



PUBLIC INTEREST LITIGATION IN INDIA: A CRITICAL STUDY

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ABSTRACT

It is rightly said that law is the means and justice is the end. Public Interest Litigation achieves the objective of delivering justice in India which was almost impossible by conventional private litigation. The positive contributions of PIL are many. PIL, for instance, offers a ladder to justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows them to participate in government decision making. PIL could also contribute to good governance by keeping the government accountable.¹

Key Words: Public interest, Judiciary, FRs, India, DPs, Justice, PIL, Constitution.

Lest the “golden key to unlock the doors of injustice”² remain only with the moneyed people, the Supreme Court of India pioneered the concept of Public Interest Litigation (PIL) thereby throwing open the portals of Courts to the common man.³ The expression ‘Public Interest Litigation’ means “litigations conducted for the benefit of public or for removal of some public grievance.” In simple words, public interest litigation means that any public spirited citizen can move/approach the court for the public cause (or public interest or public welfare) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution or before the Court of Magistrate under Sec. 133 of the Code of Criminal Procedure, 1973.⁴

¹ Surya Deva, *Public Interest Litigation in India: A Critical Review 19 (Civil Justice Quarterly, Issue 1, 2009)*.

² Peoples’ Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

³ D.K. Bhatt, *Judicial Activism through Public Interest Litigation: The Indian Experience*, AIR 1998 Journal 120.

⁴ Pritam Kumar Ghosh, *Judicial Activism and Public Interest Litigation in India*, <http://airwebworld.com/articles/index.php?article=1531>.

INTRODUCTION

It was poignantly mentioned by Justice Bhagwati in the *Asain Games case*⁵ that “*Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.*” It was further observed that: “*Public interest litigation is a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity.*”⁶

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamagar Sabha v. Abdul Thai*⁷ and was initiated in *Akhil Bharatiya Soshit Karmchari Sangh (Railway) v. Union of India*⁸, 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..

The danger of counterfeit coin is always there. Hence, the Indian PIL experience also shows us that it is critical to ensure that PIL does not become a facade to fulfil private interests, settle political scores or gain easy publicity. Another lurking danger is that Judiciary in a democracy should also not use PIL as a device to run the country on a day-to-day basis or enter the legitimate domain of the executive and legislature. The challenge for the Indian State, therefore, is to strike a balance in allowing legitimate PIL cases and discouraging frivolous ones.

THE CONSTITUTIONAL ASPECTS FOR PIL

PIL is a legal action taken up by any public-spirited person to pursue constitutional and legal rights on behalf of individuals who are disadvantaged socially or economically and are not able to approach the court for relief. Any Indian citizen can file a PIL, provided it should not have a private motive but serve a larger public interest. Under Article 32, a PIL can be filed in the Supreme Court only in the case of violation of fundamental rights whereas under Article 226, a PIL can be filed in the High Court against violation of fundamental rights as well as constitutional and legal rights.

Hence in PIL, the focus is not on vindicating private rights but on matters of general public interest and hence it extends the reach of judicial system to disadvantaged sections of society. It also facilitates an effective realisation of collective, diffused rights for which individual litigation is neither practicable nor an efficient method.

⁵ (1982) 3 SCC 235.

⁶ Prof. (Dr.) D.C. Jain, *The Phantom of “Public Interest”*, (1986) 3 SCC (J) 31.

⁷ AIR 1976 SC 1455: 1976 (3) SCC 832.

⁸ AIR 1981 SC 298.

HOW PUBLIC INTEREST LITIGATION EMERGED

It should be noted at outset that PIL, at least as it had developed in India, is different from class action or group litigation. Whereas the latter is driven primarily by efficiency considerations, the PIL is concerned at providing access to justice to all societal constituents. Therefore, in order to appreciate the evolution of PIL in India, it is desirable to have a basic understanding of the constitutional framework and the Indian judiciary.

After gaining independence from the British rule on Among others, the Constitution aims to secure to all its citizens justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and of opportunity).⁹ These aims were not merely aspirational because the founding fathers wanted to achieve a social revolution through the Constitution. The main tools employed to achieve such social change were the provisions on fundamental rights (FRs) and the directive principles of state policy (DPs), which Austin described as the “conscience of the Constitution”.¹⁰ In order to ensure that FRs did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. As we will see below, provisions related to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India.

