to inquire into the legality or otherwise of any power exercised and award appropriate remedies is curtailed. Under military rule, many decrees ousted the jurisdiction of the courts. Regrettably, the enthronement of democratic governance did not eclipse ouster clauses. Section 6(6) (c) of the 1999 Constitution ousted the jurisdiction of all courts in relation to the provisions of Chapter II of the Constitution which deals with socio-economic and social rights. The non-justiceability of this chapter makes socio-economic and cultural rights a "neglected category

[331] Sections 33 to 36

[332] For some of the cases, where the Courts have had to grapple with this problem, see *Olawoyyyinvs Attorney General for Northern Nigeria (1962) All NLR; Williams vs. Majekodunmi (1962)1 All NLR 413; Adegbenro vs. Attorney- General of the Federation &ors (1962) WNLR 150*

[333] (2001) 3 SCNJ 106

of rights in Nigeria"[334]. The grave effect of ouster clauses constrained a learned author to lament that they reduced the "ambit of human rights to vanishing point".[335] The continued employment of ouster clauses to deny the right of audience in court is a sure foundation for despotism and anarchy. It is also one of the formidable obstacles to the development of PIL.

vi. **Absence of True Judicial Independence**

One of the remarkable and enduring attributes of the common law is the notion of judicial independence. So important is this notion that it has become entrenched not only in the English judicial system, but in most judicial systems across the globe. According to Oyeyipo,[336] Judicial independence postulates that no judicial officer should directly or indirectly, however remote be put to pressure by any person whatsoever, be it government, corporate body or individual to decide any case in a particular way. He should be free to make binding orders which must be respected by the legislature, the executive and the citizens, whatever their status.

From the well known attributes of judicial independence, it can be safely concluded that judicial independence is not yet a reality but mere aspiration in Nigeria today. The appointment and removal of judges which are controlled by the executive[337] are not insulated from political and other extraneous considerations. This in turn exposes judicial decisions to political interests and manipulations.[338] Again, although the Constitution seeks to guarantee

[334] Dada, J. A., & Ibanga, M. E., (2011) 'Human Rights Protection in Nigeria: From Rhetoric to Pragmatic Agenda' African Journal of Law and Criminology Vol.1 No 2, pp. 70-81

[335] Umoh, *op cit,* at 46

[336] Oyeyipo, T. A., Commentary on the Paper entitled 'Whether the Establishment of the National Judicial Council and the Set Up Will Bring A Lasting Solution to the Perennial Problems Confronting The Judiciaries In this Nation' delivered at the 1999 All Nigerian Judges Conference held at International Conference Centre, Abuja 1-5 November, 1999 at p. 5

[337] See Sections 231, 238, 250 & 256 of the 1999 Constitution on the appointment of Federal judges and section 292 on their removal from office.

[338] The reckless and unrepentant manner removal of Justice Isa Ayo Salami, as the President of the Court of Appeal clearly exemplifies the extent of lack of judicial independence.

financial autonomy to the judiciary,[339] the relevant provision has not been implemented in most States of the federation while implementation at the national level is partial. This seriously affects our courts ability to expansively interpret our laws to curve executive lawlessness and aid the development of PIL.

vii. The fusion of the office of the Attorney-General with that of Minister of Justice

As seen in number of cases such as *Fawehinmi v. President,*[340] where the interest of the entire public is at stake, no member of the public who is affected in the same way as other members are affected can maintain an action to challenge such an act; it is only the Attorney General that has locus in such a case. The Attorney-General of the Federation is also the Minister of Justice and a member of the Executive Cabinet while that of the state is also the commissioner of justice and a member of the executive council of the state. He may not be disposed to instituting an action against the Government in which he is part of, it may tantamount to the Federal Government or the state government as the case may be suing itself. Definitely he will not perform such a duty. Importantly too, there is no provision in the 1999 Constitution for the State to sue itself. By and large, the conflict of interest between the two offices has virtually made it impossible for the Attorney-General to perform the role of defender of public interest, effectively and these impacts on PIL.

4.5 Conclusion

It should be clear from the foregoing that the test of *locus standi* applies to PIL. Nigerian courts have used this doctrine to restrict access to justice. This

[339] The 1999 Constitution empowers the National Judicial Council to "collect, control and disburse all moneys, capital and recurrent, for the judiciary." Constitution, Third Schedule, Part 1, Section 21 (e) (1999) (Nigeria)
[340] *Supra* (n 9)

has impacted and still impacts negatively on the development of PIL. It even *locus standi* is one of the most formidable obstacle to the development of PIL in Nigeria, there are other factors also negatively impacting on PIL in the country. Since they say the wise learns from the experience of others, the next chapter will devoted to the interpretation and application of *locus standi* in other similar jurisdiction with a view to highlighting possible lessons derivable.

CHAPTER FIVE

LOCUS STANDI AND PIL IN INDIA: LESSONS FOR NIGERIA

5.1 Introduction

Having seen Nigeria's interpretation and application of *locus standi* to PIL cases, let us now turn our attention to one of the two jurisdictions selected for this study: India. Thus, this chapter is devoted to the interpretation and application of the doctrine of *locus standi* to Public Interest Litigation in India. With specific reference to the Indian experience, the chapter discusses the evolution of PIL in India, highlighting how the Indian interpretation and application of *locus standi* affected the development of PIL. It further demonstrates how PIL was used in India to achieve certain important objectives not achievable through the known traditional private litigations. It then concludes with the negative consequences of too liberal or total removal of the requirement of *locus standi*. The chapter highlight lessons Nigeria could learn from the India PIL jurisprudence and then conclude.

5.2 An Overview of the Indian Constitutional System

For proper appreciation, solid analysis and informed comparison of the case studies of this study, it is quite appropriate to begin this section with an overview of the Indian constitutional system with a view to having basic understanding of its constitutional and judicial framework.

Upon gaining independence or self government from the British imperial rule on the 15th day of August, 1947, the people of India adopted their first post-colonial Constitution in November 1949 which constitution has been in operation to date. By the constitution, the people of India hoped to establish a

''sovereign socialist secular democratic republic''.[341] Even though the terms 'socialist' and 'secular' were inserted into the Constitution by the 42nd amendment in 1976, there were no doubts that, from the very beginning, the Indian constitution is both secular and socialist.[342] Among others, the Constitution aims to secure to all its citizens justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and of opportunity).[343] These aims were not merely aspirational because the founding fathers wanted to achieve a social revolution through the Constitution.[344] While quoting K. Santhanam, a member of the Constituent Assembly, Austin[345] wrote:

The social revolution meant, 'to get (India) out of the medievalism based on birth, religion, custom, and community and reconstruct her social structure on modern foundations of law, individual merit, and social education'.

The main tools put in place to achieve such social change/revolution were the provisions on fundamental rights (FRs) and the directive principles of state policy (DPs), which Austin described as the ''conscience of the Constitution''.[346] In order to ensure that FRs did not remain empty and practically meaningless declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary charged with the responsibility of interpreting and enforcing them. As we will see below, provisions relating to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India.

[341] See the Preamble to the Constitution of India, 1950.
[342] Deva, S., *supra* (n 4) p. 21
[343] See the preamble to the Constitution of India, 1950
[344] Austin, G., (1966) 'The Indian Constitution: Cornerstone of a Nation' Oxford: Clarendon Press, p. 27
[345] *Ibid*, p. 26
[346] *Ibid*, p. 50

Part III of the Constitution spells out various FRs and also specifies grounds for limiting them. ‘‘As a right without a remedy does not have much substance’’[347], the remedy to approach the Supreme Court directly for the enforcement of any of the Part III rights has also been made a fundamental right.[348] The holder of the FRs cannot waive them[349] nor can they be curtailed by an amendment of the Constitution if such curtailment is against the basic structure of the Constitution. The judiciary is the ‘‘sole’’ and ‘‘final’’ judge of what constitutes basic structure of the Constitution. Over a period of time, various provisions have been given the higher pedestal of basic structure or basic features of the Constitution, e.g. independence of judiciary, judicial review, rule of law, secularism, democracy, free and fair elections, harmony between FRs and DPs, right to equality, and right to life and personal liberty.[350]

Some of the FRs are available only to citizens[351] while others are available to citizens as well as non-citizens,[352] including juristic persons. Notably, some of the FRs are expressly conferred on groups of people or community.[353] Not all FRs are guaranteed specifically against the state and some of them are expressly guaranteed against non-state bodies.[354] Even the ‘‘state’’ is liberally defined in article 12 of the Constitution to include:-

[347] Jain, M. P., (2000) ‘The Supreme Court and Fundamental Rights’ in S. K. Verma and Kusum (eds), Fifty Years of the Supreme of India – Its Grasp and Reach (New Delhi: Oxford University Press), pp. 1, 76

[348] See Article 32 of the Constitution of India, 1950

[349] *Basheshar Nath v CIT* AIR 1959 SC 149; *Nar Singh Pal v Union of India* AIR 2000 SC 1401

[350] See Singh, M. P., (ed.) ‘*Shukla’s Constitution of India*’ 10th ed. (Lucknow: Eastern Book Co, 2001), pp.884–97; Jain, ‘The Supreme Court and Fundamental Rights’ in Verma and Kusum (eds), *Fifty Years of the Supreme Court of India*, pp.8–13.

[351] For example, Article 15 (2) which provides for right against discrimination on grounds only of religion, caste, sex, place of birth or any one of them to access and use of public places, etc. guarantees this right to citizens of India only

[352] For Example Articles 14 (right to equality), 20 (protection from conviction without due process of law), 21 (protection of life and personal liberty), 22 (protection against arrest and detention) and 25 (freedom of conscience, and right to profess, practice, and propagate religion) apply to both citizens and non-citizens.

