



## MISUSE OF PUBLIC INTEREST LITIGATION

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### **Abstract**

PIL is a normative claim and an innovative judicial procedure based on principle understandings for enhancing the social and economic rights of disadvantaged and marginalized groups to foster healthy judicial activism.

It is a highly effective weapon in the armory of law for reaching social justice to the common man and concerned with the protection of interest of the victims of governmental lawlessness, or social oppression or in denial of constitutional or legal rights.

Misuse of PIL comes in various forms such as Publicity, political rivalry, corporate gain, or personal interest. It is an undemocratic, unrealistic and dangerous tendency which is to be impeded by our judicial attitude. PIL must be accompanied by adequate judicial control to prevent this technique from being used as an instrument of coercion, blackmail or for other oblique motive. Media role is significant in highlighting and analyzing the impact of misuse to impede the tendency of abuse of PIL on judicial process through workshops, seminars and visual media.

This paper analyses the misuse of PIL and ensure that it seeks atonement of a genuine public harm or injury or there is no personal gain or oblique motive.

Keywords: - Marginalized, Judicial activism, Atonement, Misuse

Care has to be taken to see that PIL essentially PIL and is not allowed to degenerate into becoming political interest litigation or private interest litigation.

Justice A. S Anand

### **INTRODUCTION**

The word “Public Interest Litigation” litigation is escorted for the protection of public interest or removal of their grievances. It is not explained in any statute or in any act. It is a litigation versed in a court of law by the court or any other individual party and elucidated by judges to consider the intent of public at large. It is not necessary that the person who is the sufferer of the violation of his or her right should personally approach the court for the discharge of the court’s discretion. The court while discharging its discretion of judicial review concluded that a very large section of the society because of acute poverty, socialism, discrimination and illiteracy had been denied justice for time archaic and the fact they have no entrance to justice especially, to provide entry to justice to the poor, destitute vulnerable, discriminated and disadvantaged sections of the society, thus court has initiated, emboldened and mobilized the public interest litigation. The litigation is culmination and product of the court's deep and intense impetus to fulfill its bounded duty and constitutional obligation. In the words of the Supreme Court of India, it is aimed at “cultivating and developing the concept of PIL and approaching its long arm of sympathy to the poor, the ignorant, the tyrannized and the



needy whose fundamental rights are crashed and violated and whose grievances go overlooked, un-represented and unheard<sup>1</sup>

<sup>2</sup>Since after the independence, the people of India adopted the “constitution of India” with a belief to administer the “sovereign socialist secular democratic republic” Among others, it desires to protect all its citizens’ socio-economic and political justice, liberty of expression, thought, faith worship and belief, Equality of prestige and contingency. These aims were not hardly aspirational. The founding fathers wanted to build an India where there is no any division on the ground of caste, creed, religion, sex and place of birth where everyone had equal rights and opportunities. They wanted to foster India into an absolute egalitarian society where all fundamental rights are protected and free from exploitation and servitude of the long suppressed people of India.<sup>3</sup>The provisions related to FRs, DPs and independent judiciary together provided a firm constitutional authority to the expansion of PIL in India. It is emphasized that under article 32 a PIL can be filed in the Supreme Court<sup>4</sup> for the enforcement of fundamental right and under 226 a High Court<sup>5</sup> can be approached whether or not there is a violation of fundamental right. The development of PIL or SAL in India is hindrance by the locus standi rule. Locus standi is the term for the capability of a party to validate to the court in sufficient

connection to and mischief from the law or action challenged to guide that party’s participation in the case. Otherwise, the court rule of “lacks standing” against plaintiff to bring the suit and dispose the case without considering the merit of the claim. Modification of the traditional stipulation of standing was sine qua non for the evolution of PIL and any public assistance in justice administration. PIL is the power given to the public by courts through judicial activism. Any person who admit that injustice being done to the society at large can the court for judicial remedy, only a person acting bona fide and with common interest in the proceedings of the PIL will have a locus standi and can access the court to clean the tears of the poor and needy, whose fundamental rights have been violated but not a person whose motive is of personal gain, private profit, political antecedent or any oblique consideration.