Part III of the Constitution lays down various FRs and also specifies grounds for limiting these rights. “As a right without a remedy does not have much substance”,¹¹ the remedy to approach the Supreme Court directly for the enforcement of any of the Pt III rights has also been made a FR.¹² The holder of the FRs cannot waive them.¹³ Nor can the FRs be curtailed by an amendment of the Constitution if such curtailment is against the basic structure of the Constitution.¹² Some of the FRs are available only to citizens while others are available to citizens as well as non-citizens, including juristic persons.

After initial deviation, the Supreme Court accepted that FRs are not superior to DPs on account of the latter being non-justiciable: rather FRs and DPs are complementary and the former are a means to achieve the goals indicated in the latter.¹⁴ The issue was put beyond any controversy in *Minerva Mills Ltd v Union of India* where the Court held that the, “harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution”.¹⁵ Since then the judiciary has employed DPs to derive the contents of various FRs.¹⁶

⁹ Constitution of India 1950 Preamble

¹⁰ Austin, *Cornerstone of a Nation*, p.50.

¹¹ M.P. Jain, “The Supreme Court and Fundamental Rights” in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India—Its Grasp and Reach* (New Delhi: Oxford University Press, 2000), pp.1, 76.

¹² Constitution of India 1950 art.32.

¹³ *Bheshwar Nath v CIT* AIR 1959 SC 149; *Nar Singh Pal v Union of India* AIR 2000 SC 1401.

¹⁴ See *Ajay Hasia v Khalid Mujib* AIR 1981 SC 487; *Pradeep Kumar v Indian Institute of Chemical Biology* (2002) 5 S.C.C. 111.

¹⁵ Constitution art.37.

¹⁶ *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789, 1806.

In the application of the instrumentality test to a corporation, it is immaterial whether the corporation is created by or under a statute. *Som Prakash Rekhi v Union of India* AIR 1981 SC 212.

The FRs are judicially enforceable whereas the DPs are unenforceable in the courts. Mahendra P. Singh, “The Statics and the Dynamics of the Fundamental Rights and the Directive Principles—A Human Rights Perspective” (2003) 5 *Supreme Court Cases (Jour)* 1.¹⁷

The founding fathers envisaged “the judiciary as a bastion of rights and justice”.¹⁸

Since PIL began in the late 1970’s, thousands of suits have been instituted before the courts through the agency of “public interest”.¹⁹ However, despite the lowering of the threshold, many Indians are still unable to use, or are denied access to, the courts; widespread poverty, bonded labour, social restrictions and illiteracy all pose real bars to legal rights. Therefore, the courts have allowed for third-party standing.²⁰

SOCIAL CONTRIBUTIONS OF PIL

PIL in India challenges the conceptual underpinnings of a conventional understanding of liberal democracy in at least three powerful ways: (1) the empowerment of individual through collective action; (2) a strong emphasis on the creation of positive rights through a broad rendering of Article 21 of the Indian Constitution; and (3) a blurring of the traditional circumscriptions of the powers of the government.²¹ In each of these ways, Indian judiciary has refashioned the traditional model of liberal democracy to adjust to the demands of India’s widespread and entrenched financial and social inequalities.

Positive features of PIL are as follows:

1. First and foremost, it enables the participation of the weaker sections who otherwise due to their incapability are disadvantaged. It is the power given by the courts to the public to protect their rights. Rightly it has been referred as “Bread to the poor”. Indeed by liberally applying Article 21 to create new regimes of rights and by lowering the threshold for standing, the court is leveling the playing field and rebalancing the scales of justice.
2. Secondly, it is an economical way for the citizens to seek remedy for their grievances as the fees are nominal compared to the private litigation fees which lot of people cannot afford.
3. Thirdly, the relaxation of locus standi has resulted in representative action where a person or group with sufficient interest in a particular cause, litigates on behalf of a large number of others who

¹⁷ Jain, “The Supreme Court and Fundamental Rights” in Verma and Kusum (eds), *Fifty Years of the Supreme Court of India*, pp.65–76.

