



Public Interest Litigation

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1. Introduction :

Public Interest Litigation is commonly known as *PIL* in India. The initial inspiration for Indian PIL came from the American concept of Public Interest Litigation and the class actions of the 1960s. PIL means litigation for the protection of public interest or in the interest of public

It is the litigation introduced in the court of Law, not by the aggrieved party but by any person/association of persons or by the court itself. It is not necessary, for the exercise of the court jurisdiction, that the person/s who is/are the victim of the violations of his or her right should personally or through the counsel approach the court. It is said to be the strategy developed by the Supreme Court of India to secure the observance of the law by the Government and its agencies, and to extend social justice to the large masses of underprivileged persons in the country.

Prior to the 1980s, only the aggrieved party could approach the courts for justice. However, post 1980s and after the emergency era, the apex court decided to reach out to the people and hence it devised an innovative way wherein a person or a civil society group could approach the supreme court seeking legal remedies in cases where public interest is at stake. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were among the first judges to admit PIL's in the court.

According to a controversial study by Hans Dembowski, PIL has been successful in the sense of making official authorities accountable to the public or civil society organisations.

The Apex Court has been much concerned with the social justice, since 1977. The year 1977 was actually the beginning of the activist phas of the Supreme Court of

India. The Apex Court has remained firm in its avowed mission and maintained that it was the Constitutional duty of the Court to provide “justice” to the masses. The stand is absolutely in tune with Constitution of India and in order to give effects to the words expressed in its preamble “to secure to all its citizens Justice, social, economic and political; Liberty, of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual...”

The Constitution of India has guaranteed to the people of India certain basic democratic rights called the “Fundamental Rights” (Articles 13 to 32), akin to the American Bill of Rights. The Fundamental Rights include the right to equality before law; prohibition of discrimination on the ground of religion, race, caste, sex, place of birth, freedom of speech, of assembly, of movement, of forming association, of residence, of profession, trade or business; protection of life and liberty; protection against arrest and detention, and various other rights. These rights are enforceable against the State and its agencies. Any person aggrieved by a breach of any of his rights may move the local High Court or the SCI seeking enforcement of the right. Any law enacted by the legislature or any executive action may be declared to void by the Court in the event of breach. The Court may also remedy any governmental inaction or neglect by issuing a writ or a mandate to the executive authority. The right to judicial remedy is itself a guaranteed right.

To make its strategy feasible, the SCI (Supreme Court of India) worked out its plan by taking two historical steps. The first step taken in this direction was amending the implementation of the word “locus standi, which allows only the aggrieved person or victim to approach the Court for seeking relief. This was infect the main obstacle in providing access to justice to the disadvantaged or economically weaker section of the society. Accordingly the rule of standing was withdrawn in the case of PIL. The SCI made it clear that any bona fide person or public spirited individual or association or NGO to move to the Court on behalf of those who were unable to approach the Court directly.

Subsequently SCI felt that permitting any member of public to approach the court in public interest would not be enough to encourage a person acting ‘pro bono publico’ to shoulder the responsibility, burden of litigation with its costs and hassles. So in order to remove this obstacle and to make the PIL convenient and without costs for public spirited persons, the SCI took the second historical step by simplifying in the procedural law: i.e. merely writing a letter to the Court would be enough to permit the Court to take cognizance of the matter and start necessary proceedings. This proved to be a great success as many matters of public interest were brought to the notice of SCI by way of simple letters and the SCI ordered for urgent actions in interest of public at large.

'PUBLIC INTEREST LITIGATION' is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a PIL can be filed. For example

- Violation of basic human rights of the poor.
- Air or water Pollution
- Implementation of a Law
- Content or conduct of government policy
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights.

PIL as it has developed in recent years marks a significant departure from traditional judicial proceedings. It now dominates the public perception of the Supreme Court. The Court is now seen as an institution not only reaching out to provide relief to citizens but even venturing into formulating policy which the State must follow. At the time of Independence, court procedure was drawn from the Anglo-Saxon system of jurisprudence. The majority of citizens were/are unaware of their legal rights, and much less in a position to assert them. The guarantees of fundamental rights and the assurances of directive principles, described as the conscience of the Constitution would have remained empty promises for the majority of illiterate and indigent citizens under adversarial proceedings. PIL has been a conscious attempt to transform the promise into reality.

