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PUBLIC INTEREST LITIGATION: AN INSTRUMENT USED FOR SOCIAL JUSTICE OR A BASIS OF JUDICIAL MISUSE IN INDIA?

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Abstract:

To fastest way get justice public interest litigation has played a great role in Indian judiciary, especially for marginalized people. Though, its growing has raised concerns about judicial overreach and institutional inequality also relaxing the locus standi, public interest litigations allow in matters where fundamental rights and public welfare are interventions. This article examines the two different roles of public interest litigations in the case of social change and in sources of judicial overreach.

This paper analyses landmark supreme court decisions and constitutional legal frameworks to influence the role of PIL in evaluating justice, environmental protection and fundamental rights enforcements specially article 13,21,32 and 226 of Indian constitutions. Scope and strengthen of judicial activism are expanding by the PIL. It claims that PIL remains a vital tool in Indian democracy but there is for judicial restraint and responsibility to avoid its misuse.

It accomplishes, to preserve the necessity of PIL we need a balanced and regulated approach a tool of participative justice while safeguarding its effective and equitable operations within the constitutional limits.

Keywords: judicial activism, public interest litigation, democracy, social justice.

1.Introduction:

A legal mechanism known as Public Interest Litigation (PIL) allows people or groups to petition the courts on behalf of the public interest in order to seek redress for fundamental rights violations or matters of public concern. PIL is a special type of litigation that gives the judiciary the authority to actively become involved in issues of public concern and defend the values of equality, justice, and fairness. In many nations across the world, PIL has become a potent tool for social justice and judicial activism.¹

Public interest litigation is defined as a legal action filed in a court of law to protect general or public interests in which members of the public or a class of people have a financial stake or an interest that affects their legal rights and obligations. A sociological tactic of judicial activism, public interest litigation (PIL) represents an extension of the legal system to function as a mediator between social reality and social change. It has been employed as a tool to advance social welfare and justice, especially for underrepresented groups like women, convicts, bonded labourers, and victims of abuse in detention. Courts can address structural injustices and provide the underprivileged with legal protection thanks to PIL. However, as courts become more involved in a variety of social issues, there are worries about overreach due to the widening gap between judicial commitment and actual results. As a result, PIL has grown to address nearly every issue of public concern, prompting concerns about its appropriate boundaries.²

The ultimate goal of this paper is how PIL helps to improve access to justice, for underprivileged and marginalized groups and it has advanced social justice, safeguarded, fundamental rights that have to examine how its activity increased in judicial interference. Also Seeks how abuse judicial interventions and overreached may stop growing PIL

¹ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

² Professor Parmanand Singh, Public Interest Litigation, Annual Survey of Indian Law Institute, 1992, p. 239



in India. This paper's main goal is that is PIL a tool of social change or if changes are mandatory to implements its efficient and equitable implementation.

2. Concept of Public Interest Litigation:

Public interest litigation is a component of the process of participative justice, and it is also a strategic arm of legal aid. It is a collection of lit masses that make up humanity's low-visibility sector. This type of litigation is completely distinct from the typical traditional litigation, which is fundamentally adversarial in nature and involves disputing parties, one of whom makes a claim or seeks remedy against the other, while the other opposes or resists such relief.³

In the 1976 case of *Mumbai Kamgar v. Abdullabhai*,⁴ Krishna Lyer, J. introduced the idea of social action lawsuit in India.⁵ In this case, Krishna Lyer, J. noted "*Test litigation, representative actions, Pro Bono Publico and like broadened forms of legal proceedings are keeping with the current accent on justice to common man and a necessary distinctness to those who wish to bypass the real issues on merits by suspect reliance on peripheral, procedural shortcomings Public interest is promoted by a spacious construction of locus standi in our social economic circumstances....taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker less litigation, consistent with fair process is the aim of adjective law.*"

The progressive liberalization of the long-standing restriction that only a "person aggrieved" might petition the court is known as "relaxation of locus standi." Standing was limited to those who have experienced a direct personal or legal injury under the traditional common law method, leaving out more

general public concerns⁵. However, the Indian Supreme Court broke with this limited theory and developed the idea of Public Interest Litigation (PIL), especially during the post-Emergency judicial awakening. The Court acknowledged that strict adherence to locus standi would deprive underprivileged groups who lacked access to the legal system of justice⁶. As a result, it made it possible for public-minded people, social activists, and organizations to submit petitions on behalf of people who were unable to pursue justice on their own because of poverty, handicap, or social disadvantage.⁷

3. PIL as a Tool for Promoting Access to Justice:

It is believed that public interest litigation has the potential to give millions of people who belong to the weaker segments of society such access to justice. As a result, the legal system has taken on a completely new dimension, and judges, attorneys, and state law agencies are facing new challenges. There is a fervent desire to awaken the political and legal order to the social justice goals outlined in our constitution.