¹⁸ Austin, *Cornerstone of a Nation*, p.175.

¹⁹ Constitution of India 1950 arts 32 and 226.

²⁰ Gobind Das, “The Supreme Court: An Overview” in B.N. Kirpal et al. (eds), *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* (New Delhi: OUP, 2000), pp.16–47.

²¹ Zachary Holladay, Public Interest Litigation in India as a Paradigm for Developing Nations 565 to 571 (*Indiana Journal of Global Legal Studies*, Volume 19, Issue 2) 2012.

cannot afford the cost.

4. PIL is an opportunity for the courts to address important issues in areas like environmental protection, consumer protection, etc., which affect a large number of people and otherwise maybe ignored.
5. The court appoints commissions as fact finding bodies to check into the allegations made in the petition which has established a new mode of proof. The commission reports assist the courts in their decisions.
6. PIL encourages government accountability. Government agencies can be held accountable by the courts, resulting in their better performance.

WHETHER PIL IS BEING MISUSED?

PIL has, however, led to new problems such as an unanticipated increase in the workload of the superior courts, lack of judicial infrastructure to determine factual matters, gap between the promise and reality, abuse of process, friction and confrontation with fellow organs of the government, and dangers inherent in judicial populism.²² Before elaborating these problems, let me take readers to a quick tour of some recent PIL cases that would offer an indication of this dark side.

In the last three decades, the Indian Supreme Court and High Courts have been approached through PIL to redress a variety of issues, not all of which related to alleged violation of FRs. The judiciary, for instance, has addressed issues such as: the constitutionality of the Government's privatization²³ and disinvestment policies,²⁴ defacing of rocks by painted advertisements,²⁵ the danger to the Taj Mahal from a refinery,²⁶ pollution of rivers,²⁷ relocation of industries out of Delhi,²⁸ lack of access to food,²⁹ deaths due to starvation,³⁰ 161–165; and Arun Shourie, *Courts and their Judgments—remises, Perquisites, Consequences* (New Delhi: Rupa & Co. 2001).³¹ extent of the right to strike,³² right to health,³³ right to education,³⁴ sexual harassment in the workplace,³⁵ and female foeticide and

²² Desai and Muralidhar in Kirpal et al., *Supreme but not Infallible*, pp.176–183; Upendra Baxi, “The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]justice” in Verma and Kusum (eds), *Fifty Years of the Supreme Court of India*, pp.156,

²³ *Delhi Science Forum v Union of India* (1996) 2 S.C.C. 405.

²⁴ *Balco Employees Union v Union of India* AIR 2001 SC 350; *Centre for Public Interest Litigation v Union of India* AIR 2003 SC 3277.

²⁵ “SC’s 5-cr Message: You Can’t Get Away”, *The Indian Express*, September 24, 2002.

²⁶ *M.C. Mehta v Union of India* (1996) 4 S.C.C. 750.

²⁷ *Almitra H. Patel v Union of India* AIR 2000 SC 1256.

²⁸ *M.C. Mehta v Union of India* (1996) 4 S.C.C. 351.

²⁹ *M.C. Mehta v Union of India* (1996) 4 S.C.C. 351.

³⁰ *PUCL v Union of India* (2001) (7) S.C.A.L.E. 484; *PUCL v Union of India* (2004) (5) S.C.A.L.E.128.

³¹ *Kishen Pattnayak v State of Orissa* (1989) Supl.(1) S.C.C. 258.

³² *CPM v Bharat Kumar* AIR 1998 SC 184; *T.K. Rangarajan v State of Tamil Nadu* AIR 2003 SC 3032.

³³ *Parmanand Kataria v Union of India* AIR 1989 SC 2039; *Paschim Banga Khet Mzdoor Samity v State of West Bengal* (1996) 4 S.C.C. 37; *Kirloskar Bros Ltd v ESIC* (1996) 2 S.C.C. 682; *Air India Stat. Corp v United Labour Union* (1997) 9 S.C.C. 377.

