

# LEGALFOXES LAW TIMES

## PUBLIC INTEREST LITIGATION: RISING LEGAL ISSUES IN INDIA

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Public Interest Litigation (PIL) can be defined as a litigation that secures public interests and reveals the availability and accessibility of justice to those people who are socially-disadvantaged. The concept of Public Interest Litigation was introduced by Justice P. N. Bhagwati, a pioneer of judicial activism in the nation. Justice Bhagwati and Justice Krishna Iyer were the two first judges to influence PIL. Hence, the concept of PIL is appropriated to the Directive Principles of State Policy as stated in Article<sup>2</sup> provided by the Constitution of India in order to protect and deliver the prompt social justice to the citizens of India with the help of law.

During the time of independence, a majority of citizens were not much aware of their basic and legal rights, and there were very few numbers of persons who were holding a position to postulate them. As a result of which, there was much less link between the guaranteed Constitutional rights and laws, and a bulk of illiterate citizens. However the problems of people in order to access to justice were tackled by the Supreme Court at the time of post emergency by making radical changes and alterations in the requirement of the aggrieved party and the locus standi.

Locus standi is the traditional rule on which Public Interest Litigation (PIL) relaxed as per the allowance of Apex Court. Prior to 1980s, litigation was entertained by the Judiciary and Supreme Court only from the aggrieved parties who were directly or indirectly affected by the defendant. It means the doors of justice could only be knocked by the aggrieved parties and not by any other unaffected person who may act as a proxy for the victim or sufferer. However, in recent years PIL has developed and marked a significant end of traditional judicial proceedings. However, Supreme Court began to permit those cases in which other people may also bring matters to the Court on the ground of public interest litigation, whoever is not directly attached or involved in the case.

M.C.MEHTA V. UNION OF INDIA<sup>3</sup>-

In this case, a PIL was brought against water pollution of Ganga in order to prevention of further pollution of Ganga water. Here, it was held by the Supreme Court that the petitioner is having

<sup>1</sup> Image courtesy: <https://images.app.goo.gl/bZSNZH4i9rbwxEpQ8>

<sup>2</sup> Article 39A of Constitution of India is in regards to Equal justice and free legal aid.

<sup>3</sup> 1987 SCR (1) 819, AIR 1987 965

the right to move to the Court for enforcing statutory provisions in order to protect the lives of the people who use Ganga water and also for protecting water bodies, although not being a riparian owner.

Public interest is the main concern of the concept of Public Interest Litigation (PIL) which is regarding terrorism, pollution, constructional hazards, and similar disadvantaged sections. In whichever matter, the interest of public at large is concerned can be redressed by PIL in a Court.

#### VISHAKA V. STATE OF RAJASTHAN<sup>4</sup>-

In this case the judgement recognized sexual harassment as a violation of Constitutional rights enshrined in Article 14, Article 15 and Article 21. Supreme Court also formulated guidelines which directed for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, where it has been made mandatory for the organizations to establish a mechanism where complaints regarding sexual harassment can be redressed.

There are certain drawbacks faced in PIL thereby which tends to prejudice the success of PIL. In recent times, the issue in regards to the negative side of PIL is rising high thus effecting its success. Such drawbacks are described as follows:-

- **Publicity:** Some irresponsible person use PIL as an instrument for gaining publicity, which can be regarded as a major problem faced in the procedure or arena of litigation, since the litigation is using PIL as a means or a way to get popular rather than using it in a constructive way. PIL has been, over the years, degenerated into Private Interest Litigation or Publicity Interest Litigation or Political Interest Litigation.

In the case where PIL has been filed against Kedarnath movie, held that it hurts the religious sentiments<sup>5</sup>. High Court of Ahmedabad dismissed the petition and called it as “publicity stunt”.

- **Judicial interference or recklessness:** Judicial overextend occurs when there is an interference of judiciary in the domain of Legislature or Executive, which violates the concept of separation of powers as stated in Article 50<sup>6</sup> of the Constitution of India. A strict doctrine of separation of power had not been incorporated by the framers of Constitution of India.

In case where a petition was filed against granting certificate to Jolly LLB2 film, where it has been ordered by the Bombay High Court to cut four scenes from the whole film which were considered to be the defamatory ground to Judiciary. It clearly shows that Court is unnecessarily interfering, as under the Cinematography Act, 1952, courts do not have power to refuse, modify or certify the certificates granted to the films.

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<sup>4</sup> AIR 1997 6 SCC 241

<sup>5</sup> In the case filed against the Bollywood flick Kedarnath in 2018, certain reasons were pointed out which includes passionate love scenes, alleged promotions against love jihad, obscene dance sequences, etc.

