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## PUBLIC INTEREST LITIGATION IN INDIA

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### ABSTRACT

The concept of Public Interest Litigation rests on the principle that any member of public can initiate legal proceedings on behalf of an aggrieved person, especially a person who is unable to move to Court on his own. This concept was originated and developed in the U.S.A in the 1960s. In the late 1960s and 1970s, large number of American law school graduates started working for the social issues that used to keep many people in the American society at a disadvantaged position. They defined themselves as public interest lawyers in order to distinguish themselves from other practicing lawyers.

In India Justice P.N. Bhagwati and Justice V.R. Krishna Iyer are credited for the introduction of concept of PIL during 1970-1980. The journey of PIL has gone through many stages in India. From time-to-time judiciary has laid down several guidelines to stop the misuse of the PIL. This paper discusses the success, advantages and drawbacks of Public Interest Litigation.

**Keywords:** *Public Interest Litigation, Constitution, Justice.*

## **INTRODUCTION**

The introduction of PIL in India was advanced by the relaxation of the traditional rule of 'locus standi'. According to this rule, only that person whose rights are infringed alone can move the Court for remedies, whereas, the PIL is an exception to this traditional rule. Under the PIL, any public – spirited citizen or social organization can move the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged position are themselves not able to approach the Court for the remedies. Therefore, in a PIL, any member of public having 'sufficient interest' can approach the Court for enforcing the rights of other persons and redressal of common grievance.

The Supreme Court in a case had defined PIL as "a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."<sup>1</sup>

PIL is undeniably necessary for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives.

## **SCOPE OF PIL**

In 1998, the Supreme Court framed a set of guidelines to be followed for entertaining letters or petitions received by it as PIL. These guidelines were modified in 1993 and 2003. According to those guidelines, the letters or petitions falling under the following categories alone will be entertained as PIL:

- a) Bonded labour matters
- b) Neglected children
- c) Non- payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases)

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<sup>1</sup>Janata Dal v. H.S Chowdhary 1992 (4) SCC 305

- d) Petitions from jail 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
- e) Petition against Police for declining to register the case, harassment by the police and death in police custody.
- f) Petitions against atrocities on women, in particular harassment of bride, bride – burning, murder,rape, kidnapping etc;
- g) 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
- h) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matter of public importance
- i) Petitions from riot victims
- j) Family pension

**The matters which are under the following categories will not be entertained as PIL:**

- A. Landlord- tenant matters
- B. Service matters and those pertaining to pension and gratuity
- C. Complaints against Central/ State Government departments and local bodies except those relating to categories 1- 10 mentioned above
- D. Admission to medical and other educational institution
- E. Petitions for early hearing of cases pending in High Courts and the Subordinate Courts.

In the **Judges Transfer Case<sup>2</sup> a 7 judges member bench** of the Supreme Court has firmly established the rule regarding the Public Interest Litigation. The Court in this case held that any member of the public having “sufficient interest” can approach the Court for enforcing constitutional or legal rights of other persons and redressal of a common grievance.

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<sup>2</sup>S.P Gupta and others v. President of India and others, AIR 1982 SC 149.

In **People's Union for Democratic Rights v. Union of India**<sup>3</sup>, it was held that People's Union for Democratic Rights had locus standi to file a petition for enforcement of various labour laws under which certain benefits are conferred on the workers. The Union brought this fact to the notice of the Court through a letter. The Court rejected the argument that such 'Public Interest Litigation' would create arrears of cases and therefore they should not be encouraged. Bhagwati J. stated, *"No State had the rights 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 court for seeking justice until the staggering load of cases of people who can afford rich lawyers is disposed of."*

In **M.C. Mehta v. Union of India**<sup>4</sup> the Supreme Court had further widened the scope of Public Interest Litigation under Article 32, Bhagwati J. speaking for the majority stipulated the following guidelines:

- I. The Court held that poor in India can seek enforcement of their Fundamental Rights from the SC by writing a letter to any judge. Also, such a letter does not have to be accompanied by an affidavit.
- II. The Court also held that under Article 32, it has power to grant remedial relief which includes the power to grant compensation in appropriate cases where the fundamental rights of poor and disadvantaged are violated. However, Article 32 cannot be used as a substitute for claiming compensation for the infringement of fundamental right through the ordinary process of a civil court. It can only be done where the violation of Fundamental Rights are "gross and patent" and affects persons on a large scale or where it appears to be unjust and unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to seek remedy in Civil Court.
- III. The Court held that Court can appoint socio-legal commissions or devise any procedure and forge any tools it deems appropriate for the enforcement of fundamental rights of the poor.