³⁴ *Mohini Jain v State of Karnataka* (1992) 3 S.C.C. 666; *Unni Krishnan v State of Andhra Pradesh* (1993) 1 S.C.C. 645.

infanticide through modern technology.³⁶

Although a review of the above sample of PIL cases may surprise those who are not familiar with PIL in India, it should be noted that in all the above cases the judiciary did actually entertain the PIL and took these cases to their logical conclusion. But there have been instances of more blatant misuse of the process of PIL. For instance, the courts were approached to call back the Indian cricket team from Australia after the controversial Sydney test match.³⁷ PILs were initiated to regulate the treatment of wild monkeys in Delhi and the practice of private schools to conduct admission interviews for very young children.³⁸ A PIL was also filed in the Supreme Court to seek ban on the publication of allegedly obscene and nude photographs in newspapers.³⁹ Some so-called public-spirited lawyers knocked at the door of the courts against: (i) Richard Gere's public kissing of an Indian actress, Ms Shilpa Shetty; (ii) an alleged indecent live stage show on New Year's Eve; and (iii) the marriage of former Miss World, Ms Aishwarya Rai, with a tree to overcome certain astrological obstacles in her marriage.⁴⁰

More recently, the PIL discourse was employed to request the Indian government to send technical experts to work with the Nepal government in strengthening the Bhimnagar barrage to prevent recurrence of flood and to challenge the constitutional validity of the Indo–US civil nuclear agreement.

It seems that the misuse of PIL in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the PIL project.

We may sum up the negative sides of PIL as follows:

1. PIL has been adopted as a tool of harassment by many. Besides attempt to sort public and political rivalry, in numerous cases PIL is evoked to protect one's private interests in guise of public interests.
2. One prerequisite for a matter to be fit for PIL is that it must be instituted as 'bonafide' and not seek personal, political or publicity interests. Even if not for aforesaid reasons, all public interest matters cannot be a subject for PIL. For example, rise in price of onions or the untimely running of trains or revision of train fares cannot form the basis for PIL. The Supreme Court's jurisdiction under Article 32 is not an elixir for all troubles but a remedy for violation of fundamental rights.

³⁵ *Vishaka v State of Rajasthan* AIR 1997 SC 3011; *Apparel Export Promotion Council v A.K. Chopra* AIR 1999 SC 625.

³⁶ *CEHAT v Union of India* AIR 2001 SC 2007; *CEHAT v Union of India* AIR 2003 SC 3309.

³⁷ PIL in SC for recalling Indian cricket team from Australia, *ChenniOnline*<http://archives.chennaionline.com/cricket/Features/2008/01news952.aspx>.

³⁸ "PIL and Indian Courts" in *Combat Law* (November–December 2007), Vol.6:6.

³⁹ "Apex Court Dismisses PIL Seeking Ban on Obscenity in Papers" in *The Indian Express*, December 13, 2006. Although the Court dismissed the petition, it still asked the government

⁴⁰ Singh, "Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation" in Singh, Goerlich and von Hauff (eds), *Human Rights and Basic Need*, p.328.

3. The misuse of PIL has been so rampant that it takes up the time and space of courts, leads to a large number of complex and long-lasting cases which can choke the legal system and create substantial costs.
4. PIL has been criticized for disturbing the constitutional balance between legislature, executive and judiciary. There is a risk of courts abandoning their customary role in the pursuit of becoming relevant to a developing society.
5. PIL give judges wide discretion in interpreting the public interest which may violate the separation of powers doctrine and may be better done by a democratically elected legislature.

CONCLUSION

The exercise of this jurisdiction has often been described by critics of the Judiciary as judicial overreach. The main thrust of the criticism is that the Judiciary by its directives to the administration is usurping the functions of the Legislatures and of the Executive and is attempting at running the country. The criticism is unfair. What these critics of the Judiciary overlook is that it is the tardiness of Legislatures and the indifference of the Executive to address itself to the complaints of the citizens about violations of their human rights which provides for the necessity for judicial intervention. In cases where the Executive refuses to carry out the legislative will or ignores or thwarts it, it is surely legitimate for courts to step in and ensure compliance with the legislative mandate.