[353] See for example sections 26, 29 and 30

[354] Austin cites three provisions, i.e. Constitution arts 15(2), 17 and 23 which have been ‘‘designed to protect the individual against the action of other private citizen’’. See Austin, G., *supra* (n 243) p. 51

> The Government and Parliament of India and the Government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India.

The expression ‘‘other authorities’’ has been expansively interpreted, and any agency or instrumentality of the state will fall within its ambit.[355]

Part IV of the Constitution lays down the Directive Principles of State Policy. Although the DPs are not justiceable,[356] they are, ‘‘nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws’’.[357]

After initial contentions and deviations,[358] the Supreme Court accepted that FRs are not superior to DPs on account of the latter being non-justiceable: rather FRs and DPs are complementary and the former are a means to achieve the goals indicated in the latter.[359] The issue was put beyond any controversy in *Minerva Mills Ltd v Union of India* where the Court held that the, ‘‘harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution’’.[360] Since then, the judiciary has employed DPs to expand the frontiers of and derive the contents of various FRs provisions.[361]

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[355] See *Ajay Hasia v Khalid Mujib AIR 1981 SC 487; Pradeep Kumar v Indian Institute of Chemical Biology (2002) 5 S.C.C. 111*. In the application of the instrumentality test to a corporation, it is immaterial whether the corporation is created by or under a statute. *Som Prakash Rekhi v Union of India* AIR 1981 SC 212.

[356] The Fundamental Rights are judicially enforceable whereas the Directive Principles are unenforceable in the courts. For the relevance of this difference, see Singh, M. P., ‘The Statics and the Dynamics of the Fundamental Rights and the Directive Principles – A Human Rights Perspective’ (2003) 5 *Supreme Court Cases (Jour)* 1.

[357] Article 37 of the Constitution, 1950

[358] *State of Madras v. Champakam Dorairajan AIR 1951 SC 226*

[359] *CB Boarding & Lodging v. State of Mysore AIR 1970 SC 2042; Kesvananda Bharti v. State of Kerala AIR 1973 SC 1461 and Minerva Mills Limited v. Union of India AIR 1980 SC 1789*

[360] *Minerva Mills Ltd. v. Union of India AIR 1980 SC, 1789, 1806*

[361] See Jain, M. P., *supra* (n 246), pp. 65 – 76 and the cases *Kharak Singh v. State of UP AIR 1963, SC 1295, Sunil Batra v. Delhi Administration (1978) 4 S. C. C. 494 and Olga Tellis v. Bombay Municipal Corp AIR 1986 SC 180*

The founding fathers of the Indian Constitution envisaged ‘‘the judiciary as a bastion of rights and justice’’.[362] An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High

Courts[363] - the courts that have entertained all the PIL cases. The judiciary can test not only the validity of laws and executive actions, but also of constitutional amendments. It has the final say on the interpretation of the Constitution and its orders, supported with the power to punish for contempt, can reach everyone throughout the territory of the country. Since its inception, the Supreme Court of India has delivered judgments of far-reaching importance involving not only adjudication of disputes, but also determination of public policies and establishment of rule of law and constitutionalism.[364]

5.3 The Initial Position of the Indian Law on *Locus Standi*

From the 1960s through to the mid 70s, the concept of litigation in India was still in its rudimentary form and was seen as a private pursuit for the vindication of private vested interests. Litigation in those days consisted mainly of some actions initiated and continued by certain individuals, usually, addressing their own grievances/problems. The initiation and continuance of litigation was the prerogative of the injured person or the aggrieved party. This was greatly limited by the resources available with those individuals. The doctrine of *Locus standi* was strictly interpreted and applied.[365] Only the aggrieved party could personally knock the doors of justice and seek remedy

[362] Austin, G., *supra* (n 243) p. 175
[363] See Articles 32 and 226 of the Constitution of India, 1950
[364] See Das, G., (2000) ‘The Supreme Court: An Overview’ in Kirpal, B. N. et al, (eds), Supreme but not Infalliable: Essays in Honour of the Supreme Court of India (New Delhi: OUP), pp. 16 - 47
[365] ‘Public Interest Litigation’ http://www.legalserviceindia.com/article/l171-Public-Interest-Litigation.html access 14/11/2015

for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the *locus standi* (standing required in law) to file a case and continue the litigation and the non-affected persons had no *locus standi* to do so. It could be seen from the foregoing that the strict interpretation and application of the doctrine of *locus standi* obtained in India between the 1960s and the 1970s. The traditional view in regard to *locus standi* in Writ jurisdiction has been that only such persons who: a) Has suffered a legal injury by reason of violation of his legal right or legally protected interest; or b) Is likely to suffer a legal injury by reason of violation of his legal right or legally protected interest. Thus before a person acquired *locus standi* he had to have a personal or individual right which was violated or threatened to be violated. He should have been a "person aggrieved" in the sense that he had suffered or was likely to suffer from prejudice, pecuniary or otherwise.[366]

During this period (1960s - 1970s), a majority of Indians suffered from a severe lack of access to justice. In addition to the challenge posed by the requirement of *locus*, legal fees were prohibitively expensive to the extent that only the few could afford representation.[367] Moreover, the lack of education for many rural Indians meant that most people were unaware of their legal rights, and lawyers working on their behalf were few and far between.[368] As if to compound further the dire situation of many of Indian citizens, the then-Prime Minister, Indira Gandhi, the daughter of India's first prime minister,

[366] *Ibid*

[367] Susman, S. D., (1994) 'Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation' 13 WIs. INT'L L. J. p. 57, p. 63

[368] Holladay, Z., (2012) 'Public Interest Litigation in India as a Paradigm for Developing Nations' Indiana Journal Legal Studies, Vol. 19. Iss. 2, Art. 9, p. 555, p. 558

Jawaharlal Nehru, suspended elections and civil liberties in response to the great political upheaval that threatened her premiership, a time that is known in Indian history as Emergency Period (25th June, 1975 to 21st March, 1977).[369] Many citizens were expecting the Supreme Court to intervene. The Court failed to do so. Instead, it capitulated to Indira Gandhi's autocratic tendencies.[370] In fact the Court held in ***A.D.M. Jabalpur v. Shivakant Shukla***[371], a severely criticized case, that certain fundamental rights, including the right to liberty, did not survive the executive's proclamation of emergency. That decision only served to erode further the Court's esteem. When Indira Ghandi and her allies in the Congress party lost in the elections, the Court was rendered impotent in the eyes of the Indian public.

However, this scenario gradually changed when the post-emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of *locus standi* and of party aggrieved so as to recapture its legitimacy. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of 1980s to convert the Apex Court of India into a Supreme Court for all Indians. Justice V. R. Krishna Iyer and P. N. Bhagwati recognised the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing.[372] In the post-emergency period when the political situations had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression, custodial violence,

[369] *See*Jinks, D. P., (2001) 'The Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India' 22 MICH. J. INT'L L. p. 311 at pp. 344 - 347

[370] *See* generally Robinson, N., (2009) 'Expanding Judiciaries: India and the Rise of the Good Governance Court' 8 WASH. U. GLOBAL STUD. L. REV. 1

[371] Cited in Sathe, S.P., (2001) 'Judicial Activism: The Indian Experience' 6 WASH. U. J. L. & POL'Y 29, 47

[372] Public Interest Litigation available on http://www.legalserviceindia.com/article/l171-Public-Interest-Litigation.html accessed 14/11/2015

drawing attention of lawyers, judges, and social activists. PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists.[373] This trend shows stark difference between the traditional justice delivery system and the modern formal justice system where the judiciary is performing administrative judicial role. PIL is necessary rejection of laissez faire notions of traditional jurisprudence.

5.4 Judicial Moulding of *Locus Standi* in India - the Impetus for PIL

Two justices of the Indian Supreme Court, Bhagwati and Iyer JJ[374], prepared the groundwork, from second half of the 1970s to the early 1980s, for the birth of PIL in India. This included modifying the traditional requirements of *locus standi*, liberalising the procedure to file writ petitions, creating or expanding FRs, overcoming evidentiary problems, and evolving innovative remedies.[375] Modification of the traditional requirement of standing was *sine qua non* for the evolution of PIL and any public participation in justice administration.[376] Realising this need, the Supreme Court held that any member of public acting *bona fide* and having sufficient interest has a right to approach the court for redress of a legal wrong, especially when the actual plaintiff suffers from some disability or the violation of collective diffused rights is at stake.[377] Later on, merging representative standing and citizen standing, the Supreme Court in ***Gupta v Union of India***[378] held that:

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[373] NGOs India 'Public Interest Litigation: Social Change and Public Interest Litigation in India' http://www.ngosindia.com/resources/pil_sc.php accessed 18/5/2016

[374] These two judges headed various committees on legal aid and access of justice during 1970s, which provided a backdrop to their involvement in the PIL project. See Jeremy Cooper 'Poverty and Constitutional Justice: The Indian Experience' (1993) 44 Mercer Law Review 611, 614–615

[375] *Ibid*, See also Sheetal, B. S., (1999) 'Illuminating the Possible in the Developing World' 32 Vanderbilt Journal of Transnational Law, p. 435, pp. 467–473;

[376] Deva S. *op. cit* (n 4) p. 24

[377] *Ibid*

[378] *Gupta v. Union of India (1981) Supp S.C.C. 87, 210. See also PUDR v Union of India AIR 1982 SC 1473; Bandhua Mukti Morcha v Union of India (1984) 3 S.C.C. 161*

> Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right... and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ.

