



PUBLIC INTEREST LITIGATION NEED FREEDOM

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Abstract:

Public interest litigation is a common man's power and the simplest method for the poor to knock the door of the court and demand justice. Public interest litigation has been introduced and accepted by the Court itself. No statute describes or defines the same. In matters where public interest is involved the Supreme Court has accepted the petition and passed appropriate orders, encouraging the people to fight for the violation of the fundamental right not only for himself but also for the society. The Supreme Court has granted variety of reliefs to persons and group of persons whose rights have been violated and has issued variety of directions to Government to perform its duty under the law.

There has been unpredictable, tremendous and outstanding development of the concept of PIL and so of the society to fight against evil and not to be felt degraded and ignorant. However, caution and care is obviously needed to prevent the abuse of PILs.

This paper explains probably all things or facts about how a public interest litigation is formed & who can file it; also how things run and how it should run.

Introduction:

Meaning and definition- Public Interest Litigation also known as Social Interest Litigation means a legal action initiated in a

Court of Law for the enforcement of public interest or rather general interest of the public on the violation of their fundamental rights. The expression "litigation" means a legal action or proceeding initiated for the purpose of enforcing a right and seeking remedy for the same. "Public interest" has been defined in Black's Law Dictionary as – "Something in which the public, the community at a 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 locality, which may be affected by the matters in question."

Introduction of Public Interest Litigation by Supreme Court of India extends its jurisdiction under Article 32 of the Constitution of India. Article 32 of the Constitution talks about the Right to Constitutional remedies. It guarantees the right to move the Supreme Court by "appropriate proceedings" for the enforcement of the rights conferred by Part III of the Constitution. It confers powers on the Supreme Court to issue appropriate directions or orders or writs. The traditional rule of *locus standi* that a petition under Article 32 can only be filed by a person whose fundamental right has been infringed has been considerably relaxed by the Supreme Court. The concept of Public Interest Litigation or social interest litigation has now gained momentum at the instance of "public spirited individuals" for the enforcement of Constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

PIL is an opportunity to make basic human rights meaningful to the deprived and



vulnerable sections of the community and to assure them social and economic justice.

When the Court entertains a public interest litigation, it does so with a mindset of the fact that PIL is one of the most important weapon to fight with any evil in the society. It has to be used with a proper care and the judiciary has to be very careful to see that in order to redress a public grievance, it does not allow the misuse of the same. Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large.

Its development in India-

Justice V.R. Krishna Iyer and Justice P.M. Bhagwati, honourable Judges of the Supreme Court of India delivered landmark judgements which opened up new vistas in PIL. A petition regarding the condition of the prisoners detained in the Bihar jail, whose suits were pending in the court was filed in 1979, known as *Hussainara Khatoon Vs State of Bihar*. In this case, the Supreme Court upheld that the prisoners should get benefit of free legal aid and fast hearing. Because of this case 40,000 prisoners, whose suits were pending in the court, were released from the jail. *In the Judges Transfer Case - AIR 1982, SC 149*: Court held Public Interest Litigation can be filed by any member of public having sufficient interest for public injury for enforcing constitutional or legal rights of other persons and redressal of a common grievance. The court rejected the argument that such PILs would create arrears of cases and therefore they should not be encouraged. Bhagwati, J., declared, "No State had the right to tell its citizens that because a large number of cases of the rich

are pending in our courts we will not help the poor to come to the courts for seeking justice." After positive replies from the Courts, citizens began to file the grievances of the public and formation of a public interest litigation gained speed, also slowly and gradually it became the crowning achievements of the Indian Judiciary. People began to come forward and awareness understanding problem etc. led them to form litigation in interest of public. Some of most important among them are: 1) **Sheela Barse vs State of Maharashtra (February 15, 1983)**: This was a historic judgment that dealt with the issue of custodial violence against women in prisons. This resulted in an order facilitating separate police lockups for women convicts in order to shield them from further trauma and brutality. 2) **Indira Sawhney judgment**: On November 16, 1992, the Supreme Court responded to a PIL filed by lawyer Indira Sawhney and introduced 27% reservation for backward classes in posts and services under the Government of India. Citing the age old Varna system, the court justified its reason for reservation. The court also spelled out that such a system should not exceed a tenure of ten years once a particular section is adequately represented in society.