Since the inception of PIL, the SCI and the various state High Courts various subject matters dealt with and including, giving relief to unorganized workers in the matter of their wages, improving working conditions, housing issues, civic services, environmental issues, consumer issues, educational matters, prisoners in jail, prevention of torture of under trial prisoners, maintenance of jails. It also dealt with matters like prevention of pollution of the river Ganges, reservation of a jungle as reserve forest, admission to schools and holding of examinations in colleges.

According to 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. Ordinarily, only the aggrieved party has the right to seek redress under Article 32.

In 1981 Justice P. N. Bhagwati in .S. P. Gupta v. Union of India, 1981 (Supp) SCC 87, articulated the concept of PIL as follows,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 person or determinate class of persons by reasons of poverty,

helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.

Supreme Court in *Indian Banks Association, Bombay and ors v. M/s Devkala Consultancy Service and Ors.*, J. T. 2004 (4) SC 587, held that In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. **Thus a private interest case can also be treated as public interest case**

In a historical PIL (*Citizen for Democracy v. State of Assam*, (1995) 3SCC 743), the S. C. declared that the handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or while in transport or transit from one jail to another or to the court or back.

This blessing is also not untouched by abuses and aberrations as well. The credentials and bona fide used to be used to be a sound screening process at the admission level of a PIL. In its absence frivolous PILs started reaching courts, which were actually private disputes. The lure of soft justice and procedural relaxations has induced many in genuine persons, with private vested interest, misusing this litigation in the guise of a public spirited person or organization. The position in some PILs became so bad that the Apex Court had to impose a fine of one lac Indian rupees on the petitioner in a matter in 2006.

Recently there have been two observations in the Apex Court on the PIL matter, first when a two-judge bench criticized the judicial over reach and said Judges should not behave like emperors and questioned court orders on PILs. With this the Delhi High Court deferred the hearing of PILs till things were clearer. The second observation came a after a couple of days i.e. on December 13,2007 when a PIL was sent to a three judge bench headed by the Chief Justice of India Justice

K G Balakrishnan who made it clear that PILs for the right cause be heard and agreed to examine a PIL on the plights of widows in Brindavan. Chief Justice of India said we are not bound by the order (the earlier order made by two judge bench), so the genuine PILs will be taken up by the Supreme Court.”

There is no doubt that for some years the PILs were the lone weapon against the unresponsive system. The Chief Justice’s correction on the PIL restores hope for the people. In nutshell, the fact is that, due to the frivolous PILs the genuine matters should not suffer. The absence of personal interest of the petitioner in a PIL remains the acid test.

Moreover it is established rule of law that an accused may go scot free but an innocent should not be hanged.

a] Meaning :

The expression 'public interest litigation' literally means "some litigation conducted for the benefit of public or for removal of some public grievance." The words 'public interest' according to the oxford English dictionary (2nd edn. vol. XII) mean "the common well being also public welfare", and the word 'litigation' means "a legal action including all proceedings therein, initiated in a court of law with the propose of enforcing a right or seeking a remedy." Thus, the expression 'public interest litigation or social interest litigation' means "a legal action initiated in a court of law for the enforcement of public or a class of the community have pecuniary interest or some interest by which their legal right or liabilities are affected".

