



PUBLIC INTEREST LITIGATION: POTENTIAL AND PROBLEMS

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“There are times when even justice brings harm with it”

-Sophocles

INTRODUCTION

Public Interest Litigation has marked a momentous growth in the recent years from the conventional judicial proceedings. It does not emerge suddenly rather it was an idea which took a very long period of time to crop up. The Apex court or Supreme Court has the main control over the PIL. Traditionally a petition could be filed only by a person who suffered infraction of his rights and was ‘an aggrieved person’. And for those who could not afford the expense had to face the atrocity as they had no option left to revolt for the same. This led to the emergence of *pro bono publico* litigation, which is litigation at the instance of a public spirited person espousing cause of others, known as public interest litigation, has relaxed the traditional rule considerably.¹ The public interest litigation has come into existence to provide the basic human rights and fundamental rights available to the weaker and deprived section of the society and also to shield them with social, economic and political justice. As said by Mr. Kapil Sibal, “*The genesis of Public*

Interest Litigation in listening to the voice of the voiceless and giving access to the poor, the marginalized, and the weak is a unique experiment to be lauded.” Thus, the phenomenon of public interest litigation lade out as a medium to serve general public of India and is regarded as the solemn duty of the supreme court to protect the fundamental rights. Moreover, according to the traditional rule of *locus standi*, the right to move the Supreme Court is available only to those whose fundamental right is infringed. The rule is considerably relaxed by the Supreme Court over a period of time². The procedure to file a PIL in India fundamentally include that any citizen who wants to file a PIL can approach the honorable Supreme Court under article 32³ of the constitution or to high court under article 226 of the constitution or in the court magistrate under section 133 of CrPc. As the idea of public interest litigation is widely accepted, the misuse has also come into the frame. As stated by Supreme Court in the case of People's Union for Democratic Rights v. Union of India⁴ that

“Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.”

¹ 1 Manhendra P. Singh and N. Shukla, *Constitution of India*, (Eastern Book Company, Lucknow, 2008).

² Dr. Narender Kumar, *Constitution law of India* (Allahabad Law Agency, 2018).

³ The Supreme Court is empowered to issue the directions or orders or writs including the writs on the

nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for enforcement of any of the Fundamental Rights.

⁴ AIR 1982 SC 1473.



Sometimes PIL act as a challenge to the government and the officers to make the elementary human rights weighty to the deprived and vulnerable sections of the society as the down-trodden will get their entitlements or else they will remain the victims of exploitation.

HISTORY

Public Interest Litigation predominantly deals with the litigation in interest of the nebulous entity or to the public in general. In the early 1960's and 70's the judiciary was in its rudimentary form. Before 1980's only the resentful or the aggrieved party could personally knock the doors of justice. However at the present scenario because of the magnificent and splendid efforts by Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were instrumental of this jurist revolution and so they are regarded as the parents of PIL. There are umpteen number of cases related to PIL but the very first case which manifest itself before the honorable Supreme Court of India was Mumbai Kamgar Sabha V. M/s Abdulbhai Faizullabhai and others.⁵ Since, after and till now the scope of Public Interest Litigation widened. The build out of PIL has led to its own pitfalls and drawbacks. To boot, PIL is in consonance with the principles enshrined in article 39A⁶ of the Indian constitution. Filing a PIL is not as cumbersome as a regular legal case.

PUBLIC INTEREST LITIGATION IN INDIA

⁵ AIR 1976(3) SCC 832.