### **PUBLIC INTEREST LITIGATION HISTORICAL DEVELOPMENT IN INDIA**

The term “PIL” is an origin of the United States. Various movements in that country were introduced in the nineteenth century which led to the public interest law, which was part of the legal aid movement. In 1876 the first legal aid office was being established in New York. In the 1960s the PIL movement began to gain financial support from the office of Economic Opportunity, This encouraged the lawyers and public spirited persons to take up cases of the under-privileged and the and fight against dangers to the environment and

<sup>1</sup> Dr. Subhash C. Kashyap, *The Framing of India’s Constitution* 731-732 (2d ed. 2006)

<sup>2</sup> Vasundhra Majithia, *Public interest litigation, Social Action Litigation, private attorneys of law*, Apr. 8, 2015

<sup>3</sup> M. P Jain, *Indian Constitution Law*, 423-424 (7<sup>th</sup> ed. 2016)

<sup>4</sup> INDIA CONST. art 32

<sup>5</sup> INDIA CONST. art 226



public health and <sup>6</sup>exploitation of consumers and the weaker sections of the society.

PIL in India can be called as an improved version of PIL in USA. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were listed among the first judges to introduce PILs in court. In 1979 the case Hussainra khaton vs. State of Bihar (1979) which was filed by an Advocate, considering the newspaper article which was published in Indian Express relating to the under trial prisoners of Bihar prison and then a judgment<sup>7</sup> was announced Justice PN Bhagwati recognising the right of speedy trial and justice. This case opened a way of thought for the public at large. Earlier in PIL, the locus standi only belonged to the person who was aggrieved but now it has changed a bit and the locus standi is given to person acting bonafide and is having sufficient public interest to approach the court to wipe out the tears of the poor whose fundamental rights are violated or injustice is being done to them.. In 1981 Justice P. N. Bhagwati in the case of .S. P. Gupta v. Union of India, introduced the concept of PIL which are “Where a legal wrong or a legal injury is caused to a person or to a group of person’s reason of violation of any constitutional or legal right.

The PIL cases in the late 1970s were generally filed by public-spirited persons (lawyers, journalists, social activists or academics). Most of the cases which related to the rights of disadvantaged sections of society or the marginalized groups such as child laborers, bonded laborers, prisoners, women.<sup>8</sup> During this phase, the judiciary recognized the rights of these people and gave directions to the government to redress the professed violations. The second phase of the PIL started during the 1990s during which several significant changes in PIL took place. The filing of PIL cases now became more rampant and the specialized NGOs and lawyers started bringing up matters of public interest to the courts on a regular basis. The types of issues which were raised in PIL also expanded quickly— from the protection of environment to corruption-free administration, right to education, good governance, relocation of the industries, and sexual harassment at the workplace, rule of law and general accountability of the government and now PILs multiplied tremendously in the High Courts and the Supreme Court. Today, the various High Courts and the Supreme Court are equally loaded with normal litigation as well as public interest litigation with no end in each <sup>9</sup>of them.

### ABUSE OF PIL

Misuse of PIL is increasing day by day along with its multifaceted use. Many of the PIL activists have found PIL nowadays becoming a tool for harassment, since cases

<sup>6</sup> Anjali Srivastava, PIL A New Horizon, (Nov. 5, 2013)

<http://www.mondaq.com/india/x/273102/trials+appeals+compensation/Public+Interest+Litigation+A+New+Horizon>

<sup>7</sup>Jignesh Khatiwala, Essay on the use and misuse of PIL

<http://www.publishyourarticles.net/knowledge-hub/essay/an-essay-on-the-uses-and-misuses-of-pil-public-interest-litigation/1657>

<sup>8</sup> Shri V.S Vadevei, PIL a boon or bane? <http://www.legalserviceindia.com/articles/pil.htm>

<sup>9</sup> Legal Correspondent, Misuse of PIL petitions, The Hindu, Mar. 15, 2004, at A1



can be filed without heavy court fees and the results are also quick.