The court justified its extension of standing as an effort to enforce rule of law and provide justice to disadvantaged sections of society. Furthermore, the Supreme Court observed that the term ‘‘appropriate proceedings’’ in Article 32 of the Constitution does not refer to the form but to the purpose of proceeding: so long as the purpose of the proceeding is to enforce a FR, any form will do.[379] This interpretation allowed the Court to develop what later came to be known as epistolary jurisdiction by which even letters or telegrams were accepted as writ petitions.[380] Once the hurdles posed by *locus standi* and the procedure to file writ petitions were removed, the judiciary focused its attention to providing a robust basis to pursue a range of issues under PIL. This was achieved by both interpreting existing FRs widely and by ‘creating’ new FRs. Article 21—‘‘no person shall be deprived of his life or personal liberty except according to the procedure established by law’’—proved to be the most fertile provision in the evolution of new FRs.

[379] Singh, M. P., (2008) ‘V.N. Shukla's Constitution of India’ (11Th edn, India: Eastern Book Company, Lucknow) pp.278–279
[380] See, for example, *Sunil Batra v Delhi Administration* AIR 1980 SC 1579; *Dr Upendra Baxi v State of UP* (1982) 2 S.C.C. 308

5.5 Subjects of PIL in India

Public Interest Litigation is meant for enforcement of fundamental and other legal rights of the people who are poor, weak, ignorant of legal redress system or otherwise in a disadvantageous position due to their social or economic background. Such litigation can be initiated only for redress of a public injury, enforcement of a public duty or vindicating interest of public nature. It is necessary that the petition is not filed for personal gain or private motive or for other extraneous consideration and is filed *bona fide* in public interest. The following are the subjects which may be litigated under the head of Public Interest Litigation:

(A) Matters of public interest. These include:

(i) bonded labour matters (ii) matters of neglected children (iii) exploitation of casual labourers and non-payment of wages to them (except in individual cases) (iv) matters of harassment or torture of persons belonging to Scheduled Castes, Scheduled Tribes and Economically Backward Classes, either by co-villagers or by police (v) matters relating to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forests and wild life (vi) petitions from riot victims and (vii) other matters of public importance.

(B) Matters of private nature: These include:

(i) threat to or harassment of the petitioner by private persons, (ii) seeking enquiry by an agency other than local police, (iii) seeking police protection, (iv) landlord-tenant disputes (v) service matters, (vi) admission to medical or engineering colleges, and (vii) early hearing of matters pending in High Court and subordinate courts and are not considered matters of public interest.

(III) Letter Petitions: Petitions received by post even though not in public interest can be treated as writ petitions if so directed by the Honourable Judge nominated for this purpose. Individual petitions complaining harassment or torture or death in jail or by police, complaints of atrocities on women such as harassment for dowry, bride burning, rape, murder and kidnapping, complaints relating to family pensions and complaints of refusal by police to register the case can be registered as writ petitions, if so approved by the concerned Honourable Judge. If deemed expedient, a report from the concerned authority is called before placing the matter before the Honourable Judge for directions. If so directed by the Honourable Judge, the letter is registered as a writ petition and is thereafter listed before the Court for hearing.

5.6 Procedure for Filing Public Interest Litigation

(a) Filing

Public Interest Litigation petition is filed in the same manner as a writ petition is filed. If a PIL is filed in a High Court, then two (2) copies of the petition have to be filed (for Supreme Court, then (4)+(1)(i.e.5) sets) Also, an advance copy of the petition has to be served on the each respondent, i.e. opposite party, and this proof of service has to be affixed on the petition.

(b) **The Procedure**

A Court fee of Rs. 50 per respondent (i.e. for each number of party, court fees of Rs 50) has to be affixed on the petition. Proceedings, in the PIL commence and carry on in the same manner as other cases. However, in between the proceedings if the Judge feels that he may appoint a commissioner to inspect allegations like pollution being caused, trees

being cut, sewer problems, etc. After filing of replies, by opposite party or rejoinder by the petitioner, final hearing takes place and the judge gives his final decision.

(c) **Against whom Public Interest Litigation can be filed**

A Public Interest Litigation can be filed against a State/Central Govt., Municipal Authorities, and not any private party. The definition of State is the same as given under Article 12 of the Constitution, according to which , the term "State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

In Electricity Board, ***Rajasthan v. Mohan Lal***[381], the Supreme Court held that "other authorities would include all authorities created by the Constitution of India or Statute on whom powers are conferred by law".

However, "Private party" can be included in the PIL as "Respondent" after making concerned state authority a party. For example, if there is a private factory which is causing pollution, then people living nearby or any other person can file a PIL against the Government of the area concerned, Pollution Control Board, and against the private factory. However, a PIL cannot be filed against the private party alone.

5.7 Features of PIL

(a) **Relaxation of strict rule of *Locus standi***: The strict rule of *locus standi* has been relaxed by way of *(i) Representative standing*, and *(ii) Citizen*

[381] 1967 AIR 1857, 1967 SCR (3) 377

standing. In **D.C. Wadhwa v. State of Bihar**[382], Supreme Court held that a petitioner, a professor of political science who had done substantial research and deeply interested in ensuring proper implementation of the constitutional provisions, challenged the practice followed by the state of Bihar in re-promulgating a number of ordinances without getting the approval of the legislature. The court held that the petitioner as a member of public has 'sufficient interest' to maintain a petition under Article 32.

The rule of *locus standi* have been relaxed and a person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration…court has to strike balance between two conflicting interests:

i. Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and

ii. Avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive and the legislature. It is depressing to note that on account of trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though the Supreme Court spares no efforts in fostering and developing the laudable concept of PIL and extending its ling arm of sympathy to the poor, ignorant, the oppressed and the

[382] 1987 AIR 579 1987 SCR (1) 798

needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard.

(b) **Remedial in Nature**: PIL cases seek to remedy unjust or oppressive situations. It indirectly incorporated the principles enshrined in the part IV of the Constitution of India into part III of the Constitution. By riding the aspirations of part IV into part III of the Constitution had changed the procedural nature of the Indian law into dynamic welfare one.

(c) **Representative Standing**: Representative standing can be seen as a creative expansion of the well-accepted standing exception which allows a third party to file a *habeas corpus* petition on the ground that the injured party cannot approach the court himself. In this regard the Indian concept of PIL is much broader in relation to the American. PIL is a modified form of class action.

(d) **Citizen standing**: The doctrine of citizen standing thus marks a significant expansion of the court's rule, from protector of individual rights to guardian of the rule of law wherever threatened by official lawlessness.

(e) **Non-adversarial Litigation**: Non-adversarial litigation has two aspects:

1. Collaborative litigation: In collaborative litigation the effort is from all the sides. The claimant, the court and the Government or the public official, all are in collaboration here to see that basic human rights become meaningful for the large masses of the people. PIL helps executive to discharge its constitutional obligations. Court assumes three different functions other than that from traditional determination and issuance of a decree. (i). Ombudsman- The court receives citizen complaints and brings the most important ones to the attention of

responsible government officials. (ii) Forum – The court provides a forum or place to discuss the public issues at length and providing emergency relief through interim orders. (iii) Mediator – The court comes up with possible compromises.

2. Investigative Litigation: It is investigative litigation because it works on the reports of the Registrar, District Magistrate, comments of experts, newspapers etc.

(f) ***Epistolary Jurisdiction****:* Epistolary jurisdiction is a procedure invented by Indian courts whereby an applicant simply approaches the Court for the enforcement of fundamental rights by writing an ordinary letter or post card to any judge of the high court. Dr. Ben Kunbor, a member of Parliament of Ghana defined epistolary jurisdiction as follows:

> The procedure for moving the court by just addressing a letter on behalf of the disadvantaged class of persons, evolved into what now popularly known as epistolary jurisdiction in Indian human rights jurisprudence.

This procedure was first confirmed by the Supreme Court of India in the case of M. C. Mehta v. Union of India.[383] This procedure has made filing cases bordering allegations of violation of fundamental rights very easy and could be done without the need of the services of legal practitioners.

5.8 Factors that Contributed to Growth of PIL in India

Among, the numerous factors that have contributed to the growth of PIL in India, the following deserve special mention:

[383] (1988) 1 SCC 471; 1987 AIR 1086

a) The character of the Indian Constitution: India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) provides a framework for regulating relations between the state and its citizens and between citizens *inter-se*.

b) India has some of the most progressive social legislation to be found anywhere in the world whether it be relating to bonded labor, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.

c) The liberal interpretation of *locus standi* where any person can apply to the court on behalf of those who are economically or physically unable to come before it has helped. Judges themselves have in some cases initiated *suo moto* action based on newspaper articles or letters received.

d) Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the "right to life" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bar fetters and hand cuffing in prisons, etc.

e) Sensitive judges have constantly innovated on the side of the poor. For instance, in Bandhua Mukti Morcha's case[384], the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labour as a case of bonded labor unless proven otherwise by the employer. Similarly in the Asiad Workers judgment case,[385] Justice P.N.