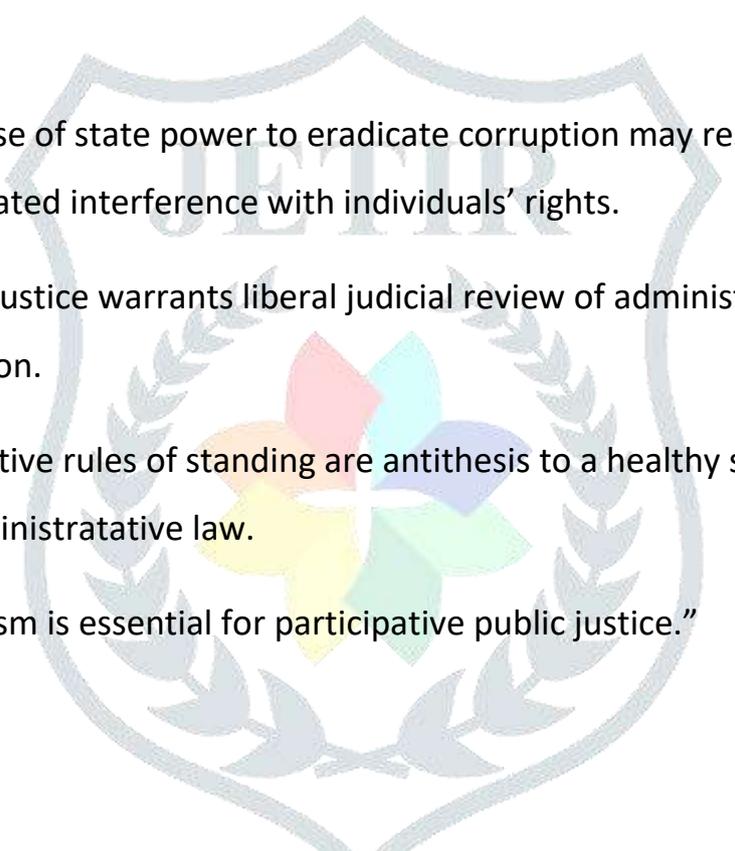
The traditional rule of '*locus standi*' that a person, whose right is infringed alone can file a petition, has been considerably relaxed, and now, the courts permit public interest litigation at the instance of the public spirited citizens for the enforcement of the constitutional or legal rights. In simple words, public interest litigation means "any public spirited citizen can move/approach the court for the public cause (public interest or public welfare) by filing a petition in the supreme court under art.32 or in high court under art.226 of the constitution or under sec.133 Cr.P.C. before the court of magistrate.

The seeds of the concept of public interest litigation were initially town in India in 1976 in Mumbai kamagar sabha vs. Abdul bhai, air 1976 SC 1455; 1976 (3) SCC 832. Krishna Iyer j., while disposing an industrial dispute in regard to the payment of bonus observed.

"Public interest is promoted by a spacious construction of *locus standi* in our socio-economic circumstances and conceptual latitude in Aryanism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shard by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law."

The concept of public interest litigation (pil) was initiated in Akhil bhartiya soshil karmachari sangh (railway) vs. union of India, (air 1981 SC 298) by V.R. Krishna Iyer, wherein an unregistered association of workers was permitted to institute a writ petition under art.32 of the constitution for the redressal of common grievances.

Justice Krishna Iyer used the terminology of 'public interest litigation' and also used the expression 'epistolary' jurisdiction' in Fertilizer corporation kamgar union vs. union of India, air 1981 SC 149, 1981 (2) SCR 52 had enumerated the following reasons for liberalisation of the rule of *locus standi*:

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- The logo of JETIR (Journal of Emerging Technologies and Innovative Research) is a watermark in the background. It features a shield-shaped emblem with a laurel wreath border. Inside the wreath is a stylized flower with five petals in red, cyan, blue, yellow, and green. The word 'JETIR' is written in a large, light blue, serif font across the center of the emblem.
1. Exercise of state power to eradicate corruption may result in unrelated interference with individuals' rights.
 2. Social justice warrants liberal judicial review of administrative action.
 3. Restrictive rules of standing are antithesis to a healthy system of administrative law.
 4. "Activism is essential for participative public justice."