⁶ It obligates the state to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes, or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or

Public Interest Litigation is directly filed by an individual or by a group of people in the Apex Court and high courts and judicial members. The person filing the PIL need not to have any personal interest rather should include the interest of public at large and so PIL has become a revolutionary step or a great cause to ameliorate miseries of masses through court system. PIL is a great challenge to the judicial system. Judicial activism and public interest litigation are two sides of the same coin which go hand in hand.⁷ The legal lexicons define 'public interest' in the Black's Law Dictionary as

“something in which the public or the common 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 the interest of the particular localities, which may effected by the matter in question. It includes interest shared by the citizens generally arising out of affairs of local states or national governments.”⁸

FACTORS CONTRIBUTING TO THE GROWTH OF PIL

The remedial nature of PIL has diverted from the traditional *locus standi* rules. So a person acting in good faith and ample of interest in PIL can approach the court. However in some cases the judges themselves initiated *suo moto* action based on newspaper and letters. Earlier our expensive court system, an ever-watchdog of the rights of rich and affluent hardly enforced the rights of the low income

other disabilities. PROF. M.P.JAIN INDIAN CONSTITUTION LAW (5 ed. 2007)

⁷ THE INDIAN LAW INSTITUTE, *Public Interest Litigation in India: a Critique*, (ILI, Delhi, 1985).

⁸ *The Black's law Dictionary*, (Springer Books, 6th edn., 1994).



groups. Our tardy court system of justice, ever insensitive to the problems of the poor has played a passive neutral umpire role, like a silent spectator doing nothing.⁹ To the poor, higher judiciary was an institution of no consequence. “*To be or not to be*”¹⁰ was the crucial existential question before the court. The judiciary soon realized that the faith was shaken and was disappearing and so the rule of law via PIL weans the aggrieved away from the lawless streets. In the case of *Bandhua mukti morcha* case¹¹ the Supreme Court put the burden of proof upon the Respondent since it would treat every case of forced labour as bonded labour unless proved by the employer.

WHEN A PIL CAN BE FILED

The concept of PIL evolved to secure the rights of people at large and so when the rights of people at large are violated then a PIL is filed in the High Court or Supreme Court. Where the concerns underlying a petition are not individualist but are shared widely by a large number of people.

SIGNIFICANCE OF PIL

The justice had been denied to the following categories of the persons i.e. the disadvantages sections of the society poorest of the poor, deprived, the illiterate, the urban and rural unorganized sector, women, children and other downtrodden having no access to justice. So,

with time, the horizons of PIL have been expanded.¹² Vigilant citizens can find an economic and reasonable remedy because

there is only a nominal rate of court fees. Litigants can file PIL on major issues like environment, consumer affair, human rights etc. also it does not restrict any person to file a PIL. As far as PIL is concerned the honorable Supreme Court has relaxed the rule of *locus standi* by which any person can file a PIL whether the party is aggrieved or not. Also by filing PIL to the Supreme Court under article 32 of the Indian constitution and to the high court under article 226 of the constitution, the time taken to reach a decision is less rather a speedy remedy is obtained.

LANDMARK PIL CASES IN INDIA

In *Hussainara Khatoon v. Home Secretary, State of Bihar*¹³, P. N. Bhagwati, J. has observed that

“today, unfortunately, in our country the poor are priced out of judicial system with the result that they are losing faith and trust in the capacity of our legal system. The poor in their contact with the legal system have always been on the wrong side of the line. They have always come across, law for the poor, rather than law of the poor”.

*Vishaka v. State of Rajasthan*¹⁴ a PIL was initiated in the Supreme Court to challenge sexual harassment in the workplace and this judgment recognized sexual harassment as “a clear violation” of the fundamental rights of equality, non-discrimination, life, and liberty, as well as the right to carry out any occupation. It was a PIL filed by Bhawari Devi, a social worker in Rajasthan who was gang raped when stopping a child marriage.

⁹ Sampat Jain, *Public Interest Litigation* (MK Books, New Delhi, 2003).

¹⁰ Shakespear, *Hamlet*, 1029, (Simon and Schuster, 1964).

¹¹ AIR 1984 SC 802.

¹² B.L. Wadehra, *Public Interest Litigation*, (Universal Law Publishing Co Pvt Ltd., 2nd edn., 2009).

¹³ AIR 1979 SC 1367.

¹⁴ AIR 1997 SC 3011.



M.C. Mehta v. Union of India¹⁵ In this case a PIL was filed in 1985 where the petitioner M.C. Mehta and requested the court to restrain the respondent from disposing off the domestic and industrial waste in river Ganga. Also, asked the industries to settle a treatment plant where the water can be treated and then disposed so that water pollution can take the edge off.