The misuse of PIL has become more usual than its use<sup>10</sup>. Supreme Court came down with a view that if petitions are being filed just for publicity or political and personal gain. It will hamper the system of justice. PIL should be aimed for seeking redressal for public wrong or public injury and not for other oblique motives. Nowadays courts are also flooded with a large number of so-called PILs, whereas only a small percentage of that cases can genuinely be called PIL. It is not easy to appreciate the public and private interest, but it is feasible that courts have not meticulously enforced the requirement of PILs being targeted at espousing some public interest. Desai and Muralidhar certify the perception that: “PIL is being abused by people for private grievances<sup>11</sup> in the clutch of public interest and pursuing publicity rather than accepting public causes. It is critical that courts do not grant “public” in PIL to be replaced by “private” or “publicity” by doing more cautious gate-keeping.

In order to preserve the purity and righteousness of the PIL, it has become necessary to issue the following directions.

1. The courts must encourage genuine and bona fide PIL and effectively discourage and the frivolous PILS filed.
2. It would be convenient for each HC to formulate rules and encourage bona fide PILs rather than every individual devising its own procedure.

<sup>10</sup>Shri V.S Vadevei, PIL a boon or bane? <http://www.legalserviceindia.com/articles/pil.htm>

<sup>11</sup>M.J Antony ,use and abuse of PIL, Business Standard, Aug. 20 ,2003

3. The courts should prima facie verify the documents of the petitioner before entertaining a PIL.
4. The court should ensure the correctness of the contents of the petition before entertaining a PIL.
5. The court should be satisfied that consequential public interest is involved or not.
6. The court should give supremacy to PILs involving larger public interest.
7. The courts before entertaining the PIL should ascertain that the PIL is aimed at seeking redressal of genuine public harm, and no other gain before filing the PIL. The court should also ascertain that the petitions filed by busybodies for extraneous and ulterior purpose must be discouraged by imposing heavy costs or by adopting similar novel methods to curb frivolous petitions.

#### ROLE OF JUDICIARY IN CONSTRUCTING PIL

At the time of 1970s only the aggrieved party or the party which were highly effected could approach the courts for justice. <sup>12</sup>After the emergency era the high court reached out to a point and devised a means for any person of the public irrespective of the aggrieved to approach the court and seek legal remedy in cases where the public interest is at danger. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were the first judges to originate PILs in court. There have been many instances were letters and telegrams have been taken into consideration as PILs and heard. But now the Supreme Court and the High Courts have started taking up proceedings suo moto (of

<sup>12</sup>Suyogya Awasthy, Role of Judiciary in PIL, (July 31, 2016)



its own without anyone approaching the court) when something important came to them through the general media or through newspapers, television or through a letter etc. Later on the court kept on increasing the scope, and the area in which the jurisdiction would be provided.

### COMPLICATION IN PERSUIT OF JUDICIAL ACTIVISM THROUGH PUBLIC INTEREST LITIGATION

It resembles that the misuse of PIL in India, which started in the 1990s, has come to such a stage where it has started overthrow the very objective for which PIL was introduced. In other words, the dark side is moving gradually to overshadow the golden side of the PIL project.

1. Publicity by regular litigants- This kind of misuse is done by people who are the regular<sup>13</sup> litigants. In the case of Ashok Kumar Pandey vs. State of West Bengal, justice described that meddlesome interlopers ,busy bodies etc. should be thrown out for filing PIL just for their own publicity, these kind of people approach the court for their publicity and to seek attention from the general media for fame and popularity. Such kind of PILs is defined as nuisance in the society.

2. Political interest litigation- PILs are filed by political parties just for political reasons, or for their aides against another political party, the court should not entertain these type of cases whose objective for filing a

PIL is just a political gain. In the case of S.P Gupta vs. Union of India it is observed that it was just filed for the political gain.

3. Persons with vested interests-Many a times it has been observed that businessmen and companies wasn't successful in their business or trade have resorted to PILs against their rivals for their own purpose. PIL was designed for the purpose of protecting the rights of the disadvantaged and marginalized groups who can't knock the door of the court for justice .But nowadays it has become a tool for harassment. Most of the PIL are just filed for the publicity, personal interest or for political gain. Court before taking a PIL into consideration need to keep a check on the cases, ensure that bonafide action is there and<sup>14</sup> nature of the case is for public interest...

