

PUBLIC INTEREST LITIGATIONS IN INDIA: AN ENUMERATED OVERVIEW AND MEASURES TO CURB ITS ABUSE

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This article essentially covers up the entire view of Public Interest Litigation and its Indian perspective. This also aims at covering up certain snags that are attached with PIL's in India and also how at times it is misused to cover up and for private motives rather than public motives for which it was essentially brought. Article also provides us with certain guidelines that the Supreme Court has framed in different case laws and how it has tried to provide us with a clear picture as to under what all categories the petitions are permissible under the courts. PIL and its Indian application had a certain sort of impact on the neighboring countries, this article very well highlights such impacts it had on its application in such countries. It also touches upon the various facets of the phenomenon of PIL. This Article provides certain measure that SC have taken to curb its abuse. Through the study of patterns of PIL in India it has been discovered that it is very vital and important for judiciary to keep a check on amount of frivolous petitions that are filed by people out of their personal interest, this article comprises of a discussion on that aspect as well. Finally, this paper concludes with summarizing the entire contents of this article and also in a manner suggest some measures that can be taken up for better utilization of such important and vital weapon for safeguarding public interest.

INTRODUCTION

Public Interest Litigation essentially means litigation which is initiated for protection of the public interest. The feature of PIL which sets it apart from other sorts of litigation is that it is initiated not by the aggrieved party but by the court itself or by a private person who is a third person for that particular case. However, the person who files a PIL must prove the court that the PIL that has been moved has certain public interest involved in it and it is not a frivolous litigation. This power is actually vested in the public with the help of Judicial Activism.¹ Public Interest Litigation is a recent institutional innovation of the Supreme Court of India. The origin of this tool forged by the Apex Court, lies in the struggle to solve social and economic problems which is never ending. The facility of Public Interest Litigation has made law and justice more accessible to the generality of the people.

KAPILA HINGORANI- "MOTHER OF PIL"

¹ Title of the paper- What is PIL, Authors-Vineet Kothari and Shreshtha Gupta, Name of the Website- www.mightylaw.in

Kapila Hingorani was one of the topmost lawyers practicing in the Supreme court, until 30th December 2013, (when she died) she was the senior-most woman lawyer enrolled with the Supreme Court. The first PIL in India was argued by Kapila Hingorani and was filed by her only in the Supreme Court, it was related to prisoners suffering in jail waiting for an immensely long period, this PIL led to inclusion of right of speedy trial in Article 21 of the constitution and also the release of about 40,000 prisoners who were under trial. The Bar Association of Supreme Court in its resolution of March 2, 1979 recorded Deep appreciation of Kapila Hingorani with respect to under trial prisoners case.

ORIGIN AND MEANING OF PIL

Black's Law Dictionary (6th edition) has defined 'Public Interest Litigation' as under: - "Public Interest- Something in which the public, the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government..."²

In S.P. Gupta vs. Union of India³ for the first time the concept of PIL was discussed by Justice P.N. Bhagwati which was as follows-"Public Interest Litigation which is a strategic aim of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two parties, one making a claim or seeking relief against the other and that other opposing such claim or relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed.

That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality."

With later coming up of different case laws on different aspects the importance and necessity of PIL was highlighted and was recorded under different judgments. Now

² State of Uttaranchal vs Balwant Singh Chauhal & Ors on 18 January, 2010, CIVIL APPEAL NOS.1134-1135 OF 2002

³ S.P. Gupta vs. Union of India, AIR 1982 SC 149

considering the present situation PIL plays a very major and important role in providing space and justice to public interest.

CONSTITUTIONALITY

If we go by the jurisprudence of Article 32 of the Constitution of India, “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed”. Ideally, only the aggrieved party has the right to seek help under Article 32. A Public Interest Litigation can essentially be filed under Article 32 of the constitution in Supreme Court and if one wishes to file a PIL in a High Court of a state then he will have to do so under Article 226 of the Constitution under their respective Writ Jurisdictions. Essentially there are five types of writ that can be issued, which have been explained below.⁴

The Writ of Habeas Corpus

Habeas Corpus means “Let us have the body”, this writ should be considered the most important and valuable asset for personal liberty. In simple words it is the order of the court to the detaining authority so that they produce the arrested or detained person before the court. The court examines that whether the person who has been detained, is detained has a genuine reason for detention or not, if the court is convinced that the person is illegally detained, it can issue order for his release.

The Writ of Quo-Warranto

Quo-Warranto stands for “by what authority”. It is a writ which is issued with the purpose of restraining a person from acting a public office to which he is not authorized. It essentially stops a person from undertaking the wrong office.

