

Public Interest Litigation: Origin, Nature and Development

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Abstract: *The Supreme Court's Greatest Gift Is The PIL And It Is Here To Stay, Whatever Critics May Say. Without PILs, corruption, nepotism and bias in executive actions will remain unchallenged. Courts must maintain a constant vigil, otherwise, all rights secured to citizens under our constitution will become worthless. The Constitution of India promises to secure to all its citizens, justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all, fraternity, assuring the dignity of the individual. These are the fundamental goals of our constitution.*

PIL is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual. This paper makes an attempt to understand the origin, nature and development in the area of Public Interest Litigation.

Key Words: Public Interest Litigation, Constitution of India, corruption, nepotism, Supreme Court.

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I. Introduction

Over the years, in Indian Constitutionalism, the Public Interest Litigation (PIL) has grown as an independent subject of Public Interest Law. One of the strategies of PIL is to democratize the access of all citizens of India and disadvantaged and underprivileged citizens in particular, to judicial remedies. The reason for doing so has been because of the inequities prevalent in the recourse to judicial remedies, which may be traced more or less to the type of legal system, which we have inherited from the Britishers.

In order to overcome the procedural roadblocks and huge costs of judicial remedies, the Supreme Court has sanctioned the PIL. Such a systematic approach to democratize the access of Citizens to the higher Courts was necessitated because most of the protection of Human Rights was dependent on Judicial Orders / Writs. The PIL envisages access to Supreme Court and other High Courts in various circumstances by persons even not suffering direct violation of their Individual Rights. On the other hand, it envisages a petition before the Courts by an individual on behalf of a group of individual or community to vindicate the rights of individuals or groups or even the public at large. Some scholars have been given the name of 'Social Action Litigation' to the PIL (1).

However, it seems that, the difference in terminology does not lead to differences in the content which has all along been to mobilize new judicial thought to meet the modern exigencies in social justice of which the access to courts is an important construct.

II. Public Interest Litigation – It's Origin

The Public Interest Litigation originated in U.S.A from the case *Gideon v. Wainwright* (2). In that case the Supreme Court of U.S.A acted on a letter of Gideon treating it as petition and relaxed the procedural law by allowing the petitioner to be defended by State Counsel, because he declared to be a pauper. Thus since 1876, the Public Interest Litigation has been receiving judicial support in adversarial system of litigation.

In India the doctrine of PIL was first applied by K. Iyer, J. in *Mumbai Kamgar Sabha vs. Abdullah Bhai* (3). Since then, the Supreme Court has consistently reinforced and upheld the doctrine in countless cases. The most important case for development of growth of PIL has been *S.P. Gupta Vs. Union of India* (4). It might be said that this case has put PIL on a firmer ground in Indian Legal Jurisprudence.

Justice Bhagwati openly advocated PIL, by any Public-Spirited Person, for vindication of rights of common people who could not approach the Court. In the words of Bhagwati J.

“.... Whenever there is a Public Wrong or Public Injury caused by an act or omission of the State or a Public Authority which is contrary to the Constitution or the law, any member of the Public acting bona fide and having sufficient interest can maintain an action for redressal of such Public Wrong or Public Injury”.

According to Rajiv Dhavan, “PIL was a part and parcel of deeper crises in the untidy discourse of the Indian state. The Court opened its doors to every Public-Spirited Citizen as part of epistolary jurisdiction of the Court. However, in order to

protect the Supreme Court from interlopers the Court made certain things very clear:

Firstly, the person approaching the Court for redressal of a Public wrong or Injury has sufficient interest in the proceeding.

Secondly, he is acting bona fide and not for personal gain and private profit or political motivation or other oblique consideration and,

Thirdly, the Court would not entertain a petition by a third person where the injured person is not interested in his case being taken up or injury to him to be remedied for it would be wrong to foist a relief on a person who does not want it (5).

III. Nature of PIL

The expression 'Public Interest Litigation' means a legal action initiated in the Court of Law for the enforcement of Public Interest or General Interest in which the Public or Class of community has pecuniary interest or some interest by which their Legal Rights or Liabilities are affected.