[384] The full citation of this case is *Bandhua Mukti Morcha v. Union Of India & Others (1984) AIR 802, 1984 SCR (2) 67*
[385] *People's Union For Democratic Rights v. Union Of India & Others (1982) AIR 1473*

Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts

f) In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

5.9 Positive Contributions

PIL has immensely contributed in a number of ways to the civil jurisprudential system of India. Some of the main contributions are noted here briefly.

a) PIL serves as ladder for Justice

The most important contribution of PIL, in the view of the researcher, has been to bring courts closer to the disadvantaged sections of society such as prisoners, destitute, child or bonded labourers, women, and scheduled castes/tribes. By taking up the issues affecting these people, PIL truly became a vehicle to bring social revolution through constitutional means, something that the founding fathers of India had hoped.

b) Expanding the Human Rights Jurisprudence

Equally important is the part played by PIL in expanding the jurisprudence of fundamental (human) rights in India. As noted before, DPs are not justiceable but the courts 'imported' some of these principles into the FRs thus making various socio-economic rights as important, at least in theory, as civil and political rights. This resulted in the legal recognition of rights as important as education, health, livelihood, pollution-free environment, privacy and speedy trial.

c) Promotion of the Rule of Law

PIL became an instrument to promote rule of law, demand fairness and transparency, fight corruption in administration, and enhance the overall accountability of government agencies. The underlying justification for these public demands and the judicial intervention was to strengthen constitutionalism, a constant desire of the civil society to keep government powers under check. This resulted in the judiciary giving directions to the government to follow its constitutional obligations.

d) Triggering Legislative Reforms

Through PIL, judiciary also triggered legislative reforms and filled in legislative gaps in important areas. Just to illustrate, the Supreme Court in the Vishaka's case[386] laid down detailed guidelines on sexual harassment at the workplace. Similarly welcome, were guidelines on arrest and detention laid down by the Court in Basu's case[387]. To what extent these guidelines have been successful in achieving the intended objectives and whether courts were justified in acting like a legislature are moot points. Nevertheless, such guidelines, which were totally in consonance with the mandate of the Indian Constitution as well as various international covenants ratified by the Indian government, helped in enhancing sensitivity to these issues. The Indian judiciary, courtesy of PIL, has helped in cooling down a few controversial policy questions on which the society was sharply divided. One of such is the controversy about the reservation of seats for SCs/STs and other backwards classes in employment or educations institutions, the government policies of

[386] *Vishaka and Ors v. Union of Rajasthan (1997)6 SCC 241* http://www.lawnn.com/case-law-vishakha-and-others-v-state-of-rajasthan-landmark-case/ accessed 15/11/2015

[387] *D. K. Basu v. State of West Bengal* (1997) AIR SC 610 available on http://www.humanrights-justice.com/landmark_initiative/d.k.basu_vs_state_of_west_bengal.php accessed 15/11/2015

liberalization and privatisation, and the contested height of the Narmada dam as examples of this kind of contribution.

e) Enhanced Public Confidence in the Judiciary

On a theoretical level, PIL has helped the Indian judiciary to gain public confidence and establish legitimacy in the society. The role of an independent judiciary in a democracy is of course important. But given that judges are neither elected by public nor are they accountable to public or their representatives ordinarily, the judiciary in a democracy is susceptible to public criticism for representing the elite or being undemocratic and anti-majoritarian. Therefore, it becomes critical for the judiciary to be seen by the public to be not only independent but also in touch with social realities. The innovations of the Indian judiciary which gave birth to PIL helped the judiciary to reclaim its past glory which it lost during the emergency period explained above.

f) Influence on other Legal Systems

Another positive contribution of PIL in India which has extended outside India deserves a special mention. The Indian PIL jurisprudence has also contributed to the trans-judicial influence - especially in South Asia - in that courts in Pakistan, Sri Lanka, Bangladesh and Nepal have cited Indian PIL cases to develop their own PIL jurisprudence.[388] In a few cases, even Hong Kong courts have cited Indian PIL cases, in particular cases dealing with environmental issues. Given that the civil society that is following the development of PIL in China is familiar with the Indian PIL jurisprudence,[389]

[388] See generally Razzaque, J., (2007) 'Linking Human Rights, Development, and Environment: Experiences from Litigation in South Asia' 18 Fordham Environmental Law Review, 587

[389] China Labour Bulletin 'Public Interest Litigation in China: A New Force for Social Justice' (Research Reports, October 10, 2007)

it is possible that Indian PIL cases might be cited even before the Chinese courts in the future. To drive the point home, a decision of the Supreme Court in India on the issue of *locus* in PIL cases was cited by the Court of Appeal of Nigeria in the case of ***Alhaji Salihu Wukari Sambo & Anor v. Capt. Yahaya Douglas Ndatse (Rtd)***[390] in which the Yola Division of the Court of Appeal cited the Indian cases of *People's Union for Democratic Rights v. Minister of Home Affairs*[391] and the *Fertilizer Corporation Kagama Union v. Union of India*[392] where the Court held that:

> It is also necessary to refer to the position of the law in India which we ought to borrow a leaf from their Public Interest Litigation system where *locus standi* can be given to any person who writes a letter or complaint … justifying the rationale for the complaint….

It should be noted that this trans-judicial influence is an example of a second tier trans-judicial influence - the first tier being Indian courts relying on the US judicial decisions to establish the PIL jurisprudence in the 1970s. Generally what we see is the first tier trans-judicial influence in that common law courts of former colonies (such as India and Hong Kong) cite and rely heavily on the judgments of the US and UK courts. The second tier trans-judicial influence is a welcome addition in the sense that it might help in fostering learning dialogues (not one-way influence) among courts at the horizontal level rather than at a vertical level.

[390] (2013) LPELR – 20857 (CA)
[391] AIR 1985 Del, 268
[392] (1981) AIR (SC) 344

5.10 Mechanism for Protection of Human Rights through PIL

Features of PIL through the mechanism of PIL, the courts seek to protect human rights in the following ways:

1) By creating a new regime of human rights by expanding the meaning of fundamental right to equality, life and personal liberty. In this process, the right to speedy trial, free legal aid, dignity, means and livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, bondage and servitude, exploitation and so on emerge as human rights. These new re-conceptualised rights provide legal resources to activate the courts for their enforcement through PIL.

2) By democratization of access to justice. This is done by relaxing the traditional rule of *locus standi*. Any public spirited citizen or social action group can approach the court on behalf of the oppressed classes. Courts attention can be drawn even by writing a letter or sending a telegram. This has been called epistolary jurisdiction.

3) By fashioning new kinds of relief's under the court's writ jurisdiction. For example, the court can award interim compensation to the victims of governmental lawlessness. This stands in sharp contrast to the Anglo-Saxon model of adjudication where interim relief is limited to preserving the status quo pending final decision. The grant of compensation in PIL matters does not preclude the aggrieved person from bringing a civil suit for damages. In PIL cases the court can fashion any relief to the victims.

4) By judicial monitoring of State institutions such as jails, women's protective homes, juvenile homes, mental asylums, and the like. Through

judicial invigilation, the court seeks gradual improvement in their management and administration. This has been characterized as creeping jurisdiction in which the court takes over the administration of these institutions for protecting human rights.

5) By devising new techniques of fact-finding. In most of the cases the court has appointed its own socio-legal commissions of inquiry or has deputed its own official for investigation. Sometimes it has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or experts to inquire into human rights violations. This may be called investigative litigation.

5.11 The Dark Side of PIL in India

Even though PIL has a lot of benefits some of which have highlighted above, it, however, led to new problems such as an unanticipated increase in the workload of the superior courts, lack of judicial infrastructure to determine factual matters, gap between the promise and reality, abuse of process, friction and confrontation with fellow organs of the government, and dangers inherent in judicial populism.[393] It seems that the misuse of PIL in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the PIL project. Some of these are summarized below:

i. Use of PIL to Serve Private Interests

PIL which originally invented to serve the interest of the entire public became a convenient platform for some people to ventilate private grievances, pay old

[393] See Desai A. H. and Muralidhar, S., (2000) 'Public Interest Litigation: Potential and Problems' in Kirpal et al. (eds) *supra* (n 263) pp. 159

scores or buy cheap popularity/publicity. Thus, the first 'P' in PIL which stood for public was substituted by private, popularity or publicity. Many private issues were presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). This development flooded the Indian courts with a number of cases which were merely calculated to serve private interests or buying cheap publicity. On this, Desai and Muralidhar remarked that:

PIL is being misused by people agitating for private grievances in the gab of public interest and seeking publicity rather than espousing public causes.[394]

ii. <u>Inefficient use of Limited Judicial Resources</u>

This is closely related to the first point made above. The over liberalization of the interpretation and application of *locus standi* in India, as seen above, led to the opening of floodgate for cases which later overwhelmed the entire legal system of the country. Consequently, the Indian Supreme Court as well as High Courts started battling with a huge backlog of cases.[395] In fact, by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary practically violated the right to speedy trial of those who are waiting for the vindication of their private interests through conventional adversarial litigation.

A related problem *is* that the courts are taking unduly long time in finally disposing of even PIL cases. This might render ''many leading judgments merely of [an] academic value''.[396] The fact that courts need years to settle

[394] I*bid*, p.181

[395] Krishnan, J. K. and Galanter, M., (2004) 'Bread for the Poor: Access to Justice and the Rights of the Needy in India' 55 Hastings Law Journal 789, 790

[396] Singh, G., 'Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation' in Singh, G. and Von H. (eds), *Human Rights and Basic Need*, p. 326

cases might also suggest that probably courts were not the most appropriate forum to deal with the issues in hand as PIL.

iii. Judicial Populism

Populism is commonly defined as the "political doctrine that supports the rights and powers of the common people in their struggle with the privilege elites".[397] Thus, judicial populism is when judges side or support the people in their contest with the privilege elites. Ordinarily, there is nothing wrong with judicial populism in itself. On the contrary, it is an important instrument used tilting the society towards social justice and welfare. However, where judges are so much carried away by public opinion, they admit and decide cases based more on public opinion than the law. Some judges admit PIL cases on account of raising an issue that is (or might become) popular in the society. Conversely, the desire to become people's judges in a democracy should not hinder admitting PIL cases which involve an important public interest but are potentially unpopular. The fear of judicial populism is not merely academic is clear from the following observation of Dwivedi J. in ***Kesavnanda Bharathi v State of Kerala:***

> The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review from the numerical concept of minority

[397] *Kesavnanda Bharathi v Union of India* (1973) 4 S.C.C. 225, 948–949 (emphasis added), as quoted in Baxi, U., *supra* (n 139) 112. Baxi also mentions how Bhagwati J. ensured that PIL letters accepted as writ petitions came to his court. Baxi, U., *supra* (n 139), p. 120

protection to the humanitarian concept of the protection of the weaker section of the people.[398]