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<sup>3</sup>AIR 1983 SC 339

<sup>4</sup>AIR 1987 SC 1087.

## **ABUSE OF PIL NOT TO BE ALLOWED**

In **GuruvayurDewaswom Managing Committee v. C.K. Rajan**<sup>5</sup> a three Judge Bench of the Supreme Court, with a view of checking the abuse of PIL, re-examined the scope and ambit in detail and reiterated the guiding principles for its exercise. The SC held that Public Interest Litigation cannot be used in solving disputes of private nature. PIL was evolved with a view to render justice to poor, deprived, the illiterate and downtrodden who have either no access to justice or had been denied justice. It cannot be used to remove corruption in a temple.

The SC evolved the following **principles** in this case with regard to **PIL**:

- a) The Court in exercise of powers given under Articles 32 and 226 of the Constitution can entertain a petition filed by any interested person in the welfare of the people who are in a disadvantaged position and therefore not in a position to knock the doors of the Court. Therefore, the Court is constitutionally bound to protect the Fundamental Rights of the disadvantaged people.
- b) When the issues of public importance, enforcement of the fundamental rights of large number of people vis-à-vis the constitutional duties and functions of the State are raised, the Court treat a letter or telegram as a PIL. In these cases, the Court relaxes the procedural laws and also the law relating to pleadings.
- c) The common rule of Locus Standi is relaxed so as to empower the Court to look into the grievances complained on behalf of the poor, deprived, illiterate, disabled who cannot defend themselves from the legal wrong or legal injury caused to them for violation of any constitutional or legal right.
- d) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL.
- e) The Court will not ordinarily transgress into a policy. It shall also not transgress its jurisdiction while purporting to protect the rights of the people from being violated.
- f) The Court would ordinarily not step out of the known areas of Judicial review. The High Court though may pass an order for doing complete justice to the parties, it does not have a power similar to **Article 142** of the Constitution of India.

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<sup>5</sup>AIR 2004 SC 561.

- g) Ordinarily the High Court should not entertain a writ petition by way of PIL questioning constitutionality or validity of a statute or a statutory rule.

### **GUIDELINES FOR ADMITTING PIL**

The PIL has now taken an important field in the administration of law. It should not be allowed to become 'publicity interest litigation' or 'politics interest litigation' or private interest litigation.

The Supreme Court in this context observed; "PIL is not a pill or panacea for all wrongs. It was especially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public - spirited person files a petition on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There have been, in recent times increasingly examples of abuse of PIL. Therefore, there is a need to re-emphasise the parameters within which PIL can be resorted to by a petitioner and entertained by the Court."<sup>6</sup>

In **State of Uttranchal v. Balwant Singh Chauhan**<sup>7</sup> the SC has reiterated the detail of the origin and development of PIL and has laid down important guidelines for checking its misuse. In this case the petitioner, has challenged the appointment of the Advocate General of the State on the ground that he was over age, that is. beyond 62 years as provided in Article 217 of the Constitution. The High Court entertained his petition and directed the State to reply. The State filed the Special Leave Petition in the Supreme Court. The SC held that this is a clear case of misuse of powers of the Court and directed the petitioner (respondent) to pay cost of Rs. 1,00,000 in the name of the Registrar General of the High Court of Uttrakhand. The cost is to be paid within two months by the respondent. If the costs is not deposited within two months, the same shall be recovered as the arrears of the land revenue. The Court said that the matter has already been settled half century ago by the Nagpur High Court in **G.D Karkara v. T.L. Shevde**

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<sup>6</sup>BALCO Employees Union v. Union of India, 2002

<sup>7</sup>AIR 2010 SC 2551

**and others**,<sup>8</sup> and approved by the Constitution bench of the Supreme Court in **Atlas workmen**,<sup>9</sup> where it was held that the provision relating to Judge of a High Court cannot be made applicable to the Advocate General where appointment is governed by Article 165(3). The petitioner, as a practising lawyer, should have known these facts but he in fact neglected it and by filing the PIL he tried to downgrade the important Constitutional office of the Advocate General.

