



*Spreading Legal and
Economic Awareness*

**A Social Initiative by
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Decoding Public Interest Litigation

Public interest litigation is a very powerful tool to fight social evils and can be filed in general interest. It can also deal with situations like anomaly at law, against a particular provision of law, suggestions on ambiguous laws or lack of laws-leading to amendment or improvement. It can also deal with government circulars and policies which may be constitutionally invalid.

It calls for intervention by the High court or the Supreme court by way of judicial review or judicial activism. The power to hear a public interest litigation vests only with the High court or the Supreme court and not with the lower courts since one has to invoke writ jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 of the constitution of India.

If it deals with civil issues it is called a civil public interest litigation and if it deals with criminal issues, it is called a criminal public interest litigation.



Cases dealing with fundamental rights, directive principles of state policy and ignorance of state are as good cases. The severity with which the case in question affects the general public becomes the base for priority of the PIL for courts. 'Publicity Interest Litigation' or 'privately interested litigation', filed in the garb of public interest litigation are nowadays dealt with severely. Many non governmental agencies and individuals have borne the brunt of courts with heavy fines and strictures in

this regard. The court also analyses the quality of petitioners and their background and the reason as to whether it is a bonafide matter or not. In such cases the facts of the petition are not as relevant as the intent of the petitioner and the subject matter of the petition. Many a times private writ petitions, for example those against hospitals, are converted by the courts themselves into public interest litigation if the issues concerned are of substantial interest to a large section or entire public.

An exhaustive list of public interest litigation is not possible— illustrations include laws on rape, emancipation of women and children, honor killings, custodial deaths, human rights, noise and other pollutions in particular areas, election laws and many more.

Wife can claim damages from husband's live-in partner

A wife and children of a married man, who is in live in relation with another lady, can claim damages from that lady who is in live in relation with such a man. This is because even if live-in relation has acquired an official sanction directly or indirectly through the applicability of domestic violence act but in 'tort law', a victim of such illicit relation

can sue the live in partner for damages. The supreme court in 2014 AIR SC 309 has held it to be proper and justified. The claim can be for heavy monetary damages for the loss caused to the lawful household both in terms of monetary loss as well as mental trauma and harassment. The husband or wife into such a relation will have to be made party and court can order

against him or her also. A civil court can pass a restraining order under order 39 of the code of civil procedure, restraining the spouse from doing or not doing certain things and can enforce the spouse to be with the family and give it priority. Each case has to be considered on the facts of case per se and has to be seen in its own set of circumstances.

An Act against Black Magic?

The State of Maharashtra has passed a law in 2013, in order to prevent people from falling prey to sinister designs of Conmen, astrologers, proposed men of God who indulge in human sacrifice and other inhuman practices including black magic and other such acts.

**ANTI SUPERSTITION,
HUMAN SACRIFICE
& EVIL AGHORI.
BLACK MAGIC ACT?**

***If you know someone,
complain to the police***

This new act, 'the Maharashtra prevention and eradication of human sacrifice and other inhuman, evil and aghori practices and black magic act 2013, gives illustration of such acts-expelling ghost, tying person

with rope/chain, beating with stick/whip, drink footwear water-urine or eat excreta, giving chilli smoke, burning parts of body, sex in open, miracles, blessing of

super natural power, inhuman and evil acts, acts for treasure, creation of fear in minds of people, promising of success, Karni, bhanamati, misuse of sacred principles of janam maran, man-

tra tantra, fear of misfortune, declaring person as shaitan or evil, etc. The offence is cognizable and non-bailable, and also provides for publishing of details of persons who are convicted under this act.

An inspector of police would be a vigilance officer who shall have the power to search, enter premises, prevent and detect and discharge such functions.

Normal puja, paath, upasana, natural miracles, pravachan, Hari path, kirtan, prayers are excluded.

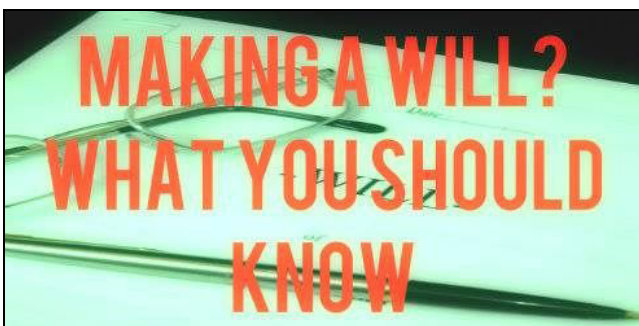
Making a Will? What you should Know

A will can be made even on a plain paper with one or two witnesses of good character and quality social standing. There is no necessity that a will must be registered. However, registration increases the authenticity of the will. The person making the Will should obtain a doctor's certificate that he is mentally sound and that certificate must be attached to the will.