We hear of the "justicing system" being inspired to provide justice to the socioeconomically disadvantaged, and new slogans and words have entered the legal lexicon. The expansion of judicial power and the emergence of new judicial notions are the results of these desires. They assert that they stand for progressive humanitarianism and a growing focus on social welfare.⁸

Public Interest Litigation (PIL) strengthened and increased public confidence in the Supreme Court. The Court received more public support once PIL began since it assisted common people and the underprivileged in obtaining justice. The Court was not subject to as severe restrictions as it had been in the past (under the 42nd Amendment, for example). But the author adds that PIL wasn't the sole reason for

³ People's Union of Democratic Rights v. Union of India, AIR 1982 SC 143 (1476-77).

⁴ 5. AIR 1976 SC 1455.

⁵ Clive Plasket, 'Representative Standing in South Africa' (Class Actions National Report, 2007).

⁶ Maharaj Singh v Uttar Pradesh, AIR 1976 SC 2602,2609

⁷ PP Craig and SL Deshpande (n22) 3.

⁸ Pathak, J. in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 (838)



this. Additionally, it occurred because People lost faith in the authorities following the emergency. People began relying more on the judiciary since other political institutions were not operating efficiently.⁹

4. Object:

Public interest litigation presents both a problem and an opportunity for the government and its officials to guarantee social and economic fairness, which is the hallmark of our constitution, and to make fundamental human rights meaningful to the underprivileged and vulnerable segments of the population.¹⁰ Twelve Compared to ordinary actions, the court's participation in public interest litigation is more forceful, innovative rather than passive, and takes a more optimistic approach to fact-finding.¹¹

4.1 Guard of Fundamental Rights:

It should be underlined that the court does not exercise any further constitutional jurisdiction in PIL. Articles 14 and 21 of the Constitution provide as a solid foundation for this tactic. The "reasonableness" criterion found in Article 14 is the antithesis of lawlessness and arbitrariness in administrative action.¹² Art. 21 for the protection of "life," which encompasses everything required for a life of dignity, including legitimate concerns for other people. It also includes transgressions of the constitution's directive principles of state policy, which are intended to promote the well-being of the less fortunate segments of society. PIL proceedings are started in accordance with Articles 32 and 226 of the Constitution.

4.2 Environmental Justice:

Industrialization is responsible for the cutting down forest on large scale. For such disturbing ecological balance, bureaucracy and magnates are responsible this disturbing environment. But the weapon of PIL has become very useful here in Rural litigation and entitlement kendra, Dehradun vs State of U.P, the court was required to consider two aspects of national life, development and conservation and the larger interest of the country and also permit removal in cases where mineral was stocked on the plots away from limestones.

In another case M.C Metha vs Union of state¹³, supreme court accepted the principle of absolute liability that guilty of negligence and shall be liable to pay compensation. The supreme court also accepted the inevitability of establishing chemical and hazardous industries for improving quality life, mainly this case about to pollution of the waters of Ganga's

4.3 Social Justice & Welfare

This article will demonstrate how PIL actions have protected people's fundamental rights, changed laws, and brought about social change. In the Hussainera Khatoon v. State of Bihar¹⁴ (which is regarded as the cornerstone of PIL in India, the court was made aware of the appalling conditions of inmates awaiting trial through a newspaper article. The ruling in that case created the body of precedent allowing courts to become involved in public interest cases. As a result, the scope of judicial redress expanded beyond the platform of individual complaints to include more general society issues including executive conduct and human rights.

⁹ Sathe (note 18 above) 96, 269–70; S Shankar & P Bhanu Mehta 'Courts and Socio-economic Rights in India' in V Gauri & DM Brinks (eds) *Courting Justice Judicial Enforcement of Social and Economic Rights in the Developing World* (2008) 178; Mehta (note 10 above) 75; Rajamani & Sengupta (note 30 above) 88; Guha (note 70 above) 597–708

¹⁰ Sheela Barse v. Union of India, AIR 1988 SC 2211.

¹¹ Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 815, 816

¹² E. P. Royappa v. State of T. N., AIR 1974 SC 555.

¹³ 1986 scc 176

¹⁴ (1979)



4.4 PIL and Judicial Activism:

The U.S. Supreme Court's decision in the *Marbury v. Madison* case¹⁵ in 1803 is where judicial review got its start. Chief Justice Marshall ruled in this judgment that any federal laws that contravene the nation's fundamental laws need to be declared null and void. He did not specify precisely what the essential laws were. As a result, the Supreme Court continued to be the most potent body for evaluating federal legislation and identifying whether laws broke the nation's fundamental laws. As a result, judicial supremacy exists in America. The American Constitution is believed to be what courts declare it to be.

There is no such thing as judicial activism, according to Mr. Justice Kuldeep Singh¹⁶. In the context of public interest litigation, it is just another term for the Supreme Court. In *Keshavanan Bharti vs state of Kerala*¹⁷ Judicial review is a recent phenomenon; it has to do with either Social Action Litigation (SAL) or Public Interest litigation (PIL). Prominent jurists such as Justice Krishna Lyer, Justice P.N. Bhagwati, Justice D.A. Desi, and Justice Chinappa Reddy have contributed significantly to the development of the notion of judicial activism.

