



PUBLIC INTEREST LITIGATION: AN INNOVATIVE STEP TOWARDS JUDICIAL ACTIVISM

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Abstract:

Public Interest Litigation was a revolutionary innovation which attempt to ensure implementation of rescue programme, framed for the benefit of the needy. In India the Judicial Scenario changed during the 1980s when the apex court allowed anybody with sufficient public interest to approach the court and request to enforce any public right or welfare scheme. It also compelled the government and its authorities to perform their task and for this revolutionary action, Justice P.N. Bhagwati & Justice V.R. Krishna Iyer have played a play role in promoting the avenue of approaching the apex court of the country, seeking legal remedies in area where public interests tare at state. PIL is an Innovative step towards Judicial Activism, and also it is an inexpensive legal remedy for those people who are poor, weak, helpless but still there is no awareness or less awareness about judicial activism through PIL in the society.

So by this research paper I want to spread awareness. My Aim behind this is to give information to every people whose fundamental rights, Human rights, religious rights etc. are affected. My Aim behind this is to think the people of the society that; The Doctrine of Locus Standi and The Doctrine of the Natural Justice is still alive.

Introduction:

Public Interest Litigation is fairly recent phenomena to activate the judicial method to pursue a public cause or the rule of law, and allows the court to provide unorthodox remedies PIL refers to that activist jurisprudence that allows any person without being actually aggrieved. The concept and practice of PIL is thus an exception to the general rules of our Common law based legal system.

Public Interest Litigation has emerged as a most important instrument for legal and judicial redress available to all. In India, there is a large scale illiteracy and poverty are prevailing, the



common people doesn't in a position to avail the legal remedy for their rights and complaints. In fact it is the most advance forum of innovation on the part of judges.

The PIL is beneficial to the society at large, gradual development in this area has created certain new idea in remedial part of existing law.

“Doctrine of locus standi”

Locus standi means the legal capacity to invoke the jurisdiction of the court; it is the well settled law that a person who doesn't have any direct interest in the subject matter cannot be heard in a court of law.

The basic reason of development of PIL lies in a liberal approach of Locus Standi, a person can approach the court for the interest of public. It is being said that the expansion of fundamental Right has given the positive support to the idea of P.I.L.

Meaning of PIL

The three words “Public”, “Interest” and “Litigation” analyzed in a very effective manner.¹ As per given definition

- “Public” means people in general or a section of people who for reason or ignorance, illiteracy, indigence and the like are not in a position to reach out to a court of law to protect their right.
- “Interest” in PIL means right of public, arising out of some statute or the constitution, which have been infringed or are under threat of being infringed. Something that is of material or pecuniary interest to the public and not mere interest by way of curiosity.
- “Litigation” means proceedings before a court of law commenced and carried on in public interest.

Above mentioned analysis reveals the fact that any PIL must be based on public interest.

Who can file PIL?

This question is widely asked by the citizens, in fact any citizen, person or social sensitives person, group or any association, voluntary organization can file the PIL. There should not be any

¹ Public Interest Litigation By Dr. B.L.Wadhwa (Universal Law Publishing- 5th Edition)



personal or an individual interest in the subject matter, his bonafides should be beyond doubt and the basic purpose for filling the PIL must be of welfare nature. Public Interest is the Central Idea in PIL.

Once the petitioner has filed the PIL, he is not at liberty to withdraw his petition because the nature of the cause is of public interest and not of private rights. Generally, after filling the petition, the court examines the fairness and genuineness of the subject matter. But if court finds that the PIL is filed for the malafied intention and with a base approach, the court would reject and dismiss it and may impose the fine.

There is no prescribed form for PIL. Sometimes the post card can also be considered as PIL. As the language of the Court is English but even in vernacular language court may take cognizance.

The High Court and the Supreme Court are the proper court for filling the PIL. The subject area is very wide for PIL, but generally the court is more sensitive in custodial death, environmental issues, solid waste management, police atrocities, basic public needs and related matters.

Basic Need for PIL

There are some basic requirements for PIL, such as

1. There must be some action, which may create adverse effects upon the public, or in action which is of urgent nature is required or a state affair.
2. Such action or inaction causes the deprivations of right of large number of people.
3. Which creates a need for petition.
4. For which the public spirited person or NGO files a petition.

Court Procedure

The petitioner should file the PIL for the Subject matter as early as the Cause of Action arises, but there is no specific time limit for filling the PIL. Any petitioner must think twice before filling the PIL, because sometimes the person files PIL in a quick manner without proper information and basic requirements, date and appropriate cause.

Apex Court's view on PIL

In **Bandhua Mukti Morcha v. Union of India**², the Supreme Court entertained a matter concerning release of bonded labour raised by an organization dedicated to the cause release of

² (1991) 4 SCC 177



bonded labour. The court rebuked the State Government for raising preliminary objections to stall an inquiry by the Court into the matter and then went on to emphasize that, "Public Interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and the society and to assure them social and economic justice given by the constitution of India.