5. Inefficient use of limited judicial resources: - PIL has a potential to contribute to an efficient disposal of people's grievances. But taking into consideration the number of per capita judges in India is much lower as compared to other countries and due to lack of judges both the supreme court and the high court are facing a huge backlog of cases, it is abstruse why the courts have not taken any measures to stop non-genuine PIL cases<sup>15</sup>. In fact, by allowing frivolous PIL petitions, it wastes the energy and the time of the judiciary and due to this it violates the right to speedy trial of those who are waiting since long time.

<sup>13</sup> Manmeet Singh ,PIL A critical evaluation,( June 19,2015)  
<http://www.legalservicesindia.com/article/article/public-interest-litigation-a-critical-evaluation-18441.html>

<sup>14</sup>Mohd. Haris Usmani ,PIL  
<http://www.legalserviceindia.com/article/1273-Public-Interest-Litigation.htm>

<sup>15</sup> Pritam Kumar Ghosh, Judicial activism and PIL in India ,GJLS,Vol 3 ,No.1, (2013)



One of the major problem is that the courts are taking unduly long time in finally determining of even PIL cases, which are generally for public interest at large. The fact that courts are taking unduly long time to settle off cases might also recommend that the probably courts were not the most convenient forum to deal with the issues as PIL.

1. Judicial populism: Judges are human beings, but it would be inappropriate if they permit PIL cases on report of upraising an issue that is common in the society. Contrarily, the desire to become people's judges in a democracy should not obstruct entertaining PIL cases which consists of an important public interest but are likely uncommon. The fear of judicial populism<sup>16</sup> is not only academic and this can be seen from the observation of Dwivedi J. in *Kesavananda Bharati 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 fixed place in the hearts of the people and enlarge its moral authority if it can switch the focus of judicial review to the protection of weaker sections of people rather than focusing on the numerical concept of minority protection in the society.

2. Symbolic justice:-Judiciary is often unable to ensure that its guidelines or directions in PIL cases are accede with, for exponent, sexual harassment at workplace (Vishaka

case)<sup>17</sup> or the procedure of arrest by police (D.K. Basu case). No doubt, more provisional research is needed to prospect the extent of amenability and the difference made by the Supreme Court's guidelines. But it seems that the judicial interference in these cases have made little progress in contesting sexual harassment of women and in reducing police barbarity in matters of arrest and detention. The second example of symbolic justice is provided by the emptiness of over conversion of DPSPs into FRs which making them justiciable.

8. Disturbing the constitutional balance of power: - Indian Constitution does not follow any rigid separation of powers, it still demonstrate the doctrine of checks and balances, which even the judiciary should respect. Prof. M. P. Jain discretion against such tendency "PIL is an ammunition which must be used with great care and discretion. The courts need to keep in view that under the façade of amending a public grievance PIL does not interfere upon the sphere aloof by the Constitution to the executive as well as the legislature. The Supreme Court did not stumble to intrude on policy questions but in other cases it bury behind the armor of policy questions and intervened to deal with sexual harassment as well as custodial distress and to legislate the adoption of children by foreigners, but it did not arbitrate to introduce a uniform civil code, to stop ragging in educational institutions, to accommodate the height of the Narmada dam and to administer a humane face to liberalization divesture polices..

<sup>16</sup>Shweta Kaushik, Know all about PIL <http://www.vakilno1.com/legal-advice/know-public-interest-litigation-pil.html>

<sup>17</sup> Jain M.P., "The Supreme Court and Fundamental Rights" in Verma and Kusum (eds), Fifty Years of the Supreme Court of India, pp.65-76.



## CASES STUDY OF PUBLIC INTEREST LITIGATION

### CONSTITUTIONAL CONTRIBUTION

**Vishaka & Ors. Vs State of Rajasthan & Ors**<sup>18</sup> The petition was filed to prevent harassment at work place, and guidelines were laid down for sexual harassment at work place. These guidelines were helpful in the formulation of sexual harassment of women at workplace (prevention, prohibition, and redressal) 2013.

**D.K Basu vs state of West Bengal**<sup>19</sup> In this case a letter was written to the Chief justice of India stating the torture and deaths in police custody, the Chief justice considered it as a petition. After this petition guidelines for fair treatment of prisoners and arrestees were laid down.