<sup>6</sup> Article 50 of Indian Constitution which contains a Directive Principle of State Policy, provides that the State shall take steps to separate the Judiciary from the Executive in the Public Services of the State.

In case of Vishaka V. State of Rajasthan, the division of law and policy was eradicated which was a PIL concerned towards sexual harassment of women at workplace. This decision had a significant attribute that is the role of court (judiciary) to step in the shoes of legislature. It was declared that till the legislature enacts law consistent with the elimination of all forms of discrimination against women, various guidelines put by the Supreme Court for the employees to ensure the prevention of sexual harassment of women at workplace would be enforceable.

- Symbolic Justice: “Symbolic Justice” reflected by PIL as it can be seen that sometimes the directions are not implemented which are issued in the PIL and thereby affects the credibility of the judiciary. The directions are issued by the Apex Court regarding the issues of sexual harassment, arresting procedures, etc., but often times it is not at all able to examine its compliance.
- Abstruse motives of the litigants: There is a general principle of law- “He who comes into equity must come with clean hands”, but often times the original motive lies under the mask of PIL. Some personal grievances and political motive remains behind the clean hands.

The court should not proceed further with such PILs. Even sometimes it decodes or deciphers such underlying motives resulting in destroy of the true essence of PIL.

In the case S. P. Gupta V. Union of India,<sup>7</sup> it was held that the court shall disallow the process of PIL to be misused by a person who acts for personal gain or profit and such application must be rejected at the threshold. It has been held that any person being a member of public or social group acting in good faith can invoke the writ jurisdiction of the High Court (under Article 226) or the Supreme Court (under Article 32) seeking relief against violation of constitutional or legal rights.<sup>55</sup>

- Growth in litigation rate: Since frivolous cases could be filed with investing light court fees as required in private or ordinary civil litigation. So as the required court fees for filing PIL is not so heavy, people misuses it. In recent time, improper usage of PIL has become more rampant than its original use. Due to simple, uncomplicated and flexible procedure of filing PIL, the non-selective petitions creates excessive pressure on the system of judiciary, resulting in delay of the disposal or conveyance of bona fide petitions.
  - Institutional issue: there arises a need of huge change in the structure of the procedure for operating PIL process. Another significant issue of the litigation is that the structure of bench keeps on oscillating or fluctuating.
- In the case Nilima Priyadarshini V. State of Bihar,<sup>8</sup> a letter of an illegally detained person in a written form was placed before the court which was received by the PIL call after two and half matters.

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<sup>7</sup> AIR 1982 SC 149

<sup>8</sup> AIR 1987 SC 2021

**Conclusion:**

In order to regulate the improper usage of Public Interest Litigation (PIL), certain guidelines have been framed by the Supreme Court of India itself, and those guidelines had also been reiterated in the case *Guruvayur Devasawom Managing Committee V. C. K. Rajan*<sup>9</sup>. It is needed to examine whether the approaching petitioner acting in good faith or not and there must not be any existence of private, personal or political gains. Various suggestions have also been made by the former Attorney-General of India Mr. Soli Jehangir Sorabjee.<sup>10</sup>

Despite of several beneficial and positive effects of using PIL for enforcement of fundamental right and other legal rights, a lot of legal issues are riding by the day. Firstly, the Courts are getting flooded with letters of litigation for entertaining the infringement of fundamental rights of citizens, as a result of which a delay is happening in taking decisions concerned with other vital cases. Secondly, it is needed to point out that the courts are not needed regularly to interfere in the spheres of Legislature and Executive, as because of such interference a dispute or conflict between the three organs of government is arising. Thirdly, the time of courts is getting wasted basically by filing non-serious and trifling petition, it is also overburdening the judiciary.

However, till now the use of new strategy i.e., Public Interest Litigation (PIL) has produced surprising and unbelievable results. Through judicial intervention, a lot of aggrieved parties have been relieved. But for being more constructive, pragmatic and in order to keep the loads of work of PIL manageable, the inane and insignificant PILs need to be discouraged.<sup>i</sup>



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<sup>i</sup> Article reference: [http://www.legalservicesindia.com/articles/pil\\_ind.htm](http://www.legalservicesindia.com/articles/pil_ind.htm)

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<sup>9</sup> AIR 2004 SC 561

<sup>10</sup> <https://www.firstpost.com/india/soli-sorabjee-on-pils-every-matter-of-public-interest-cannot-be-a-matter-of-public-interest-litigation-2592886.html/amp>