While deciding public interest cases the judiciary was willing to relax the rules, deviate from the standard procedures and ditch formalities and technicalities that stood in the way of providing substantive justice to the poor and downtrodden. The courts adopted this strategy so as to secure the blessings of the rule of law for the weak and vulnerable members of society who had traditionally been deprived of its benefits. It was a unique and singular event in the judicial history of India when the judiciary extended its support to the poor and expressed its solidarity with them. It was, of course, a purely indigenous response to address the problems of the underprivileged and give them access to justice. It was indeed a native recipe for making socio-economic justice accessible to all.

Opinion of Justice Bhagwati

Bhagwati, J., pointed out that in the words of Article 32(1), there is no limitation the Fundamental Rights sought to be enforced must belong to the person moving the Court. Nor does Article 32(1) say that the Supreme Court should be moved only by a particular kind of proceedings. "It is clear on the plain language of clause (1) of Article 21 the whenever there is violation of a Fundamental Right, anyone can move the supreme court for enforcement of such Fundamental Right." When there is violation of Fundamental Right of a person or a class of a person who cannot have resort to the court because of poverty or disability or socially or economically disadvantaged position, the court must allow any member of the public acting bonafide to espouse the cause of such person or persons and move the court for judicial enforcement of the Fundamental Right of such person or class of Person.

Public Interest Litigation now serves a much broader function than merely espousal of the grievances of the weak and the disadvantaged persons. It is now being used to ventilate public grievances where the society as a whole, rather than a specific individual, feels aggrieved. If the



traditional rule of locus standi is adhered to, such public grievances could not be brought before the court by any individual.

As BHAGWATI, J., has explained in *Asiad*, PIL is brought before the court not for the purpose of enforcing the rights of one individual against another as happens in the case of ordinary litigations. Under this category, a large number of case rising all kinds of Socio-Economic and administrative problems affecting the public generally, such as protection of the environment, misuses of powers by ministers, etc., have been brought before the Supreme Court and The High Court.

The Principle was enunciated by the court as early as 1982 in *S.P.Gupta v. Union of India*, where BHAGWATI, J., stated:³

“Any member of the public having sufficient interest can maintain an action for judicial redress for public inquiry arising from breach of public duty or from violation of some provision of the constitution or the law and seek enforcement of such public duty ad observance of such constitutional or legal provision.”

Precautions to be taken in PIL

PIL should not, however be used by a petitioner as a means to grind a personal axe. The PIL should not be inspired by malice or a design to malign others, or be actuated by selfish or personal motives of by political or oblique consideration. He should be acting bond-fide and with a view to vindicating the cause of justice. Time limit for filling the petition after the cause of action is arise, is very important.

Court Jurisdiction in PIL

The Superior judiciary is empowered to enforce fundamental rights and thereby ensure compliance with rule of law. Be that the case of enforcement of an individual right or provision of distributive justice to the community at large, the judiciary is mandated to ensure that adequate, effective and complete relief is given and substantive justice is ensured.

³³ AIR 1982 SC 149



The PIL can be file in the Apex Court under Article 32 only if a question concerning the enforcement of a Fundamental Right is involved. Under Article 226 a writ petition can be filled in a High court whether or not a Fundamental Right is involved.

The Supreme Court has entertained a number of petitions under Article 32 complaining of infraction of Fundamental Rights of individuals or of weak or vulnerable class of the Society.

The Supreme Court has ruled that to exercise its jurisdiction under Article 32, it is not necessary that the affected person should personally approach the court. The court can itself take cognizance of the matter and precede SUO-MOTU or on a petition of any public spirited individual or body.

Resent Trend

The range and scope of PIL is vast as it is mechanism to agitate any socio-economic public issue before the court which can be brought within the legal and the constitutional mould. The grievances in a Public Interest action generally about the content and conduct of governmental action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies. Recently, on behalf of Narmada Bachao Andolan⁴, Activist Megha Patker, The court has refused to take cognizance of a PIL petition if there is undue delay on part of the petitioners. Other landmark judgements mentioned here,

1. **S. P. Gupta v. Union of India**⁵: The Court upheld the locus standi of lawyers to file a writ petition by way of public interest litigation and threw light on the change in the court's approach to the concept of locus standi.
2. **Rural Litigation Entitlement Kendra (RLEK) v. UOI, 1988**⁶: This was the first environmental PIL in India. The Supreme Court acting promptly prohibited the mining operations with a view to determine if the mines were operated with the safety standards. It appointed the Bhargava Committee- to assess the total effects of the mines in the ecology of the area. On the recommendations of the Bhargava Committee, the court ordered that these

⁴ NMA V/s Union of India

⁵ 1981 Supp. SCC 87

⁶ AIR 1988 SC 2187



operations in such an ecologically sensitive area has to be stopped. The court further observed that preservation of ecology is a task which not only the States but also the Citizens must undertake u/A 51 A (g).