The Writ of Certiorari

The literal meaning of Certiorari is to certify. This sort of a writ is issued by the Supreme Court to an inferior Court to transfer the matter to it or some other sort of a superior authority. Certiorari can also be issued by a Supreme Court or any other High Court for crushing the order already passed by an inferior court.

The Writ of Mandamus

A (writ of) mandamus is an order or a direction from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion. What has to be remembered is that this writ cannot be claimed as a matter of a right it is as per the courts discretionary whether it wishes to issue such writ or not.

⁴ Title of the paper- Public Interest Litigation, Authors- Vishal P. Bhat, Name of the Website- <http://www.legalservicesindia.com/>

The Writ of Prohibition

In easy language Writ of prohibition means to stop and is also known as 'Stay Order', this is issued when a lower court essentially or even a lower body for that matter tries to outreach its authority, this is issues by a superior court to a lower court. Both High Court and The Supreme Court can issue this writ to and lower or subordinate court or a tribunal to stop its proceedings in a particular matter or case.

IMPACT OF PUBLIC INTEREST LITIGATION IN INDIA ON NEIGHBOURING COUNTRIES⁵

IMPACT ON PAKISTAN

The development of public interest litigation in India has also had an impact on judicial systems of neighbouring countries like Pakistan. Some of the important decisions of the of the Pakistan Supreme Court at Islamabad in respect of public interest litigation are:

- Constitution Petition No. 9 of 2009 filed by the Sindh High Court Bar association through its secretary and constitution petition No.8 of 2009 filed by Nadeem Ahmed Advocate. It has been held by the Supreme Court that the entire superior judiciary which was sacked by the previous political regime has been restored.
- Constitution Petition Nos. 76 to 80 of 2007. In that case also the Supreme Court rendered that judgment on December 16, 2009 by all the 17 judges of the Pakistan Supreme Court which has far reaching implications on PIL.
- The Supreme Court of Pakistan in Human Right Case No.120 of 1993 delievered the judgment to widen the definition of the concept "aggrieved person". That decision was largely based on the judgments of the Supreme Court of India.

IMPACT ON SRI LANKA

In *Bulankulama v. Secretary, Ministry of Industrial Development* the Supreme Court of Sri Lanka upheld the fundamental rights of the petitioners by invoking the public trust theory as enunciated in the United States and also in the case *M.C. Mehta v. Kamal Nath*⁶ by the Supreme Court of India. Chapter III containing articles 8-26 of the constitution of Sri-Lanka provide for fundamental rights and freedom to persons and citizens of Sri Lanka.

IMPACT ON NEPAL

In a Writ Petition No. 35 of 1992 a Three-Judge bench of the Supreme Court of Nepal gave significant directions to protest degradation of environment and ecology. The Supreme Court of Nepal in that case adopted the concept of sustainable development as enunciated by the Supreme Court of India. Article 26(4) of the Constitution of the kingdom of Nepal, 1990 provides for protection of environment and prevention to its

⁵ Restatement of Indian Law Public Interest Litigation, Authors- R.Venkataramani and S.C. Raina, 2011, Universal Law Publishing House

⁶ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388

further damage. This Article is placed under Directive Principles and Policies of the State. Article 24(1) of the said Constitution provides that the principles and policies contained in Part 4 containing articles 24-26 under the heading “Directive Principles and Policies of the State” shall not be enforceable in any Court. It is noteworthy to mention in this connection that Article 24 of the Constitution of Kingdom of Nepal has been borrowed from the principles and provisions of article 37 of the Constitution of India.

PROBLEMS OF PRACTICE FOR PIL's⁷

The problems of effective implementation of PIL decision/orders arise from:

- The multitude of Socio-Economic, political factor, often involved in the resolution of large number of issues brought before the court in public interest litigation and which arise from the diverse set of responses by the executive.
- The institutional structure of governance and the availability of legitimate and justifiable excuses to the executive which are the factors reckoned while implementing directions and orders in public interest.

PUBLIC INTEREST LITIGATION- A CRITIQUE

Public Interest Litigation has been criticised on number of grounds viz., that it can be misused for private motive or political ends, that would result in tremendous increase in the litigation; that it would develop uncertainty as to the admission of petition for hearing. It is said that there is no guideline as to the cases which should be admitted and the cases which should not be admitted. Due to this, public interest litigation has become unpredictable. Moreover, the court has no capacity to enforce its orders and in many cases the conditions have not changed.