**Hussainara Khatoon v. State of Bihar**<sup>20</sup>, This case got filed in the Supreme Court before Justice P. N. Bhagwati. This petition was filed by prisoner, Hussainara Khatoon. In this case the Supreme Court laid down that prisoners should get benefit of free legal aid and speedy trial.

**Sheela Barse vs State of Maharashtra**<sup>21</sup> In this case, it has been observed that it dealt with the issue of violence against women in the prisons. This PIL resulted in the separation of police lockups for women convicts in order to get rid of trauma and brutality.

<sup>18</sup>Vishaka & Ors. Vs State of Rajasthan & Ors (1997) 6 SCC 241 (India)

<sup>19</sup> D.K Basu vs state of West Bengal (1997) 1 SCC 216 (India)

<sup>20</sup>Hussainara Khatoon v. State of Bihar (1979) SCR(3) (India)

<sup>21</sup> Sheela Barse vs State of Maharashtra (1987) JT 1988 (3) 15 (India)

### MISUSE OF PIL

**Ashok Kumar Pandey vs State of West Bengal**<sup>22</sup>, The court observed that the meddlesome interlopers, busybodies approach the court just for their publicity and seek the attention of general media, are a nuisance in the public and a threat on the judicial process.

**Kalyaneshwari vs Union of India**<sup>23</sup>, The court cited the misuse of public-interest litigation by businessmen for the rivalry in business in the case of. Petition was filed in the [Gujarat High Court](#) for the closure of [asbestos](#) units, stating that the material was harmful to humans. Then the court dismissed its petition and stated that it was filed for their products to be used as a substitute. Of asbestos, hence it was a misuse of PIL by business persons.

**Shubhash Kumar Vs. state of Bihar**<sup>24</sup>. In this case Subhash Kumar was a common laborer who was being fired by the director of the company for doing some wrong so he filed a PIL that the company is not acting well and something is wrong. So this was considered as a case of misuse of PIL which was done for personal interest.

### CONCLUSION

Public interest litigation is a system which helps the common man to reach the remedy and is constructive for public at large which was not available before. It has opened the new window of thought. We should be

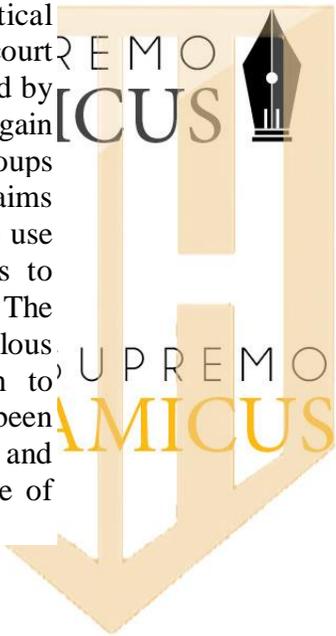
<sup>22</sup> Ashok Kumar Pandey vs The State Of West Bengal (2003)cr1.199 of 2003(India)

<sup>23</sup> Kalyaneshwari vs Union of India(2011) 3 SCC 287 (India)

<sup>24</sup> Subhash Kumar vs State Of Bihar And Ors (1991) AIR 420, 1991 SCR (1)5 (India)



thankful to our judiciary system who have formulated this new concept which is really very useful for public at large because there are many examples present before us which proves that it is beneficial in our Indian society in the field of pollution, environment, bonded labor, sexual harassment ,scams corruption etc. . By filing the Public Interest Litigation one is having the locus standi and can ensure the justice to the oppressed people. The court at the very first stage while taking the petition into consideration ensure that the petitioner who approaches is acting under bona fide and not for personal gain, private profit or political rivalry or other oblique motives. The court should not grant its process to be misused by politicians and others for action or to gain political objectives. Political pressure groups who are not able to achieve their aims through the political process may try to use the courts by the very means of PILs to further their personal vested interests. The PIL activists who do prefer to file frivolous PILs will have to pay compensation to opposite party against whom it has been filed. PIL requires a complete building and reconstructing of it, overuse and misuse of PIL will make it ineffective or fruitless.



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