INSISTENCE ON REGULAR PETITIONS

The series of relaxations in the way our legal system traditionally has been highly influenced by the critical role played by letter and media in litigation in critical cases.

The Supreme Court in a landmark case pointed out that those

‘who are living in poverty and destitution, who are barely eking out of measurable existence with their swept and toil, who are helpless victim of a society and who do not have easy access to justice, this court will not insist on a regular petition.’¹⁶

Also, many of the PIL has been filed both in the High Court and Supreme Court have been based on newspapers reports and other sources of mainstream media. Moreover the reason that why media have a limited role in deciding a case is due to the settled principle of law that news items published in newspapers are only hearsay evidence and no judicial notice can be taken or such news items unless supported by further evidence.¹⁷

PROBLEMS IN FILING PIL

The Supreme Court of India has evolved certain guidelines for entertaining Public

Interest Litigation in order to prevent filing petition on frivolous grounds. Accordingly petitions falling under the categories such as bonded labour, neglected children, non-payment of minimum wages to workers, harassment inside the jails, harassment by police and death in police custody, atrocities on women, harassment by police to persons belonging to Scheduled Castes and Scheduled Tribes, environmental pollution.

Cases falling under the categories like landlord tenants, service matters, complaints against Central/State Government Departments, admission to medical and other educational institutions, petition for early hearing of cases will not be entertained as Public Interest Litigation.

Though the Court has prescribed a set of guidelines for entertaining Public Interest Litigation as mentioned above the Court has itself departed from the guidelines by entertaining PIL not falling under the categories of guidelines as provided by the Court.

In **Dr. Duryodhan Sahu and others v/s Jitender Kumar Misra and others**¹⁸

The Supreme Court entertained Public Interest Litigation falling under the service matters. According to guideline set by the Court the cases relating to services matters will not be entertained as Public Interest Litigation. If the Courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and at the same time it will enhance the mounting arrears of cases in the

¹⁵ AIR 1987 (4) SCC 463.

¹⁶ *SP Gupta and others v Union of India*, AIR 1982 SC 149.

¹⁷ *SP Shenbagamoorthy v Cheena Reddy*, (1994) 2 MLJR 23.

¹⁸ AIR 1999 SC 114.



Courts. As a result, people will suffer from getting justice in time.

PIL is for the poor. But if that is so, then the process of the PIL should be available to the poor all over the country. What is the provision which will ensure that an impoverished citizen in a remote village or a city can gain access to justice under the PIL? The system today has blocked roads to justice under the PIL. This is because the PIL is to be presented and heard in higher courts only. No district court is authorized to hear the PIL, nor can anybody approach the local court to hear it. This prohibitory provision needs to be considered for modification.

FLAW IN PUBLIC INTEREST LITIGATION

The merits of PIL have led to its enormous growth. However, with its development and expansion it has discovered its own pitfalls and drawbacks. Also along with the extended and multifaceted use, its abuse is also increasing. It can be seen that PIL is used as a handy tool for harassment in frivolous cases. PIL is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice or publicity is not lurking. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind.

The misuse of PIL prompted the legislators to introduce a private member Bill regulating

the practice of filing public interest litigation in the higher courts. The Public Interest Litigation (Regulation) Bill 1966 had particularly strong provisions on the question of locus standi. It was suggested that the petitioner must prove his locus standi in all public interest litigation. It also added that the petitioner must prove that he is personally being affected and to provide for deterrent punishment in case petitioners failed to prove the charges leveled in such petitions.

In the case of “**Ashok Kumar Pandey v. State of West Bengal**”¹⁹, the court held that if it is found out that the petition filed in the name of PIL, is to foster personal disputes, then the court should dismiss the case. Though PIL has served its best to safeguard the interest of the public, it

is now being misused and if not steps taken, then the mere purpose of implementing this doctrine, would be unproductive.