In some cases, the affected parties addressed directly in the name of judges of the Supreme Court and they converted the letters into writ petitions. This practice has been criticised on the ground that there would be danger of litigants choosing a judge and in turn judges choosing their litigants. The suo moto action by Judges based upon news reports is criticised as thereby the judges assume the role of advocates as well and this acts against the judicial percept 'nobody should be a judge in his own case'

The Hon'ble Chief Justice of the Supreme Court Mr. J.S. Verma viewed that it is necessary to avoid the misuse of Public Interest Litigation rather than criticising the process. Any attempts to curb it would be to throw baby with the bath water. It is primarily for the courts which devised this process to practice self-restraint and to also devise proper checks and balances to ensure that even persons who went to misuse it are not able to do so. Time has come to make revision of the Supreme Court Rules.⁸

⁷ Restatement of Indian Law Public Interest Litigation, Authors- R.Venkataramani and S.C. Raina, 2011, Universal Law Publishing House

⁸ Constitutional Obligation of the Judiciary, J.S. Verma, AIR 1997 Journal 165

MISUSE AND ABUSE OF PIL's

Certain dangers are involved with the application and development of PIL in our country, few of them have been highlighted below:

- PIL has led to a humungous amount of pending cases with the court with the limited amount of judicial resources to solve them.
- A huge amount of courts time is wasted in PIL that hare frivolous in nature and have been essentially filed up for publicity, private interest or for political gains.
- At times the concept of separation of powers is violated during exercising PIL jurisdiction.
- It shows immobility and also might affect administration of an organization because of courts orders.

MEASURES TO CURB ABUSE OF PIL'S

The increased number of frivolous petitions has led to certain measures that are taken up to screen out the frivolous petitions that used to be registered with the courts and which acted as a burden on the court. The Supreme Court over a long period of time has come up with certain headings under these headings only the PIL's will be entertained and only if they are of public interest and also some other grounds have invented which have to be proved for a petition to be entertained as a PIL. Those grounds and conditions have been mentioned below.

“ESSENTIALS AS TO WHEN COURT CONSIDERS A LETTER AS A PIL”:

- It is only where the letter is addressed by an aggrieved person or
- A public spirited individual or
- A social action group for the enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who finds it difficult to approach the court for redress.”

PETITION UNDER WHAT CATEGORIES ARE PERMISSIBLE BY THE COURT.¹⁰

⁹ Title of the paper- Know all about Public Interest Litigation (PIL), Authors- Shweta Kaushik, Name of the Website- <https://www.vakilno1.com/legal-advice/know-public-interest-litigation-pil.html>

¹⁰ Compilation of Guidelines to be followed for entertaining letters/petitions received. Issued by- Supreme Court of India

“As per the guidelines of the Supreme Court the Letters or Petitions are permissible under the following headings under a court and also the below mentioned categories are not permitted¹¹:

- Bonded Labor Matters
- Neglected Children
- Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labor Laws (except in individual cases).
- Petitions from jails 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.
- Petitions against police for refusing to register a case, harassment by police and death in police custody.
- Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping etc.
- 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.
- Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.
- Petitions from riot-victims.
- Family Pension

Cases falling under the following categories will not be entertained as Public Interest Litigation and these may be returned to the petitioners or filed in the PIL Cell, as the case may be:

- Landlord-Tenant matters.
- Service matter and those pertaining to Pension and Gratuity.
- Complaints against Central/ State Government Departments and Local Bodies except those relating to item Nos. (1) to (10) above.
- Admission to medical and other educational institution.
- Petitions for early hearing of cases pending in High Courts and Subordinate Courts.”

CONCLUSION AND SUGGESTIONS

Public Interest Litigation on the whole is a very essential aspect nowadays considering the amount of PIL petitions that are being filed in our country it is very evident that PIL acts as a major weapon for the public at large to address certain vital issues. PIL validates that “ law is not necessarily a class weapon used by the rich to oppress the poor through the

¹¹ Compilation of Guidelines to be followed for entertaining letters/petitions received. Issued by-Supreme Court of India

simple device of making justice too expensive and that lawyers are not simply the mercenaries of the propertied class”¹². One of the greatest contribution of PIL has been that it has increased the accountability and responsibility of government with respect to Human Rights. The judiciary needs to properly analyze the underlying intention behind filing a PIL and what that will yield, and should approve of only such PIL that have a genuine ground for being approved in public Interest. Well it can be said that PIL is still in its early stage of experimentation and many facets of its demerits have not been discovered but, all such lacunas can be removed with use of more innovational strategies that are brought to fight out such difficulties. The court has to stick with Supreme Courts Guidelines about the admissibility of PIL under different heads that it has noted over a long period of time with the help of a great number of cases that came up before it. Innovation in this field and development of PIL has proved to be of great importance for a country like India and has been used to fight out certain major issues concerning public interest. Essentially PIL is the power that has been vested in the people by the court with the help of Judicial Activism.

¹² “ PIL and the Development of Human Rights in India in World of All Human , Gopal Subramanian, in R.N.Trivedi(ed.) (2010) at 156-161