Consequently, some courts in India wrongly perceived themselves as crusaders constitutionally obliged to redress all failures of democracy. It is submitted that court neither have this authority nor could they achieve this goal.

iv. Symbolic Justice

Another major problem with the PIL project in India has been of PIL cases often doing only symbolic justice. Two facets of this problem could be noted here. First, judiciary is often unable to ensure that its guidelines or directions in PIL cases are complied with, for instance, regarding sexual harassment at workplace (Vishaka case) or the procedure of arrest by police (D.K. Basu case). As remarked by Singh[399], more empirical research is needed to investigate the extent of compliance and the difference made by the Supreme Court's guidelines. However, it seems that the judicial intervention in these cases have made little progress in combating sexual harassment of women and in limiting police atrocities in matters of arrest and detention. The second instance of symbolic justice is provided by the futility of over-conversion of DPs into FRs and thus making them justiceable. Not much is gained by recognising rights which cannot be enforced or fulfilled. It is arguable that creating rights which cannot be enforced devalues the very notion of rights as trump.[400] Singh aptly notes that:

[398] AIR 1973 SC 1461

[399] Sathe, S.P., *supra* (n 270), pp.244–245

[400] 'Individual rights are political trumps held by individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do.' Dworkin, R., (1999) *Taking Rights Seriously*, (2nd Indian Reprint) (New Delhi: Universal Law Publishing) p. xi

> A judge may talk of right to life as including right to food, education, health, shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced.[401]

So, the PIL project might dupe disadvantaged sections of society in believing that justice has been done to them, but without making a real difference to their situation. This will be a classical case of motion without development.

v. **Disturbing the Constitutional Balance of Power**

Although the Indian Constitution does not follow any strict separation of powers, it still embodies the doctrine of checks and balances, which even the judiciary should respect. However, the judiciary on several occasions did not exercise self-restraint and moved on to legislate, settle policy questions, take over governance, or monitor executive agencies. Jain cautions against such tendency when said:

> PIL is a weapon which must be used with great care and circumspection; the courts need to keep in view that under the guise of redressing a public grievance, PIL does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.[402]

Moreover, there has been a lack of consistency as well in that in some cases, the Supreme Court did not hesitate to intrude on policy questions but in other cases it hid behind the shield of policy questions.[403]

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[401] Sathe, S.P., *supra* (n 270), p.322

[402] Jain, M. P., (2003) 'The Supreme Court and Fundamental Rights' in Verma, S. K. and Kumar, K. (eds.) Fifty Years of the Supreme Court ff India: Its Grasp and Reach (New Delhi: Oxford University Press)

[403] Desai, A. H., and Muralidhar S., *op. cit*, (n 292) pp. 176–179

Just to illustrate, the judiciary intervened to tackle sexual harassment as well as custodial torture and to regulate the adoption of children by foreigners, but it did not intervene to introduce a uniform civil code, to combat ragging in educational institutions, to adjust the height of the Narmada dam and to provide a humane face to liberalisation-disinvestment polices. No clear or sound theoretical basis for such selective intervention is discernable from judicial decisions,[404] It is also arguable if the judiciary has been (or would be) able to enhance the accountability of the other two wings of the government through PIL. In fact, the reverse might be true: the judicial usurpation of executive and legislative functions might make these institutions more unaccountable, for they know that judiciary is always there to step in should they fail to act.

5.12 Lessons for Nigeria

After careful examination of the two jurisdictions' interpretation and application of the doctrine of *locus standi* to PIL cases, the next step is to analyse the impacts of the different interpretation and application of the doctrine of *locus standi* on PIL in the two jurisdictions and identify those lessons Nigeria could learn. Some of these lessons could be positive while yet others could be negative. Lesson learning is a key objective of this study and it is the business of this chapter.

5.12.1 Contextual Similarities of the Two Jurisdictions

In order to determine the suitability of the analysis and lessons to be learned, it is apposite to give an overview of the constitutional, historical and socio-economic factors which Nigeria shares with India.

[404] One possible explanation could be: ''Where, however, the PIL challenges an existing policy backed by powerful political forces, and established in the name of economic development, the Court's grasp of its fundamental rights mission becomes more unsteady.'' ''PIL and Indian Courts'' in *Combat Law* (November–December 2007), Vol.6:6

The two jurisdictions studied share a lot of similarities in their constitutional framework. Firstly, they both have written constitutions which are the supreme law of the land. Secondly, these constitutions establish three organs of government: the legislature, executive and judiciary, define their powers and regulate their relationships. Thirdly, the constitutions guarantee certain inalienable rights to the citizens and establish courts to interpret laws and protect the rights guaranteed by the constitutions. While some of those rights are regarded as fundamental and thus justiciable, some are regarded as merely aspirational and non-justiciable. In addition, both the jurisdictions are signatories to international human rights instruments such as the United Nations Charter and the Universal Declaration on Human Rights. And finally, they are liberal democracies.

Historically, both jurisdiction were colonized by the British and they both, as a result, have a Common law based legal system and a large chuck of English law and legal principles in their legal systems. One of such doctrines of the Common law system is the doctrine of *locus standi* which is applicable in both the jurisdictions. The interpretation and application of these doctrines and principles in these jurisdictions were and are still influenced by the British legal traditions which were introduced as result of colonialism and perpetuated by English trained judges after the termination of colonialism. Furthermore, both jurisdictions may be said to have similar socio-economic equations in that both are emerging economies battling to break even; both of them are societies in which the majority of the population is poor and suffers multi-dimensional disabilities which include lack of access to justice due to political, economic, educational and/or social disabilities.

5.12.2 Relaxation of the Requirement of *Locus Standi*

As shown in this study, India, like Nigeria, inherited the common doctrine of *locus standi* from the British legal system. Both jurisdictions initially narrowly interpreted and strictly applied this doctrine to all cases and as a result of which many cases were thrown out of courts without going into their merits. However, in the course of time, India relaxed its interpretation of the doctrine of the *locus standi* so as to admit cases which would have been otherwise disallowed.

In India, this development was a judicial innovation in that it came into being as result of the Indian courts judicial activism. As discussed, modification of the traditional requirement of standing was *sine qua non* for the evolution of PIL and any public participation in justice administration.[405] Realizing this need, the Supreme Court held that any member of public acting *bona fide* and having sufficient interest has a right to approach the court for redressal of a legal wrong, especially when the actual plaintiff suffers from some disability or the violation of collective rights is at stake.[406] Later on, merging representative standing and citizen standing, the Supreme Court in ***Gupta v Union of India***[407] held that:

> Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right... and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or socially or economically

[405] Deva, S., (n 4) p. 24
[406] *Ibid*
[407] *Gupta v Union of India (1981) Supp S.C.C. 87, 210. See also PUDR v Union of India AIR 1982 SC 1473; Bandhua Mukti Morcha v Union of India (1984) 3 S.C.C. 161*

> disadvantaged position, unable to approach the Court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ.

The court justified its extension of standing as an effort to enforce rule of law and provide justice to disadvantaged sections of society.

Nigeria has also shown some progress in its interpretation and application of the doctrine as shown in the cases of ***Fawehinmi v. Akilu***[408] and ***Fawehinmi v. President, FRN.***[409] In both of these cases, it was held that every tax payer should be accorded *locus standi* where the interpretation or application of the Constitution is at stake. Another visibly though controversial development is the provision of the preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 which appears to have not only permitted but also encouraged public interest litigation in fundamental rights litigations.[410] However, these developments are only restricted constitutional matters only. In the case of the latter development, it has been a point of intense debate as to whether the preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 has any binding force.[411] As shown, this strict interpretation forestalls the development of PIL in Nigeria.

Liberalizing the requirement of *locus standi* in PIL cases is a condition precedent to its development. India liberalized its interpretation and application of *locus standi* through judicial activism. Nigeria can use same method.

[408] (1987) NWLR (Pt. 67) p. 797
[409] (2007) 14 NWLR (Pt. 1054) p. 275
[410] For extensive discussion on this, see Sule, I., *supra* (n 17) pp. 38 – 56
[411] On this refer to paragraph 3.3 in chapter three above

5.12.3 Liberalization of the Procedure for Commencement of Action

Another important lesson Nigeria could learn from India is the liberalizing of the procedure for the commencement PIL, especially, fundamental right cases. In Nigeria, even though Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that fundamental right may be commenced by any mode of commencement, nevertheless, a careful reading of Order II Rule 2 and the appendix to the Rules reveals that although an applicant can commence his action by any mode, he is expected to use a mode acceptable and procedurally recognized by our courts. That is to say the use of any other mode than the conventional mode of "writ of summons, originating summons, petition and originating application" is not allowed even under the extant Rules. Preparation of any of these originating processes requires the skill of a legal practitioner. Thus, members of the public whose rights have been breached and public-spirited individuals and groups who want to institute a public interest litigation case will have to engage the services of a lawyer whose professional charges they may not be able to afford. This militates against the development of PIL.

As discussed in 4.3 of Chapter IV above, the situation has long changed in India. The Supreme Court of India liberalized the procedure for filing writs when it observed that the term ''appropriate proceedings'' in Article 32 of the Constitution does not refer to the form but to the purpose of proceeding: so long as the purpose of the proceeding is to enforce a FR, any form will do.[412] This interpretation allowed the Court to develop what later came to be known as epistolary jurisdiction by which even letters or telegrams were accepted as

[412] Singh, G. B., (2009) 'Bills of Rights in the Constitution of India' http://www.newenglishreview.org/G._B._Singh/%22Bill_of_Rights%22_in_the_Constitution_of_India/ accessed 31/5/2016

writ petitions.[413] By the epistolary jurisdiction of the Indians courts, a potential applicant can approach the court by simply writing a letter or postcard to any of the judges of the court. The letter or postcard would then be turned into a writ upon which the court would act. This has made the initiation of fundamental rights proceedings easy and doable without the need of engaging a legal practitioner whose services poor litigants may not afford.[414]

Nigeria could use the example of India to liberalize the procedure for the commencement of fundamental rights suit so that victims who may not afford the service of legal practitioners may still approach the court.