5. Pitfalls and Challenges of PIL:

Because the oppressed will either receive their rights or continue to be exploited, PIL serves as a challenge to the government and law enforcement to make basic human rights important to the disadvantaged and vulnerable segments of society.

5.1 Misuse of PIL:

To guarantee equity in the administration, PIL is used. As stated in the constitution and welfare laws, it is impossible to transfer the principles of justice into socioeconomic reality due to corrupt authorities and their unscrupulous practices. *State of Karnataka v. Chaitanya Kumar*¹⁸ Despite the fact that this case has made political history, individuals who care about the

rule of law must continue to be unaffected by the fallout. The High Court of Karnataka questioned the legality of the Government of the State of Karnataka's action in awarding contracts for "bottling" arrack to the appellants and others. The State Government's order was overturned on the grounds that it was unlawful, "arbitrary," and "capricious," in flagrant violation of the rule or found to be shocking to the judicial conscience.

5.2 Judicial Overreach:

Between judicial activism and judicial overreach a PIL plays a pivotal role in India firstly to get justice for the marginalized groups, it evolved a powerful and flexible tool.

Anyways this flexibility has chances to get misuse and judicial overreach. *M.C Metha cases* blurring the separations of powers, when the *Visaka Vishaka vs state of Rajasthan*¹⁹ legislative gaps filled by them. to maintaining this constitutional boundary is important to highlight this dual role also judiciary has acknowledged these risks seen in the case of *state of Uttaranchal vs Balwant Singh Chauhal*²⁰ issued to control frivolous in PIL.

5.3 Lack of Clear Guidelines:

*Dr. Duryodhan Jitender Kumar Misra and others v. Sahu and others*²¹ Public Interest Litigation that falls under service matters was heard by the Supreme Court. The Court's guidelines state that lawsuits pertaining to service-related issues would not be considered public interest litigation. Traditional litigation will suffer and the growing backlog of cases in the public interest will increase if the courts do not limit the free flow of such cases courts. People will suffer as a result of not receiving justice promptly. PIL is for the underprivileged. However, if that is the case then the PIL procedure need to be accessible to the underprivileged nationwide. What clause in the PIL will guarantee that a poor person in a far-off city or

¹⁵ 1803 5 US 137

¹⁶ Retired Judge of Supreme Court, *Indian Express* 5.1.97, page 8.

¹⁷ AIR 1973

¹⁸ AIR 1986 SC 825

¹⁹ (1997) 6 SCC 241

²⁰ (2010) 3 SCC 402

²¹ AIR 1999 SC 114.



village can obtain justice? Roads to justice under the PIL have been closed by the current system. This is due to the PIL's exclusive presentation and hearing in higher courts. No one may approach the local court to hear the PIL, and no district court has the authority to do so. It is necessary to think about changing this prohibitive clause.²²

6. Judicial Responses to Misuse:

Recently supreme court announced the clear guiding principles to file PIL and avoid its misuse. state of Uttaranchal vs Balwant singh²³ court announced only for genuine public interest will be entertain for filling PIL, identifications and motives should be fair enough and court will examine the originality before filling the PIL also which are interest of personal grievances are not entertain at all, court upheld that PIL only for marginalized and deprived person groups not any one's personal interest.

Monetary consequences imposing to prevents misuses, also those are filed for malafide intentions and waste the court times or any political interventions in the case of Subash kumar vs state of Bihar²⁴

In the 1970s, one can file a suit for to fairness those who are felt wronged and severely lost. P.N Bhagwati and V. R .Krishna Iyer were first judges who files PIL in the court. Now court started Suo moto without anyone coming to the court.²⁵

7. Conclusion and recommendations:

Every marginalized and disadvantages people can access PIL and its benefits can easily efforts, so its influence and significance are built the justice system effective. In the 1980s, economic impairment, a lack of information, and bureaucracy made it difficult for grieving, impoverished, and disadvantaged citizens to seek redress for their complaints. But with the advent of PIL, it took a very different direction after the emergency. Although the introduction of epistolary jurisdiction and the loosening of the locus standi rule have made it easier to seek justice, we must overlook

the fact that they have also created a back door for people to pursue their personal and political goals, abusing the PIL.

It should be mentioned that there has been a lot of criticism in recent years regarding growing judicial activism and its effects on the system's separation of powers and checks and balances. This suggests that a revaluation and delineation of the authority and functions of the three branches of government is necessary, but bolstering the judiciary's role is beneficial. Since the emergence of the abuse of public interest litigation, the Apex Court of India, judges, and legislation have periodically taken action.

So, in my recommendations a better regulated PIL provides a foundation of social justice so we need to focus on refining its process not in restricting its scope. Its misuse can reduce by rigorous preliminary scrutiny, and deterrents costs also judiciary can adopt calibrate activity to prevent in where rights violate and preserves the powers of constitutional mechanisms.

²² PUBLIC INTEREST LITIGATION: POTENTIAL AND PROBLEMS By Vanshika Aggarwal From Army Institute of Law, Mohali

²³ 2010

²⁴ 1991

²⁵ Suyogya Awasthy, Role of Judiciary in PIL, (July 31, 2016)