A person must state in the will that the property being granted to the beneficiary is his self earned property. If inherited, the will must show that the person making the will had clear title to it.

In Bombay and Chennai, a will has to be probated by the high court, not a necessity in other cities.

A muslim cannot will more than



1/3rd of his estate. If he wants to give all of it he can do it by Hiba or gift deed during his life time.

Oral will is not accepted in India. However in the case of army and

navy men, before going to battle, if they declare in front of their officers and nominate their heirs, which is done in anticipation that they may die in battle, then is accepted by law as an oral will. Except this, the law does not recognise an oral will. It has to be written. Notarisation also increases the validity of the will.

If a person dies without a will he is said to die 'intestate' and the remedy to the legal heirs is to apply for a letter of administration/succession certificate from the competent court.

Know what a guardian means

This law applies to entire India except Jammu and Kashmir and the Union Territory of Pondicherry. A guardian is the person 'giving care' to the person of a minor or of his property or both his person and property. A minor is a person who has not attained the age of majority under the Indian Majority Act 1875.

Ward means a minor for whose person or property or both, there is a guardian. It is not at all necessary that either of the parents should be a Guardian or a ward. Although, the Courts keep in mind and give preference to either of the parents to be the guardian, if he is neglected by one of the parents. That parent may be a natural or a legal guardian.

A guardian can also be called a legal guardian in a will or any other document/ instrument like a deed of declaration. This can be done with or without an accompanying public notice, or can be declared by the court. This kind of a legal guardianship can be terminated by an order of the Court (which considers the paramount interest of the minor before doing so and the availability of a more suitable guardian) or in cases where the Guardianship ceases in terms of the period specified in the will or the instrument/ document/ declaration or stated by the Court.

In cases where the child is disowned by one of the parents and the other parent is not in a position to take care of the child, the court may appoint a different person as a guardian, who may not necessarily be a family member. The same is the case of

orphans. The act specifies that the guardian would take care of the property and the child. The High Court has special powers to appoint 'guardians and wards'.

It may be noted that Guardianship orders or Custody orders of a Guardian can never be final. However, if a change is made then the court has to record reasons for doing so and the interest of the child is paramount in such cases. Please refer to the judgment of the Supreme Court in the case of R. V. Srinath Prasad vs. Nandamuri Jayakrishna AIR 2001 SC 1056 for details.

Courts have the power to call for and interview the minor at any time if it is deemed necessary. Courts can even terminate the guardianship or modify the terms.

The Court has to be satisfied about the best interests of the child. For example in the case of Muslim Law, the mother is entitled to the custody of a son till he attains the age of 7 years and of the daughter till she attains puberty but in case the mother does not have a husband or is widowed, then the custody of the child goes to the paternal grandfather.

When an application for guardianship of a minor is made to the Court along with an application for adoption, the Court studies whether the parents desiring to adopt and be guardians would be in a position to look after the child. When couples are



physically fit to give birth to more children but they may adopt a female child or a male child because, they may have two or more male children or female children already, the courts permit appointment of guardianship and adoption.

Even foreign nationals can adopt and be appointed as a guardian of an Indian child. For this purpose, the Supreme court has laid specific guidelines in the case of Laxmikant Pandey vs. Union of India 1984 AIR SC 469 and later the Supreme Court has further issued guidelines in this regard in Laxmikant Pandey vs. Union of India 1987 AIR SC 232. In Johannes Phillipus Vaddee Venee DIJK vs. State of Rajasthan AIR 1990 Raj 124, stated as an illustration, the High Court permitted the adoption of a female destitute by Inter country adoption agency of Netherland moved an application for adoption with the permission of the Director of State Social Welfare Board. The initial application was rejected but the High Court allowed the appeal and permitted the same with some formalities and a provision for repatriation to India, if it is found that the child is not looked after properly.

Laws for Converting Religion

The Courts intervene in this subject only when the alibi of (false) conversion is used to derive benefits or avoid lawful treatment. Conversion has far reaching consequences on succession, marital status, educational admissions and even elective offices.

Conversion cannot be treated as an event which can be achieved through a mere declaration. Though the Law commission says that no particular ceremonies or formalities are required. Except in states like Gujarat, Madhya Pradesh, Arunachal Pradesh and some states which have enacted state laws like 'freedom of religion act', a notice to the District Magistrate followed by a procedure, there is no procedure recommended. This would mean an affidavit with a newspaper declaration and a name change in the official state gazette is the only procedure except in states where there is a procedure as stated herein before.

As Supreme Court has held in (2006) 2 SCC 578 that registration of marriages is compulsory, the Law Commission states that if either of the spouse wishes to convert, a declaration has to be given to the Marriage Registrar and within 21 days the individual can appear before the officer and can get the change recorded. This procedure is not applicable to the mentioned states which have procedures for conversion.

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*A law and economics knowledge
sharing initiative*

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This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.