5.12.4 Liberalization of Proceedings at Trial

Another important lesson from India is the nature of proceedings of courts in PIL cases, PIL proceeding is 'non-adversarial' the Indian Supreme Court has interpreted PIL as "not in the nature of adversary litigation but [as] a challenge and an opportunity to the government and its officers to make basic human rights meaningful...."[415] The Supreme Court further emphasized that PIL is a collaborative and cooperative project in which all concerned parties should work together to realize the human rights of disadvantaged sections of society.[416]

This paved the way for the courts to innovate what is came to be known as fact finding commissioners which are charged with the responsibility of investigating allegations of human rights abuses and reporting to the courts in situations where the applicant cannot access the evidence required to prove his allegation. The courts also appointed *amicus curiae* who are directed by the

[413] See, for example, *Sunil Batra v Delhi Administration AIR 1980 SC 1579; Dr Upendra Baxi v State of UP (1982) 2 S.C.C. 308*
[414] See *M. C. Mehta v. Union of India* (1988) 1 SCC; 1987 AIR 1086; 1987 SCR (1) 819
[415] *Bandhua,* A.I.R. 1984 S.C. at 811
[416] See Sathe S. P., (2001) *Judicial Activism in India* (England, Oxford University Press)pp. 207 – 208, 235 - 237

courts to appear and argue cases for indigent litigants.[417] The courts have afforded themselves extensive leeway in deciding which remedies are appropriate. Some of the remedies the courts construct include the creation and implementation of regulations, the establishment of free legal services, and the formation of administrative bodies to oversee the remedies ordered by the courts.[418]

Lessons from the foregoing include: that a country whose legal system is generally adversarial may still select some kinds of actions and make them non-adversarial because of the importance of such aspects. That, in addition to their traditional role of interpreting laws, the courts can invent principles that will carter for the welfare of the populace.

5.12.5 Emphasis on Collective Rather than Individualistic Action

Liberal democratic theory places substantial emphasis on the rights of the *individual.* It is the individual in the protective model of democracy whose constitutional rights are protected from state interference, and it is the individual who approaches the judiciary for relief. This emphasis is exemplified in the Nigerian tradition when Courts expressed the requirement that "a party seeking review must allege facts showing that he is himself adversely affected . . .**.**[419]

The Indian focus, while recognizing individual rights, stresses collective action in empowering the individual. In commenting on the difference between public interest action in India and the Anglo-Saxon traditions, Justice Bhagwati said of the latter that it is "transactional, highly individualistic,

[417] Desai, A. H., and S. Muralidhar, *op. cit,* (n 292) 165 - 167
[418] Holladay, Z., *op. cit* (n 267) 159
[419] See for instance the cases *of Albion Construction Ltd. v. Rao Investment & Properties Ltd (1992) 1 NWLR (Pt. 219) p. 583 @ 594* and *A. M. Bello v. The Governor of Kano State* (2002) NNLR p. 560

concerned with atomistic justice incapable of responding to the claims and demands of collectivity, and resistant to change."[420] This is an apt description of the legal tradition in Nigeria.

PIL in India, on the other hand, is concerned with "enforcing collective rights, an objective that is inconsistent with a private rights model of public law litigation."[421] The emphasis on collective rights is demonstrated in many Supreme Court decisions handed down since PIL began in India about three decades ago. One particular case emphasizing collective rights was *Vishaka v. Rajasthan*,[422] a case in which the Supreme Court promulgated procedures concerning the sexual harassment of women in the workplace. A woman named Bhanwari Devi was working as a social worker for the State of Rajasthan when five male members of the community raped her. The rape was prompted by her attempts to expose the marriage of a one year-old girl in the rural Rajasthani village. All of the assailants were tried for the offense of rape, but acquitted because the judge did not find credible evidence "that upper caste men would rape a lower caste woman." Visaka, a social action group, moved the Supreme Court to establish guidelines for protecting women from sexual harassment in the workplace in the absence of such legislation. In executing the order, Chief Justice J.S. Verma stated:

> The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of

[420] Bhagwati, P.N., (1985) 'Judicial Activism and Public Interest Litigation' 23 COLUM. J. TRANSNAT'L L. 561, 569
[421] *See* Ranjan, K A., (2004) 'The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India' 21 ARiZ. J. INTL & COMP. L. p. 663, pp. 688 - 690
[422] (1997) 6 SCC 241, AIR 1997 SC 3011

> fundamental rights of women workers under Articles 14, 19, and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.[423]

Visaka represents a collective solution to rights abuses. While prior to this case, specific legislation regulating the sexual harassment of women in the workplace did not exist, female government workers were presumed to be protected by the Indian Constitution's right to equality in Article 14. However, the government's failure to enforce its own constitutional safeguards prompted the judiciary to intervene. Naina Kapur, the lawyer acting on behalf of Bhanwari Devi, became "frustrated by the criminal justice system's inability to provide tangible remedies, restore the dignity of the victim, address systemic issues, and create widespread social change . . ."[424] The frustration Kapur experienced translated into a determination to "focus on the big picture" by filing a PIL action in the Supreme Court to investigate and address sexual harassment in the workplace.[425] During the PIL, Kapur and other lawyers collaborated to demonstrate a pattern of sexual harassment of women in the workplace by "providing examples of five other women who had experienced sexual assault in the course of employment."[426]

The collective solution to the rights abuses detailed in *Visaka* is but one example among many in India. The transition from the emphasis on the individual in the traditional liberal democratic tradition to the collective

[423] Sood, A. M. (2008) 'Gender Justice through Public Interest Litigation: Case Studies from India' 41 VAND. J. TRANSNAT'L L. 833, 845
[424] *Ibid,* p. *867*
[425] *Ibid*, (quoting Telephone Interview with Naina Kapur, Director, Sakshi, in New Delhi, India (Apr. 10, 2006) (internal quotation marks omitted)
[426] *Ibid*

represents an effective method of confronting widespread rights abuses, like those discussed in *Visaka*. Because of the government's failure to prosecute Bhanwari's assailants, the petitioners made the decision to attempt to obviate future abuses of women in the workplace. It is in this sense that the individual is empowered through the elaboration of collective rights.

There is need for Nigeria to use this lesson to address cases of human rights abuses by the police, violation of labourers workplace rights and sexual abuse of children which are becoming prevalent in the country.

5.12.6 Judicial Activism

Another valuable lesson Nigeria could learn from India is the activist role of the judges. All the developments leading to PIL and its fruition were inventions of the Indian judiciary. It first modified the requirements of *locus standi*, liberalized the procedure for filing and prosecuting PIL cases, introduced the appointment of fact-finding commissioners and amicus curiae and innovated different kinds of remedies and means of enforcing them. The Indian judiciary did not hesitate to intervene to fill in executive and legislative gaps where there is inertia from these organs as exemplified in the ***Vishaka v. Rajasthan***[427] discussed above. Another major role of the Indian judiciary is its purposive interpretation of the fundamental rights provisions contained in the Indian constitution which lead to the creation of several positive rights such as the right to livelihood, right live with dignity, the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.[428]

[427] (1997) 6 SCC 241, AIR 1997 SC 3011
[428] See *Mullin v. Administrator, (1981) 2 S.C.R. 516, 529 (India)*; Holladay, Z., *op. cit* (n 267) p. 164

A valuable lesson for the Nigerian judiciary from the above is that the judiciary needs borrow a leave from India to assume a more activist role in its discharge of its constitutional role of safeguarding the constitution if the declaration of the 1999 Constitution "the security and welfare of the people shall be the primary purpose of government" and "the participation by the people in their government shall be ensured" were to have any practical meaning. Like its Indian counterpart, the Supreme Court of Nigeria has a particular key role to play here. There is the need, nay necessity, of leadership in judicial activism by the Supreme Court in view of existing non-liberal interpretations entrenched in precedence which only it can overrule and pave the way for other courts. The Supreme Court of Nigeria has a good example in the Indian Supreme Court. It is worthy of note that just like Nigeria, the Indian constitution guarantees its judiciary independence, the Indian courts asserted their independence through their judicial pronouncements and the support of the media and civil society organizations. Nigerian courts are accorded virtually all the powers and protections the Indian courts have. What is lacking in Nigeria, however, is the practical assertion of these powers and protections. The Nigerian judiciary needs assert its independence and the media and civil society organization should spear no efforts in supporting the judiciary to do so.

5.12.7 The Role of the Media and CSOs

It is clear that media and vibrant civil society activism played a key role in the evolution of PIL in India. In fact, as noted elsewhere, PIL is a product of informal collaboration between a fearless media, vibrant civil society activism and a progressive judiciary. Some of the role of the media and CSOs includes

exposing human rights violations, publicizing progressive human rights decisions and supporting the judiciary in asserting its independence. Thus, Nigerian media and civil society organizations have a great deal of lesson to learn from the Indian example.