3. **Goa Foundation v. Konkan Railways Corporation, 1992⁷**: In this landmark judgement, the court observed that: “The Courts are bound to take into consideration the comparative hardship which the people in the region will suffer by stalling the project of great public utility. No development is possible without some adverse effect on the ecology and environment but the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests and this exercise must be left to the persons who are familiar and specialized in the field.”
4. **Indian Council for Enviro-Legal Action v. UOI, 1996⁸**: The court dealt in detail the matters concerned above referred to the cases of Rylands versus Fletcher, Oleum Gas Leakage case, Bhopal Gas Tragedy etc. and applied the Principle of Absolute Liability. It ordered closure of factories and also ordered them to pay damages up to the tune of Rs. 4 Crores for reversal of ecology of the area. The Court also suggested setting up of Green Benches in all the State High Courts.
5. **Samatha State of Andhra Pradesh⁹**: The Supreme Court held that lease of land, tribal land, and forest land in scheduled areas operations is not allowed to private companies or non-tribal for mining or industrial and such activity can only be done by a government undertaking or by tribal people.
6. **Vishaka State of Rajasthan¹⁰**: This case came before the Supreme Court as a Public Interest Litigation against State of Rajasthan and Union of India by Vishakha and other women groups. The petitioners demanded enforcement fundamental rights for working women under Articles 14, 19 and 21 of the Constitution. For this, Vishaka Guidelines were issued. The judgment also

⁷ AIR 1991 Bom 471

⁸ 1996(5) SCC Pg. No.281

⁹ 1997 Supp(2) SCR 305

¹⁰ AIR 1997 SC 3011



provided basic definitions of sexual harassment at the workplace along with provided guidelines to deal with the same.

7. **Mumbai Kamgar Sabha v. Abdul Bhai**¹¹: The court introduced the doctrine of Judicial Activism. Justice Krishna Iyer in the present case held that test Litigation, representative actions, pro bono public etc keep with the current accent on justice to the common man. Further it is a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural short-comings.
8. **Best bakery case**¹²: The Best Bakery was burned down. This resulted in death of 14 people on March 1, 2002 as part of the 2002 Gujarat violence. The Supreme Court held this as a rarest of rare case and ordered a re-trial outside of Gujarat. A Special Court in Mumbai was formed in 2006 which gave conviction to nine out of the seventeen accused.
9. **M. C. Mehta v. Union of India**¹³: MC Mehta filed a Public Interest Litigation for escape of poisonous gases by a plant in Bhopal. The court in this case extended the scope of Article 21 and 32 of the Constitution of India. The case is also famous as *Bhopal Gas Tragedy*.
10. **Olga Tellis v. Bombay Municipal Corporation**¹⁴: This case came before the Supreme Court as a writ petition. 5 judge-benches gave decision allowing petitioners who live on pavements and in slums in the city of Bombay to stay on the pavements against their order of eviction. The court also held that right to livelihood is a right to life as per Article 21.
11. **Sunil Batra v. Delhi Administration**¹⁵: The apex Court here dealt with the right to protection against solitary confinement and putting undertrials. It observed that the operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether and every man or women sentenced for a term is doing violence to Part III¹⁶.
12. **Shreya singhal v. Union of India**¹⁶: The apex Court held section 66A of the Information Technology Act which allowed arrests for objectionable content posted on the internet as unconstitutional and hence, struck down by the impugned section.

¹¹ 1976 3 SCR 591

¹² Zahira Habibulla H Sheikh And Anr vs State Of Gujarat And Ors (2004) 4 SCC 158