When the court is apprised of and is satisfied about gross violations of basic human rights, it cannot fold its hands in despair and look the other way. The Judiciary can neither prevaricate nor procrastinate. It must respond to the knock of the oppressed and the downtrodden for justice by adopting certain operational principles within the parameters of the Constitution and pass appropriate directions in order to render full and effective relief. If the Judiciary is also to shut its door to the citizen who finds the Legislature as not responding and the Executive indifferent, the citizen would take to the streets and that would be bad both for the rule of law and the democratic functioning of the State.

It is submitted that the following observations must always be borne in mind in dealing with Public Interest Litigation: *“If carefully and prudently used, the PIL has great potential in correcting administrative wrong but if liberally and indiscriminately used in all kinds of cases, it may turn into an engine of destruction.”*⁴¹

The Court has issued appropriate writs, orders and directions on the basis of Public Interest Litigation. The Court has also laid down checks and balances to restrain the perils of abuse of PIL and the Courts have now become cautious to not to entertain a mala fide petition with some personal interest or ulterior motive in the name of PIL. PIL in India has produced astonishing results which were unthinkable two decades ago.⁴² Degraded bonded labourers, tortured under trials and women prisoners, environment

⁴¹ I.P. Massey, Administrative Law 447 (7th Ed., Eastern Book Company, Lucknow, 2008) (1980).

⁴² AIR 1985 Del 268.

protection, exploited children and many others have been liberated through judicial intervention. Supreme Court has now realized its proper role in welfare state and it is using its new strategies for the development of a whole new corpus of law for effective and purposeful implementation of Public Interest Litigation. Public Interest Litigation has proved a boon for the common men.⁴³ Thus, *Public Interest Litigation is certainly a legitimate exercise and not judicial overreach.*

PIL has an important role to play in the civil justice system in that it affords a ladder to justice to disadvantaged sections of society, some of which might not even be well-informed about their rights. Furthermore, it provides an avenue to enforce diffused rights for which either it is difficult to identify an aggrieved person or where aggrieved persons have no incentives to knock at the doors of the courts. PIL could also contribute to good governance by keeping the government accountable. Last but not least, PIL enables civil society to play an active role in spreading social awareness about human rights, in providing voice to the marginalised sections of society, and in allowing their participation in government decision making.

Courts should also not use PIL as a device to run the country on a day-to-day basis or enter the legitimate domain of the executive and legislature.

The way forward, therefore, for India as well as for other jurisdictions is to strike a balance in allowing legitimate PIL cases and discouraging frivolous ones. One way to achieve this objective could be to confine PIL primarily to those cases where access to justice is undermined by some kind of disability. The other useful device could be to offer economic disincentives to those who are found to employ PIL for ulterior purposes. At the same time, it is worth considering if some kind of economic incentives—e.g. protected cost order, legal aid, pro bono litigation, funding for PIL civil society, and amicus curie briefs—should be offered for not discouraging legitimate PIL cases.

PIL serves a vital function in Indian democracy by redistributing justice and providing access to courts through the lowered threshold. When confronting a fractured Parliament, a bewilderingly complex bureaucracy, legislative inertia and severe corruption, judiciary can effectuate systematic change.⁴⁴ One also hopes that this mechanism may serve as a model for other developing nations to pursue in their efforts to address the needs of the disadvantaged sections of society, thereby contributing to the prosperity of democratic institutions.

Even with all the demerits, PIL remains to be an essential tool of the judicial system as it aids to serve justice to the weaker sections of the society who are usually not well informed about their rights. Hence, it can be a mighty tool for positive social change. It will considerably contribute to good governance by keeping the government accountable and also enable the civil society to create social awareness about human rights.

⁴³ Dr. G.B. Patil, *Public Interest Lawyering and Social Transformation in India*, AIR 2011 Journal 217.

⁴⁴ Zachary Holladay, *Public Interest Litigation in India as a Paradigm for Developing Nations 572 (Indiana Journal of Global Legal Studies, Volume 19, Issue 2) 2012.*