5.12.8 Identifying the Dark Side PIL in the two Jurisdictions

The foregoing are some of the positive lessons Nigeria could learn from the Indian example which Nigeria is urged to borrow and make use of taking local peculiarities into cognizance. However, the experience of the India also reveals some negative tendencies which we must be careful with so as to avoid the negative consequences suffered by it. The first of such lessons is that over-liberalization of the requirement of *locus standi* may open a floodgate of cases and lead to an unanticipated increase in the workload of the superior courts. This increase may later overwhelm the entire legal system of the country. Consequently, the Indian Supreme Court as well as the High Courts started battling with a huge backlog of cases.[429] In fact, by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary practically violated the right to speedy trial of those who are waiting for the vindication of their private interests through conventional adversarial litigation.[430]

Similarly, there exists tendency of the misuse and/or abuse of PIL by busybodies, cranks and meddlesome interlopers meddling in the corridors of courts. Again, the Indian example shows a glaring picture of this. For instance, the courts were approached to call back the Indian cricket team from Australia after the controversial Sydney test match.[431] PILs were initiated to

[429]Galanter, M., and Krishnan, J. K., (2004) 'Bread for the Poor': Access to Justice and the Rights of the Needy in India'' 55 *Hastings Law Journal,* p. 789 at p. 790

[430] This point was discussed in chapter 4 in paragraph 4.9 above

[431]PIL in SC for recalling the Indian cricket team from Australia, *Chenni Online* *http://archives.chennaionline.com/cricket/Features/2008/01news952.aspx* [January 16, 2008] visited on 17/122015 by 2:00pm

regulate the treatment of wild monkeys in Delhi and the practice of private schools to conduct admission interviews for very young children.[432] Some so-called public-spirited lawyers knocked at the door of the courts against: (i) Richard Gere's public kissing of an Indian actress, Ms Shilpa Shetty; (ii) an alleged indecent live stage show on New Year's Eve; and (iii) the marriage of former Miss World, Ms Aishwarya Rai, with a tree to overcome certain astrological obstacles in her marriage.[433] More recently, the PIL discourse was employed to request the Indian government to send technical experts to work with the Nepal government in strengthening the Bhimnagar barrage to prevent recurrence of flood.[434]

Furthermore, there is the possibility of the use of PIL to vindicate private rather than public interests. Examples of this are seen in both the Indian example. In India, Many private issues were presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). This development flooded the Indian courts with a number of cases which were merely calculated to serve private interests or buying cheap publicity.[435]

The good news, however, is that the experience of India would give Nigeria a clue on how to check these excesses. First, while liberalizing the requirement of *locus standi* to allow PIL, our courts should lay down a set of Guidelines to be followed for entertaining PIL cases. The guidelines may include specifying those matters on which PIL cases may be filed and those conditions that must be fulfilled before a matter can qualify as a PIL matter. These can be down in

[432] Combat Law 'PIL and Indian Courts' (November–December 2007), Vol.6:6
[433] 'Chased by the Moral Brigade' Rediff News (October 3, 2007)
[434] 'SC Bench Sneers at PIL Filed to Strengthen Bhimnagar Barrage' The Times of India (September 3, 2008)
[435] See Desai, A. H. and Muralidhar S., *op. cit*, (n 292) pp. 176–183

the process of judicial pronouncements in cases that may be initiated before our superior courts or by the Chief Justice of Nigeria using the powers conferred by and under sections 236 and 46 (3) of the Constitution. Heads of other superior courts may also use the powers as conferred in various sections of the Constitution to do same.

Secondly, Nigerian courts should send strong messages on a case-to-case basis whenever they notice that the process of PIL is abused misused by litigants. The courts can do so by condemning and/or imposing fines on plaintiffs who abused/misused the judicial process. The foregoing were the methods used by both India to check instances of abuse/misuse of PIL for reasons other than public interests.

5.13 Conclusion

PIL has been effectively used in India to enhance access to justice for vulnerable sections of the society. The innovations leading to the development of PIL in India are mainly judicial. The Indian PIL system covers a long list of subject matters ranging from public health and safety, public morality, accountability, human rights to the environment. There a number of lessons Nigeria could draw from the experiences of India.

Finally, the dark side of PIL noticed in India could be checked in Nigeria by putting in place mechanisms which will strike a balance between allowing legitimate PIL cases and discouraging frivolous ones. One way to achieve this objective could be to confine PIL primarily to those cases where access to justice is undermined by some kind of disability. The other useful device could be to offer economic disincentives to those who are fun of employing PIL for ulterior purposes.

CHAPTER SIX

SUMMARY, FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.1 Introduction

This is concluding chapter of this work. It presents an overview of the entire work, itemizes the findings and observations of the work, makes some recommendations and concludes the research.

6.2 Summary

Access to justice is one of the fundamental requirements of any democratic society as it is also a crux for the realization of any human rights. This is so because all human rights and, indeed, all justiceable legal claims will be empty declarations if there is no easily accessible forum for their enforcement. Lamentably, however, the realities of today's human society, poor governance and historical injustices have combined to make justice inaccessible to the global poor in general and those of the developing world in particular. This has meted out untold hardships on victims of abuses who are economically, politically, culturally and/or educationally disadvantaged. This led concerned persons into attempts to innovate ways that will enhance accessibility to justice. One such machinery is what came to be known as Public Interest Litigation (PIL).

PIL is a procedure which permits and even encourages public-spirited individuals, who may have no personal interest in a matter, to initiate law suits in cases of breach of fundamental rights or where some harm, detriment or injury has or can befall the entire public or a section of it. The procedure started gaining prominence when the phrase 'public law litigation' was coined in 1976 by Professor Abram Chayes of the Harvard Law School to refer to the

practice of lawyers in the United States seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms. Sometimes taking the class action form, public law cases often involved the restructuring of important government institutions, including public schools, mental hospitals, welfare agencies, and prisons, and affected many thousands of individuals. Although Professor Chayes limited his discussion to the United States, variegated forms of "cause lawyering" or "social activist" litigation also exist in the courts of many other countries, presenting localized strategies that draw on separate traditions and function within specific contexts. Examples of countries of the world where PIL is recognized though in varying degrees and dimensions include Austria, Canada, England and India.

This mechanism has today become a veritable tool in the civil justice system of several countries of the world. It has been used to achieve those objectives that are otherwise unachievable by conventional private litigations. PIL provides a stepladder for justice to the underprivileged and vulnerable sections of the society such as children, women, labourers, the poor, illiterates and other socially, politically and/or economically less advantaged members of the society. It also provides an avenue for the enforcement of collective and diffused rights and enables civil society organizations not only to spread awareness about human rights, but also to participate in government decision making. It serves as a vehicle for creating and enforcing rights and is critical to the sustenance of democracy and its ideals.

However, one of the major challenges to the development of PIL in most common law jurisdictions is the common law doctrine of *locus standi* which

requires a litigant to show personal interest or injury in a matter before they can be heard by any court of law. The doctrine of *locus standi* which was originally a private common law phenomenon assumed transnational status in the course of time and was raised and considered in all kinds of cases. Consequently, the doctrine of *locus standi* became a strong clog in the wheel of the development of PIL in that the doctrine bars public-spirited members of the society from instituting and maintaining cases in which they do not have personal interest or suffered personal injury. Thus, there arose the need to liberalize the interpretation and application of the doctrine so as to enhance the development of PIL.

In India, the development of PIL started after the emergency period of the country. During the 1970s, a majority of Indians suffered from a severe lack of access to justice. Legal fees were prohibitively expensive to the extent that only the few could afford representation. Moreover, the lack of education for many rural Indians meant that most people were unaware of their legal rights, and lawyers working on their behalf were few and far between. Compounding the dire situation of many of India's citizens, then-Prime Minister Indira Gandhi, the daughter of India's first prime minister, Jawaharlal Nehru-suspended elections and civil liberties in response to great political upheaval that threatened her premiership, a time in Indian history known as the Emergency Period (25th June, 1975 to 21st March, 1977). Many citizens were expecting the Supreme Court to intervene. The Court failed to do so and instead capitulated to Indira Gandhi's autocratic tendencies. In fact the Court held that certain fundamental rights, including the right to liberty, did not

survive the executive's proclamation of emergency. That decision only served to erode further the Court's esteem.

After the emergency period, the Supreme Court which had lost public confidence opened a new chapter aimed at making the Indian legal system more people friendly. The court started by modification of the traditional requirement of standing was *sine qua non* for the evolution of PIL and any public participation in justice administration. It then liberalized the procedure for filing and prosecution suits thereby making it possible for disadvantaged sections of the society to institute cases without much technicalities and the need to engage the services of legal practitioners. In complicated cases in which the plaintiffs have no access to the evidence required to prove their cases, the courts appointed fact-finding commissioners and amicus curiae to assist them. After putting the above in place, the courts embarked on purposive and expansive interpretation of the provisions of the Indian constitution and other relevant laws with a view to curbing the excesses of the government and rich members of the Indian society, intervening whenever and wherever there was executive or legislative inertia or neglect and to make the Indian state a welfare state. Since PIL began in the late 1970s, thousands of suits have been instituted before the courts through the agency of public interest and the Indian courts used each opportunity to make the Indian society fairer.

In the course of time, some unscrupulous persons started using PIL to vindicate personal interests; a situation almost outweighed the positive contributions of PIL. The Indian courts arrested this ugly trend by issuing

guidelines for the entertainment of any matter as PIL matter, strong message to violators and also by offering economic disincentives against busybodies.

In Nigeria, two noticeable modifications which are favorable to PIL were made since the promulgation of the 1979 Constitution and even those are limited to some constitutional matters only. The first modification was the decision of the Supreme Court of Nigeria in ***Fawehenmi v President***[436] that where the interpretation or construction of any section of the constitution is in issue, any member of the public can maintain a law suit; in other words, one does not have to establish *locus* before he/she can maintain a suit which borders on the construction or interpretation of the provisions of the constitution. The second modification was the one introduced by the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009 which permits any public-spirited member of the society to institute enforcement of fundamental rights suits and enjoins courts to encourage and welcome PIL in the field of human rights. However, these two modifications are only limited to matters bordering on the interpretation of the constitution and enforcement of fundamental rights. So, other PIL matters are not covered by the modifications. In other words, the strict common law requirement of standing still applies to them and this negatively impact on the development of PIL in the country.