Competency to file it-

A Public Interest Litigation (PIL) can be filed in any High Court or directly in the Supreme Court. It is not necessary that the petitioner has suffered some injury of his own or has had personal grievance to litigate. PIL is a right given to the socially conscious member or a public spirited to espouse a public cause by seeking judicial for redressal of public injury. Such injury may arise from breach of public duty or due to a violation of some provision of the Constitution. Public interest litigation is the



device by which public participation in judicial review of administrative action is assured.

The Court must encourage only genuine and bona fide PIL. The person forming the public interest litigation must act bona fide he should not have some or the other pecuniary or political interest in the same. He should not have some personal interest or gain, the court should not allow itself to entertain such application and reject it. He must be interested genuinely in the society welfare and its protection.

The person must have a sufficient interest. The Court has to decide from case to case as to whether the person approaching the court for relief has "sufficient interest" and has not acted mala fide. He must be a public spirited individual not acting for himself but for the public at large. The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

Legal wrong is caused. The Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL. Some or the other legal wrong or legal injury must have been caused to the public at large or to a determinate class of persons by reason of violation of any constitutional or legal right and such person by reason of poverty, helplessness of disability or socially or economically disadvantaged position unable to approach the court for relief. There is a personal injury or injury to a disadvantaged section of the population for whom access to legal justice system is difficult.

Public interest is involved- The court should be fully satisfied that substantial public interest is involved before

entertaining the petition. The matter must be of larger public interest and must also be given priority over other petitions. The injury must have arisen because of breach of public duty or violation of the Constitution or of the law. This is a powerful safeguard and has provided immense social benefits, where there is essentially failure on the part of the executive to ameliorate the problems of the oppressed citizens.

Formation & Procedure beyond it-

There are two ways of forming a public interest litigation. The very first is by a normal petition, which would be treated as a public interest litigation. Any citizen can approach the court for public case (upon the interest of public) by filing a petition:

- In Supreme Court under Article 32 of the Constitution
- In High Court under Article 226 of the Constitution
- In the Court of Magistrate under Section 133

The other is by a letter petition. It is not compulsory for a public spirited individual to file a proper writ petition for forming of a PIL. A petition can also be formed by a letter or a telegram. The Supreme Court will readily respond to a letter addressed by such individual, who is of course competent to file a PIL. But, on the same condition some rules have been enacted by the Supreme Court of India, prescribing the procedure for presenting it for relief. The Court will, therefore, cast aside the technical rules of procedure of a normal writ petition as also law relating to pleadings and treat the letter of the public-minded individual as a writ petition and act upon it. In case of *M. C. Mehta v. Union of*



India, The Supreme Court has widened the scope of PIL under Article 32. The Court held that a public spirited individual or association, for the poor and needy who are suffering from violation of the fundamental rights can seek its enforcement by writing a letter in the name of the Court. Such letter does not have to be accompanied by an affidavit. This has provided simplest method to the poor people who may knock the doors of the highest court of jurisdiction. The Court has brought justice to the doorstep of the people's thought of fight for justice.

Letter-petitions falling under the following categories alone will ordinarily be entertained as Public Interest Litigation:

1. Bonded Labour matters.
2. Neglected Children.
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
4. Petitions from jails complaining of harassment, for (pre-mature release) and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right.
5. Petitions against police for refusing to register a case, harassment by police and death in police custody.
6. Petitions against atrocities on women, in particular harassment of bride, bride burning, rape, murder, kidnapping etc.
7. Petitions complaining of harassment or torture of villagers by co- villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes.
8. Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.
- 9.

Petitions from riot -victims. 10. Family Pension.