**The SC laid down the following guidelines for checking the misuse of the PIL in this case:**

- A.** The Court must encourage genuine and bona fide PIL and effectively discourage and curb the PIL field for extraneous considerations.
- B.** Instead of every individual judge devising his own procedure for dealing with PIL, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL filed and discouraging PIL filed which is filed with oblique motives.
- C.** The Court should prima facie verify the credentials of the petitioner before entertaining the PIL.
- D.** The Court shall be prima facie satisfied regarding the correctness of the contents of the petition before entertaining the PIL.
- E.** The Court should be completely satisfied that substantial public interest is involved before entertaining the petition.
- F.** The Court should ensure that the petition which is involving larger public interest, gravity and urgency must be given priority over other petitions.
- G.** The Court before entertaining the PIL must ensure that the PIL is aimed at redressal of genuine public harm and public injury. The Court should also make sure that there is no personal gain, private motive behind filing PIL.
- H.** The Court should also ensure that the petition filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or adopting similar novel methods to curb frivolous petitions and also the petition filed for extraneous considerations.<sup>10</sup>

**PUBLIC INTEREST LITIGATION ADVANTAGES**

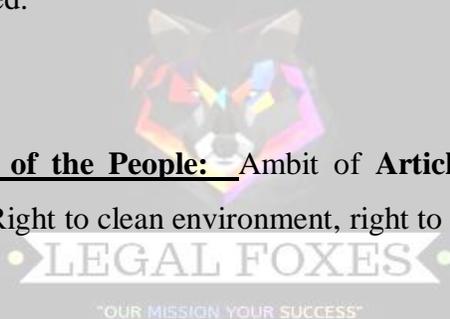
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<sup>8</sup>AIR 1952 Nag. 333.

<sup>9</sup>AIR 1962 SC 1100

<sup>10</sup> State of Uttranchal v. Balwant Singh Chauhal, AIR 2010 SC

- **Inexpensive legal remedy:** In public interest litigation vigilant citizens of the country can find an inexpensive legal remedy because of nominal fixed court fee involved in this.
- **Cases of public interest:** Through PIL, the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare & environment.
- **Accountability of Public Authorities:** It makes authority answerable to Court when an authority is not performing its duties in ensuring rights of the poor people.
- **Justice for vulnerable:** The liberal interpretation of locus standi where any person can apply to the Court on behalf of those who are economically or physically unable to come before it. Judges themselves have in some cases initiated Suo moto action based on any report or letter received.
- **Expansion of Right of the People:** Ambit of **Article 21** – Right to Life has been expanded to include Right to clean environment, right to privacy etc.



### **MISUSE OF PIL**

There are many judgements following PIL which stepped up the trust of the poor and vulnerable section in judiciary. From judgements ranging from social issues like prevention of child marriage, pending Court trials to those relating to environmental issues. However, misuse of PIL has also been rising with time.

- **PIL as a tool of harassment:** Many people started handling PIL as a tool for harassment because frivolous cases can be filed without heavy court fee as compared to private litigations.

- **PIL for Publicity:** Many times, it is used for publicity and political interest and deviate the original motive of public interest. It is being misused by the public agitation for private grievances in the name of public interest by seeking publicity rather than supporting the public cause.
- **PIL leads to violation of separation of powers:** The Judiciary has been criticized due to the overstepping of its jurisdiction. Now and then it can be seen that the Judiciary is encroaching the area of executive.
- **PIL** matters regarding the exploited and disadvantaged groups are **pending** for many years. There is inordinate delays in the disposal of PIL cases.

### **CONCLUSION**

PIL has produced astounding results, be it relating to degraded bonded labourers, tortured undertrials, and women prisoners etc. PIL has played a big role to keep the Government accountable and it has provided a ladder to the disadvantaged section of the society to have access to justice. It has achieved those goals which are not achieved by private litigation. Despite all these contributions in the society, it has also faced shortcomings. The Supreme Court has come with certain guidelines in cases to prevent the misuse of Public Interest Litigation but still introspection is needed to renovate this tool. Besides, the frivolous PILs with vested interest must be discouraged to keep the workload manageable.