Therefore, public minded citizen must be given an opportunity to move the court in the interest of the public. Further, the supreme court in S.P. gupta vs. union of India, (air 1982 SC 149), popularly known as 'Judges' transfer case'bhagwati j., firmly established the validity of the public interest litigation. Since then, a good number of public interest litigation petitions were filed.

b) Definitions of Public Interest Litigation:

1] IN BLACK'S LAW DICTIONARY :

"Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

Public Interest Litigation's explicit purpose is to alienate the suffering off all those who have borne the burnt of insensitive treatment at the hands of fellow human being. Transparency in public life & fair judicial action are the right answer to check increasing menace of violation of legal rights. Traditional rule was that the right to move the Supreme Court is only available to those whose fundamental rights are infringed. But this traditional rule was considerably relaxed by the Supreme Court in its recent rulings:

Peoples Union for Democratic Rights v. Union of India

(A.I.R. 1982, S C 1473)

The court now permits Public Interest Litigation or Social Interest Litigation at the instance of "Public spirited citizens" for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps.

In the Judges Transfer Case

(AIR 1982, SC 149)

Court held Public Interest Litigation can be filed by any member of public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress. This is absolutely necessary for maintaining Rule of law and accelerating the balance between law and justice.

It is a settled law that when a person approaches the court of equity in exercise of extraordinary jurisdiction, he should approach the court not only with clean hands but with clean mind, heart and with clean objectives.

Shiram Food & Fertilizer case

(AIR (1986) 2 SCC 176 SC)

through Public Interest Litigation directed the Co. Manufacturing hazardous & lethal chemical and gases posing danger to life and health of workmen & to take all necessary safety measures before re-opening the plant.

In the case of M.C Mehta V. Union of India

(A.I.R (1988) 1 SCC 471)

In Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

Parmanand Katara V. Union of India

(AIR 1989, SC 2039)

Supreme Court held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

Council For Environment Legal Action V. Union Of India

(1996)5 SCC281)

Public Interest Litigation filed by registered voluntary organization regarding economic degradation in coastal area. Supreme Court issued appropriate orders and directions for enforcing the laws to protect ecology. A report entitled "Treat Prisoners Equally HC" published in THE TRIBUNE, Aug 23 Punjab & Haryana High Court quashed the provisions of jail manual dividing prisoners into A , B & C classes after holding that there cannot be any classification of convicts on the basis of their social status, education or habit of living .This is a remarkable ruling given by High Court by declaring 576-A paragraph of the manual to be " Unconstitutional".

State V. Union Of India

(AIR 1996 Cal 181 at 218)

Public Interest Litigation is a strategic arm of the legal aid movement which intended to bring justice. 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 abused and misused by the vested interest. In a recent ruling of Supreme Court on " GROWTH OF SLUMS" in Delhi through Public Interest Litigation initiated by lawyers Mr. B.L. Wadhwa & Mr. Almitra Patel Court held that large area of public land is covered by the people living in slum area . Departments despite being giving a dig on the slum clearance, it has been found that more and more slums are coming into existence. Instead of "Slum Clearance", there is "Slum Creation" in Delhi. As slums tended to increase; the Court directed the departments to take appropriate action to check the growth of slums and to create an environment worth for living.

During the last few years, Judicial Activism has opened up a new dimension for the Judicial process and has given a new hope to the millions who starve for their livelihood. There is no reason why the Court should not adopt activist approach similar to Court in America , so as to provide remedial amplitude to the citizens of India.

Supreme Court has now realised its proper role in welfare state and it is using its new strategy for the development of a whole new corpus of law for effective and purposeful implementation of Public Interest Litigation. One can simply approach to the Court for the enforcement of fundamental rights by writing a letter or post card to any Judge.

That particular letters based on true facts and concept will be converted to writ petition. When Court welcome Public Interest Litigation, its attempt is to endure observance of social and economic programmes frame for the benefits of have-nots and the handicapped. Public Interest Litigation has proved a boon for the common men. Public Interest Litigation has set right a number of wrongs committed by an individual or by society. By relaxing the scope of Public Interest Litigation, Court has brought legal aid at the doorsteps of the teeming millions of Indians; which the executive has not been able to do despite a lot of money is being spent on new legal aid schemes operating at the central and state level. Supreme Court's pivotal role in expanding the scope of Public Interest Litigation as a counter balance to the lethargy and inefficiency of the executive is commendable.