However, the meaning of the term is better expressed through tracing PIL, in its historicity. PIL may be taken to be a result of the widened activity of Welfare State. The concept of modern welfare state gave rise to new concept of rights. In the modern welfare state, individual rights and duties are giving place to collective rights and duties of the class or group of persons, for example, in respect of discharge of effluents in a lake or river or emission of noxious gases.

M. Cappelletti describes PIL as a necessary rejection of laissez-faire notions of traditional jurisprudence in order to address the modern phenomenon of 'massification' in which the important rights are not individual but "diffuse and meta-individual" (6).

This description of PIL was cited and followed in the influential opinion of Bhagwati, J. in the 'Judges transfer case' (7). He envisioned PIL, as a revolutionary transformation, "A turmoil, indeed real revolution, is in the progress, in which even the most sacred ideas and themes of judicial law, such as due process and the right to be heard are being challenged".

According to Justice Bhagwati, it was observed in same case:

"today, a vast revolution is taking place in the judicial process; the theatre of law is fast changing and the problems of the poor are coming to the forefront" (8).

PIL is totally different from ordinary litigation that is essentially of an adversarial character. In a private action, the litigation is bipolar, two opposed parties are locked in a confrontational controversy, which pertains to the determination of the legal consequences of past events, unlike in public action. In PIL, litigation is not considered as a battle to be won but a disease to be cured. Unlike ordinary litigation, its purpose is not the enforcement of right

of one person against the other but to reach justice to the deprived sections of the society and is thus for the benefit of a Class. In fact, it ought to be a collaborative effort between the Petitioner, the Court and the Government and its instrumentalities to make Socio-economic programmes meaningful for the disadvantaged and the deprived.

Accordingly, in India, the PIL has been defined as a device developed to fulfill the constitutional and legal obligations bestowed upon the Government. To that extent it may be argued that, the PIL is looking at the Spirit of Constitution, which is manifested all along either in the Preamble or the Directive Principles of the State Policy as envisaged in the Constitution. Indeed, in a significant number of cases the Supreme Court has relied on both Preamble and Directive Principles of State Policy in giving decisions in PIL Cases.

Such Litigation envisages:

- (a) A Court action by an Individual or a group of individuals belonging to a community or an indeterminate class against an Administrative wrong, remotely or equally affecting the members of that community or class.
- (b) A Court action by a Public-Spirited Citizen, or a body devoted to the Public Cause, to vindicate the Rights of Individuals, groups or even the Public at large, against Administrative wrongs, through the person or body undertaking the court action may not have suffered the injury.

In its initial incarnation PIL was directly concerned with the predicament of the disadvantaged and marginalized sections of the citizens. But being concerned with the overall enforcement of Public interest and particularly Human Rights of large segments of the society. The Indian PIL appropriated a whole range of public causes. It, therefore, included not only the human rights condition of men, women and children, a due criminal process, the question of social justice including the exploitation of Bonded Labour.

IV. Locus Standi and PIL

In the traditional Litigation, the *locus standi* has had a major role in permitting remedies at the instance of the court. Only those parties, which were personally aggrieved, could approach the court for the redressal of his / her grievances. This was most characteristic of particularly the private litigation where the parties were locked one to one. However, as the nature and the content of judicial craft stood transformed, it was but natural to relax the traditional requirements of *locus standi* in Public Interest cases. Indeed it was necessary if the social justice issues had to be agitated and resolved.

In a society, where freedoms suffer from atrophy and activism is essential for participative Public Justice, some risks have to be taken and more opportunities opened for the Public-minded citizen to rely on the legal process and not be repelled from

it by narrow pedantry surrounding *locus standi*. If a Plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some Government agency is left free to violate the Law, and that is contrary to the Public Interest. PIL is a part of the process of participative justice and standing in civil litigation of that pattern must have liberal reception of the judicial doorsteps (9).