Tehseen Poonawalla v. Union Of India²⁰

The judgment in the string of writ petitions seeking an independent probe into the death of CBI special judge B. H. Loya is scheduled to be by the Supreme Court bench of Chief Justice Dipak Misra, Justice D. Y. Chandrachud and Justice A. M. Khanwilkar. The Supreme Court pleaded that the PIL was an attempt to malign the judiciary. It further stated that the death of justice Loya was mere a natural death and there was no doubt about the fact.

Kalyaneshwari v Union of India²¹

¹⁹ Writ Petition (cr.l.) 199 of 2003.

²⁰ [Ma No 1607 of 2018 in IA Nos.14870-14871 of 2018] [In Writ Petition (C) No 19 of 2018].

²¹AIR (2011) 3 SCC 287.



A PIL was filed in the Gujarat High Court seeking the closure of asbestos units, stating that the material was harmful to humans. The high court dismissed the petition, stating that it was filed at the behest of rival industrial groups who wanted to promote their products as asbestos substitutes.

P.Seshadri v S.Mangati Gopal Reddy & Ors²²

The bench of the Apex Court set aside the services of a retired Indian Police Service (IPS) officer employed by the Tirumala Venkateswara Temple. The high court's decision concerned a public-interest petition filed by S. Mangati Gopal Reddy, who alleged in court that the former IPS officer was involved in the loss of "300 gold dollars" from the temple and should not continue in office. The Supreme Court found that the high court decided against the accused with little information about Reddy himself. Such PIL create distress among the citizens in respect of country's armed forces.

Indian Young Lawyers Association v The State Of Kerala²³

In January 2016, a PIL was filed in the Supreme Court by the Indian Young Lawyers Association on the ground that women of all age should be allowed to visit Shabrimala temple. With 4:1 majority, the bench in its verdict said that the temple violated the fundamental right of Hindu women and banning women to enter in the temple is gender discrimination and ruled that women of all age can enter in the temple.

TO PREVENT MISUSE OF PIL

The Supreme Court and the High Court has been encountered in several cases where they

found that the PIL has been highly misused to have their personal gain and benefit. The concept which was earlier made to ensure public justice now seems to start corrupting. Here are some measures which can be taken into account for a better and smooth functioning of the state:

1. The Supreme Court as well as the High Court needs to form a committee which should seek that the petitioner is having a bona fide intention and not having any personal gain and interest and rather have interest for public at large.
2. The court should not allow any person to abuse its process and proceedings whether it may be a politician or any other person who has power vested under him so that they may not gain any legitimate administrative action to procure any wrong objective.
3. In shaping the reassurance the court must follow rigid pace to ensure public interest.
4. The PIL activists should be reasonable and responsible towards the people and law.
5. The one who files the frivolous PIL should be penalize.
6. The flexibility of procedure that is a character of PIL has given rise to a problem that it gives an opportunity to opposite parties to ascertain the precise allegation and respond specific issues.
7. Prior to accept a PIL, the court at the very beginning should verify the credentials of the PIL.
8. The court should give priority to those PILs which have larger public interest and gravity.
9. Many a times PIL becomes 'Personal Interest Litigation' rather it should only and only be 'Public Interest Litigation'.

CONCLUSION

²² AIR (2011) 5 SCC 484.

²³ WRIT PETITION (CIVIL) NO. 373 OF 2006.



It would be appropriate to conclude by quoting Cunningham,

“Indian PIL might rather be a Phoenix: a whole new creature arising out of the ashes of the old order.”

Public interest litigation in India has produced astonishing results which were unthinkable two decades ago when it came into existence. The greatest and substantial contribution of PIL has been the enhancement of human rights of the underprivileged and downtrodden sections of society. PIL acts as a combat to prevent the atrocities prevailing in the country. For such a long time, since PIL came into existence in a developing country like India, PIL has contributed a lot in moulding the law with accordance of radical changes and development of the society. This doctrine is of utmost importance as it provides justice in a simple and a cheaper procedure. PIL has its own pitfalls and drawbacks because it acts as a handy tool for those who can misuse it. If the Courts will strengthen the loop holes and preserve from being misused then its efficacy will be again retained.