¹³ AIR 1987 SC 1086

¹⁴ 1985 (2) Supp. SCR 51

¹⁵ (1978) 4 SCC 409

¹⁶ AIR 2015 SC 1523



13. **Naz foundation v. NCT**¹⁷: The court decriminalized sexual activities “against the order of nature” which included homosexual acts, as per Section 377 of the Indian Penal Code. But this judgement was overruled in 2013 by the Supreme Court of India.
14. **Damodar Rao v. Special Officer, Corporation. 1987**¹⁸: In this case, the writ petition was filed by some of the residents who lived around the Park claiming that construction of residential colony in an area reserved for recreational purposes amounts to violation of their Right to Life u/A 21. The court in this case held that any construction of residential house on the land allotted for recreational park would upset the environmental balance of the area. It directed the Government to remove any such construction on recreational zones.
15. **NALSA v. Union of India**¹⁹: The Court recognized rights of the transgender as third genders. Also, ordered government to treat them as minorities. Reservations in jobs, education and other amenities shall also be provided to them.
16. **M. C. Mehta v. UCC, 1986**: The Supreme Court directed the UCC to pay sum of 470 Million U.S. Dollars i.e. Rs. 750 crore towards compensation to the victims for the full and final settlement in satisfaction of all past, present and future claims and the same were accepted by both the parties. Also, the Court by exercising its extraordinary jurisdiction quashed all proceedings civil, criminal etc against the UCC.
17. **M. C. Mehta v. UOI 1987**²⁰: The rule of Absolute Liability which is a more stringent rule than Strict Liability was laid down in this case. This case is more popular as the oleum gas leakage case. The Supreme Court after great debate and discussion, decided to permit Shri Ram Food and Fertilizers Industry to restore its operations. The Court observed that although such industries are dangerous, they are very essential for the economic and social progress of the country. It further directed the industries to establish and develop a green belt of 1-5 kms in width around such industries.

¹⁷ 160 Delhi Law Times 277 (Delhi High Court 2009)

¹⁸ AIR 1987 AP 171

¹⁹ AIR 2017 SC 1863

²⁰ AIR 1987 SC 965 [Shri Ram Food And Fertilizers Case / Oleum Gas Leakage Case]



18. **Citizen for Democracy v. State of Assam**²¹: The Supreme Court in the present case which was a PIL had declared that while lodged in jail or while in transport or transit from one jail to another or to the court or back handcuffs and other fetters should not be forced upon a prisoner.
19. **Hussainara Khatoon case**²²: One of the earliest cases in the subject of Public Interest Litigation is the famous Hussainara Khatoon case. There were a series of cases entitled Hussainara Khatoon v. Home Secretary, State of Bihar that were filed by a SC advocate in which the plight of helpless under trials, who were behind bars for decades, for a period much more than they would have undergone in case of conviction, was brought to the notice of the court. It observed that “even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21.
20. **Municipal Council, Ratlam v. Vardichan**²³: This landmark case is a path-finder in the field of people’s involvement in matters of public importance. The court accepted the locus standi of the citizens of a ward to seek directions against the Municipality for taking remedial action under Section 133 of the Code of Criminal Procedure and putting an end to the nuisance caused due to open drains, pits and public excretion in the absence of lavatories.

Conclusion:

From the above it is concluded that Public interest litigations are manifestations of the Aristotelian principle of distributive justice which is based on the ideal that there has to be distribution amongst equals and that there should be equal treatment of all. It is ready to fight battles on the question of locus standi. PIL demonstrates that “law is not necessarily a class weapon used by the rich to oppress the poor through the simple device of making justice too expensive and that lawyers are not simply the mercenaries of the propertied class.”²⁴

PIL is a tool of social transformation. It is to usher in an egalitarian social order and welfare state. It is an actual demonstration of interaction of law and society. Public Interest Litigation is based on the innovated concept of safeguarding the rights of various categories of persons, who could not

²¹ 1995 ACC 543 SC

²² AIR 1979 SC 1360

²³ AIR 1980 SC 1622.

²⁴ See Gopal Subramanian, “PIL and the Development of Human Rights in India in World of All Human Rights in R.N.Trivedi(ed.) (2010) at 156-161



approach the Court due to poverty and other social conditions. In India, the Supreme Court thought it proper, to meet the ends of justice to entertain Public Interest Litigations to safeguard the rights of disadvantaged, marginalised sections of the society (i) poorest of the poor; (ii) deprived; (iii) the illiterate; (iv) the urban and rural unorganised labour sector; (v) handicapped by ignorance, indigence and illiteracy; (vi) other downtrodden having no access to justice and (vii) women and children.

As for as the judicial response the PIL is concerned, it is also very important for the court to decide, which type of and on which subject-issue the PIL should entertained, because now a days it has become the fashion for some NGOS to file a PIL for any reason, so here the role of the Court become very vital, because some time the motive is more important than the subject matter has initiated the PIL on the name of displaced person, due to Narmada Dam construction which is vital lifeline for the brought affected and area of water security North Gujarat and Saurashtra, In fact due to this delay the Gujarat state and it's people have suffered a lot. Such type of PIL should not entertained by the court.

There is no doubt that the courts have played their role in a constructive manner with a view to promoting the welfare of the people and strengthen the democratic fabric in the country, but recent trend creates dual impression about the certain PIL petitioners i.e, NGO about their motives. The Indian Courts have contributed a lot in a direction to achieve the basic idea of social justice in the country. It is not a fault of PIL System but the way in which we utilize the system. By way of writing this Research Paper, I want to spread some awareness regarding the concept of PIL in the society, so that the poor and illiterate people can easily get the justice.