It is well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such determinate class of persons by reason of poverty, helplessness of disability or socially or economically disadvantageous position, unable to approach the court for relief and in such a situation, any member of the Public can maintain an application for an appropriate direction, order or writ in the High Court Under Article 226 of the Constitution of India, and, in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court Under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the Community are concerned, the Supreme Court will not insist on a regular writ petition to be filed by the public-spirited individual espousing their cause and seeking relief for them. The Supreme Court in spate of cases has, therefore, put aside the *Locus Standi* issue in PIL cases. If an administrative action causes no specific legal injury to a person, or to a determinate group or class of persons, but does so only to Public Interest; then the question is as to who can maintain an action for vindicating the Rule of Law and setting aside the unlawful action or enforcing the performance of Public Duty.

In the words of Bhagwati, J.:

“If no one can maintain an action for redress of such Public wrong or Public injury, it would be disastrous for the ‘Rule of Law’, for it would be open, to the State or a Public Authority to act with impunity beyond the scope of its power or in breach of a Public Duty owed by it. The Courts cannot countenance such a situation where the observance of the Law is left to sweet will of the authority bound by it, without any redress, if the law is contravened.”(10).

His Lordship also rejected the argument of fear that such a liberal view would lead the court being flooded with writ litigation and, therefore, they should not be encouraged.

Although the courts have liberalized standing in PIL cases yet the courts are not averse to the abuse of PIL cases. One of the way to do that could be by

laying down guidelines in PIL cases; though the Supreme Court has not done it so far. The Courts are objectively examining each PIL case so that it is not an abuse of Liberal approach to the Supreme Court. In *Janta dal v. H. S. Chowdhary* (11), The Supreme Court has held thus:

“Though it is imperative to lay down clear guidelines and propositions and outline the correct parameters for entertaining a Public Interest Litigation, particularly on the issue of *locus standi*, yet no hard and fast rules have yet been formulated and no comprehensive guidelines have been evolved. There is also one view that such adumbration is not possible and it would not be expedient to lay down any general rule which would govern all cases under all circumstances.”

Though we have, in our country, liberalize a departure from the strict role of *locus standi* as applicable to a person in private action and broadened and liberalized, the rule of standing and thereby permitted a number of Public having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Court for judicial redress, yet no precise and flexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of PIL.

In this connection, reference may be made to a decision of the Supreme Court in *Bangalore Medical Trust vs. B.S. Muddappa* (12); whereby, the court further liberalized *locus standi* and stated that PIL can be invoked by any public spirited citizen and cannot be measured by conservative yard-stick of standing.

The liberal rule of *locus standi* has, therefore, helped social action groups to come to court on behalf of disadvantaged sections of the society. Groups such as the People’s Union for Civil Liberties, People’s Union for Democratic rights, Bandhua Mukti Morcha, Akhil Bhartiya Soshit Karamchari sangh, Banwasi Sewa Ashram, and the common cause, a registered society, and individuals such as M. C. Mehta, Sheela Barse, Shiv Sagar Tiwari and Upendra Baxi were able to come to Court because their standing to move the Court on behalf of the disadvantaged sections of the Society was recognized and conceded. Similarly, under-trial prisoners, prison inmates, unorganized labour, Bonded labour, Pavement dwellers, Children prosecuted under the Juvenile Justice Act, Children of Prostitutes and women in protective custody readily received the courts attention.

V. The Case for PIL & Judicial Activism

The debate on the justification of PIL has centered on the issue whether the judges do and ought to

make Law? Lord Denning (13), has said that, even though the British Judges say that they do not make laws but only interpret it, “this is an illusion which they have fostered but it is a notion which is discarded everywhere”.

Professor Baxi notes that, “Very few people would venture to deny the elementary proposition that Appellate Judges not merely declare the law, or apply it, but they also make or create the law” (14). In the contemporary society where we have laws for almost everything, Judicial Activism is most essential. Every activist Judges should think that judicial activism indispensable for the Law is not petrified by the past, but must respond to the challenges of the changing times.