There is therefore the need for Nigeria to borrow a leaf from India by relaxing judicial interpretation and modifying the requirements of *locus standi*.

[436] *Supra*

6.3 Findings

From the research which was conducted on the impact of the interpretation and application of the doctrine of *locus standi* on PIL cases in Nigeria and India, the following findings were made:

1) That both of the jurisdictions studied inherited the common law doctrine of *locus standi* from the British colonial masters and applied same in both private and public cases even after gaining independence;
2) That both of the jurisdictions have similar socio-political, cultural and historical antecedence as they were all colonized by the British, have similar legal systems and are developing countries.
3) That both of the jurisdictions studied have written constitutions each of which guarantees certain inalienable rights, establishes organs of government, provides for separation of powers and makes the courts guardians of the rights guaranteed and the constitution;
4) That PIL plays an important role in the civil justice system in that it affords disadvantaged sections of the society easy access to justice, serves as an avenue for the enforcement of collective and diffused rights, keeping the government accountable to the people and enables civil society organizations to spread awareness about human rights, to provide voice for marginalized groups, participate in government decision making and promotes democracy and democratic ideals.
5) That there is a growing consensus that *locus standi* constraints access to justice and poses significant challenge to the legitimacy and application of PIL in most common law jurisdictions.

6) That liberalizing the interpretation and application of the doctrine of *locus standi* is a condition sine quo non to the development of an effective system of PIL and that the doctrine went through profound transformation in the foreign jurisdictions studied and that enhanced the development PIL there;

7) That India liberalized its interpretation and application of the doctrine of *locus standi* in the post-emergency period through purposive judicial pronouncements. This is called judge-made standing.

8) That socio-economic factors, societal imbalance and historical injustices triggered the increasing judicial attitudinal shift to *locus standi* in some common law jurisdictions while Nigeria is relatively passive in this respect.

9) Even though there are two noticeable developments to PIL in Nigeria, the strict interpretation and application of the doctrine of *locus standi* by Nigerian courts in a large majority of cases is still a strong clog forestalling the development of PIL in the country.

10) The interpretation of section 6 (6) (b) of the 1979 Constitution in the *locus classicus* case of *Adesanya* has created a confusion as to the true nature and position of *locus standi* in the Nigerian legal system thereby posing further conceptual challenges to PIL.

11) In addition, PIL does not have conspicuous place under the substance of the 2009 Fundamental Rights (Enforcement Procedure) Rules as it was only referred to in the preamble to the Rules.

12) The Nigerian constitution is silent on PIL, but is not 'hostile' to, rather accommodative, of the underlying philosophy of PIL which regrettably needs a strong push to be utterly accepted in the legal system.

13) The research found that a change in the *locus standi* requirements was not part of the recently concluded constitutional amendment exercise.

14) That the Nigerian judiciary, over the last couple of decades, has exhibited a somewhat passive and conservative stance towards general constitutional interpretation.

15) PIL is a product an informal collaboration between an activist judiciary, a robust civil society and a progressive media.

16) The research observed that, in addition to the foregoing, there are other factors militating against the development of PIL. These factors, which are extensively discussed in chapter three, include archaic procedural rules, inherent conservatism in the legal profession, various constitutional qualifications and limitations imposed on human rights, lack of true judicial independence and fusion of the of the office of Attorney-General with that of the Minister of Justice.

6.4 Recommendations

In the light of the research conducted, the following recommendations are proffered for the purpose of endangering the development of PIL in Nigeria:

1) Since the development of PIL in Nigeria is mainly constrained by the strict judicial attitude of our courts towards *locus standi*, there is the need to liberalize the interpretation and application of the doctrine so as to enhance the development of PIL in the country particularly since the constitution is not averse to PIL. One option is for Nigerian courts to

take after their Indian counterparts in relaxing the traditional requirements of *locus standi*.

2) The relaxation of the *locus* requirements (whether by the judiciary or the legislature or both) should be cautiously pursed to avoid the dangers of 'over-liberalization' which is likely to lead to its abuse and/or misuse by some unscrupulous litigants who may wish to enter the temple of justice through PIL to fulfill private interests, settle political scores or simply gain cheap popularity as noticed in the two foreign jurisdictions studied. Therefore, it is important to balance the need between allowing legitimate PIL cases and discouraging frivolous ones. This could be done by issuing guidelines on the subject areas and conditions to be fulfilled before a matter can qualify as a PIL one as done in India.

3) The Supreme Court urgently needs to expressly clarify the confusion created in *Adesanya* so that the present lack of certainty would be laid to rest. The Nigerian Supreme Court would do well to comprehensively overturn *Adesanya* and affirm the objectives and preamble of the 2009 Rules without any equivocation so that the hardships occasioned by the decision may be totally and finally put to rest.

4) There is the need to jettison the obsolete and technical procedures that affect the development of PIL in Nigeria. The Nigerian judiciary needs to move with the times by opening up the doors of justice through creativity and activism bearing in man the socio-economic challenges of the country and the welfare socially, politically, economically and/or educationally disadvantaged section who constitutes the majority. Nigerian courts should borrow a leaf from India by inventing epistolary

jurisdiction, liberalizing the procedure for filing and prosecuting PIL cases, inventing innovative remedies and appointing of facts-finding commissioners and amicus curiae to facilitate dispensation of justice through PIL. The need to borrow a leaf from the Indian PIL jurisprudence was advocated by no authority than the Court of Appeal of Nigeria in the case of ***Alhaji Salihu Wukari Sambo & Anor v. Capt. Yahaya Douglas Ndatse (Rtd).***[437]

5) While the positives of PIL within the context of access to justice are significant, it is advisable that the Nigerian courts should not use PIL to run the country on a day-to-day basis thereby confusing the constitutional balance by entering the legitimate domain of the legislature or executive.

6) As recommended above, an activist judiciary is critical to the development of PIL. But only genuine activism which allows access to justice without frivolity and creative constitutional interpretation without exceeding due limits is advocated.

7) A robust civil society and a progressive media to compliment the efforts of the constitutional branches in expanding the province of justice is required. Fundamental rights regardless of the classifications can be better protected by the collaboration of civil society, the media and other stakeholders who often trigger the justice machinery whenever a violation occurs. This is more so with the enactment of the Freedom Information Act which seeks to make government businesses and decisions open to scrutiny.

[437] (2013) LPELR – 20857 (CA)

8) Since PIL is more suitable in fundamental rights litigation, the dichotomy between the provisions of chapters II and IV of our constitution should be deemphasized because it is now generally accepted that all human rights are interdependent and indivisible as evident by the Indian jurisprudence.

9) Since Nigeria's treaty obligations on human rights are in tandem with the broad constitutional rights, any legal or constitutional hurdle to their implementation should be eliminated or at least watered down to resonate with the its international obligations. In this regard, the claw-back provision of section 45 of the Constitution needs clear interpretation and its seemingly sweeping effect should be minimized.

10) On the effect of the ouster clause under 6 (6) (c) of the Constitution to the development of PIL in Nigeria, there two possible options. The first is to expunge it completely particularly in the light of increasing development in and outside the country, the interconnectedness of the provisions of chapter it affects with the provisions of chapter IV and the need for enhanced access to justice. The second is for the judiciary to recognize the interconnectivity between the two interrelated chapters (Chapters II and IV) without necessarily touching the ouster provision. The second option seems more preferable in the light cumbersome task of constitutional amendment.

11) Any meaningful judicial activism necessarily requires financially independent judiciary that sees itself as the vanguard for protection of the powerless, the power and the vulnerable vested with the onerous task of ensuring equality, rule of law and justice for all.

12) Given the significant position of the Attorney General as the chief legal officer and the conscience of the society, the politicization and frequent abuse of such office need to be addressed by way clear separation of the office of the commissioner or minister of justice as the case may because while the former ought to represent public interest, the latter represents political interest. In a system characterized by judicial inflexibility, this fusion is unhealthy for the advancement of PIL.

6.5 Conclusion

PIL is an inescapable reality that is assuming popularity and significance particularity in emerging nations. It is unarguably important for the promotion and protection of fundamental human rights as recognized by the Fundamental Rights (Enforcement Procedure) Rules, 2009 and if properly employed could narrow the inequality gap and reduced "viocelessness" of the silent less privileged majority. It could be used to enhance social programmes, promote, and enhance good governance and accountability. It important to stress that absence of express constitutional provision on any issue should be seen as an implicit acceptance of such issue. Therefore, substantive and procedural clogs to the advancement of PIL must not be allowed to undermine its implicit constitutional acceptance and development. This is in line with the global trend and in a globalizing world, Nigeria cannot afford lag behind. *Locus standi* has confused judicial and academic opinions. But more fundamentally, it has directly and indirectly affected the development of PIL in Nigeria while constraining the space for justice. This can have incalculable impact on the country's democratic progress. It is therefore submitted that the dynamism of the law needs to be reflected in judicial opinions and this should entail

proactive enforcement and protection of human rights with a flexible judicial mind. It is only in this context that social exclusions can be minimized and access to justice enhanced. It is also in this context that PIL can be nurtured and advance these noble objectives.

Therefore, in the light of the above, this work advocates rethinking of the concept of *locus standi* in Nigeria with a view to allowing the smooth development of PIL. The work looked into how the interpretation and application the doctrine of *locus standi* impacts on the development of PIL. It was found that narrow interpretation and strict application of the doctrine of *locus standi* negatively affects the development of PIL and that liberalizing the requirements of the doctrine is a condition precedent to the development of PIL. Example of a jurisdiction which has enhanced the development of PIL by modifying its interpretation and application of *locus standi*, among other things, was extensively discussed. There are a lot of lessons Nigeria could learn from this jurisdiction. While some of these lessons are positive, others are negative.

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