All letter-petitions received in the PIL Cell will first be screened in the Cell and only such petitions as are covered by the above mentioned categories will be placed before a Judge to be nominated by Hon'ble Chief Justice of India for directions after which the case will be listed before the Bench concerned.

If a letter-petition is to be lodged, the orders to that effect should be passed by Registrar (Judicial) (or any Registrar nominated by the Hon'ble Chief Justice of India), instead of Additional Registrar, or any junior officer.

On the other hand, cases related to Landlord-Tenant matters, Service matter and those pertaining to Pension and Gratuity, Complaints against Central/ State Government Departments and Local Bodies except those mentioned above, Admission to medical and other educational institution, and petitions for early hearing of cases pending in High Courts and Subordinate Courts. Cases falling under the following categories will not be entertained as Public Interest Litigation and these may be returned to the petitioners or filed in the PIL Cell. If on scrutiny of a letter petition, it is found that the same is not covered under the PIL guidelines and no public interest is involved, then the same may be lodged only after the approval from the Registrar nominated by the Hon'ble Chief Justice of India.

When it comes to the formation of a PIL by a letter petition, the most important case is of **Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 803**, the Supreme Court was informed through a letter that they conducted a survey of the stone



querries and found that there were a large number of labours working in these stone-querries under “inhuman and intolerable conditions” and many of them are bonded labours. The court treated the letter as a writ-petition.

PIL needs freedom-

So far, it has been given a review as to how things related to public interest litigation is running in our country, which is a way far from of how things should actually run. Abuse of public interest litigation is a major concern nowadays.

Public interest litigation is a litigation filed by a public spirited individual who wants to do welfare of his society. He is a common man who very well knows what wrong is been done to the people of the society by infringing their rights. The “common man” wants to fight against evil for stopping his society from suffering. But unfortunately, he is not a lawyer-who knows how to file a petition, nor a celebrity-who can afford a lawyer, not even a renowned NGO who works for the same. Our judiciary has opened a way for a common man for easy reach of justice that is Public Interest Litigation. A common man can file a litigation or shall write a letter to the court of how public at large is suffering as their rights have been violated. His letter would reach the Court and will wait for justice like million other letters are waiting. When his chance of getting justice would come, the matter raised by that common man will become more serious and by that time people would continue to suffer. The question arises as to how this problem can be solved? When a different channel of getting justice has been opened for the public or a for a common man, so as

to skip the procedure of filing a petition and attain justice, then why are the lawyers been allowed to file a public interest litigation? A lawyer should continue to fight for justice by filing cases to the court. The celebrities, renowned NGOs can help the public financially and also can afford a lawyer for the same. They can help people get justice by following a proper procedure of getting justice by filing a normal petition. This different channel will then be opened only for that common man who will not only get immediate relief but also a sense of belief in getting justice, which will encourage the society to fight for their rights. The abuse will automatically be reduced as the renowned NGOs, lawyers, etc. will not be filing PILs. Also, the burden on the courts of millions of PILs will be less which will enable it to early hearing of matters presented by the public at large.

Conclusion-

Public Interest Litigation is still on experimenting stage. Many a times, objections arises as to the acceptance or rejection of a litigation. There are still if not many, few deficiencies in either accepting or rejecting the public interest or in properly handling it. Deficiency herein, results in great loss of general public interest, which may then break their hope of getting justice from the judicial system. But, public interest litigation is still working as an instrument of social change. In the words of K. Ramaswamy, “Justice is never given; it is always a task to be achieved.” It is being developed day by day by public spirited individuals who hopes for the best for our society. Its development shows that the judges has not only introduced to the public this innovative idea but also has adopted to its fulfilment. There are more and more reaching PILs to the courts. Many have



been solved by the courts by giving relief to the public and rest are tried for the same.

Immediate ractification needed-

A separate bench of judges must be appointed who may receive such public interest litigations and accept or reject the same but with proper reasons which may satisfy the petitioner. Along with this many ractifications must be done to make PIL free from legal procedure and mannerism so as to make it available to public in general.

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