It can hardly be disputed that judicial activism is now a central feature of every political system that vest a judicatory power, in a free and independent judiciary. The scope of judicial activism varies with the width of the power conferred on the courts. Where the courts have the power of Judicial review there is a greater scope for judicial activism and the scope increases considerably where the power of judicial review extends not only over executive action but also over legislative action, as is the case of India and in United states of America (15).

Indian judiciary has demonstrated wider activist role in the interpretation and development of law. Armed with wider discretion particularly Under Article 32 and 226 of the Constitution, they have observed that since their powers are not curtailed under writ jurisdiction, they have exercised the law making functions under the same.

Subba Rao, C.J stated in Golaknath’s case(16) that, articles 32, 141 and 142 are couched in such wide and elastic terms as to enable the Supreme Court to formulate legal doctrines to meet the ends of justice. The Supreme court has accepted that it discharges a law making role, and they do and must legislate. (17).

M.P. Singh (18) has noted that the three most important conditions conducive to growth of Judicial activism & PIL have been:

- 1) A written constitution
- 2) The guaranteed Right to judicial review / access to courts and,
- 3) Enumerated list of Fundamental Rights and Directive Principles.

The basic values of the Constitution are expressed in Preamble of Fundamental rights, Directive Principles and some other provisions relevant for weaker and vulnerable sections of the society. All organs of the State including the judiciary are expected to act towards the realization of these constitutional goals and values. The PIL has been a fertile ground for the activist role of judiciary in proceeding towards judicial activism on part of Indian judiciary. More importantly in the area of fundamental rights, the enforcement of which is guaranteed Under Article 32 of the Constitution,

has found the most important place through IPL. The reason for this is that fundamental rights are expressed in terms of concepts and values, such as Life, liberty, Equality, Dignity etc. These concepts are dynamic and require constant exploration and exposition. The Supreme Court has clearly stated that, in respect of enforcement of fundamental rights by appropriate proceedings Under Article 32 there is no limitation. The word appropriate does not refer to any form but to the purpose of the proceedings and therefore to the extent the purpose is enforcement of fundamental right, it is appropriate. They have also stated that when the proceedings relate to enforcement of fundamental rights of the poor, disabled, disadvantaged or any other vulnerable section of the society, even a letter addressed by any public-spirited person to the court can be legitimately regarded as an appropriate proceeding. The superior courts have even taken suo-motto cognizance of the violations of fundamental rights of various classes of citizens and have given appropriate orders to the executive in these cases. The court has emphasized that enforcement of fundamental rights is a collaborative enterprise between the Court and the State. Most naturally, therefore, the courts have not only wide opened the gates of access, they have simplified the procedures and innovated remedies to meet the ends of justice in each case. They have awarded Preventive, Restitutive and even Compensatory Reliefs in cases of enforcement of fundamental rights.

VI. Conclusion

From a bare review of the pronouncements of the Supreme Court, it becomes clear that PIL has become clearly established as an independent field of jurisprudence, mostly dealing with public issues being agitated before the Courts.

Secondly, over the years, the scope and content of PIL has widened to include almost every conceivable issue in Indian Juristic thought.

Thirdly, the Supreme Court, has consciously laid down guidelines and policies in various subjects and has not even hesitated in agitating questions of policies, as much as they have been necessary for building a strong, viable and democratic polity.

The Courts have even justified such an approach for betterment of the public at large and in conformity with the constitutional prescription. The pronouncements of the Courts have established dynamic activism in the field of PIL. At the same time, the higher judiciary has been quick to find out that the weapon of PIL should not be misused or permit to be misused creating a bottleneck in the superior courts preventing other genuine violation of fundamental rights. Although, the courts have not laid down any guidelines for entertaining PIL petitions, yet they have made it clear that they will be more careful in entertaining PIL. It is clear that

PIL has come out as the most potent tool for poor and needy whose fundamental rights have been violated but it is not a mechanism to derive any personal gain or private profit or political motive or any oblique consideration. Therefore, any Vexatious Petition, under the colour of PIL for vindicating any personal grievance or which is not in the arena of Public Interest, the courts would quickly reject such Petitions (19).

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