



The Concept of Public Interest Litigation in India: A Dynamic Approach

Amit Baisoya

Assistant Professor, *Trinity Institute of Professional studies* Sector 9, Dwarka, Dwarka Institutional Area Near Metro Pillar No.1160, Dwarka, New Delhi, Delhi

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ABSTRACT

Public Interest Litigation is that the public in general are interested in exoneration of some right or enforcement of some public duty. Such litigation has hitherto been entertained by Supreme Court under article 32 and by High Court under article 226 of the constitution of India not only from association or organization but also from individual in a common cause. The Public Interest Litigation Regulation Bill, 1996, introduced in Parliament by Sri Suresh Pachuri as a private Bill was one such effort. After discussion, the bill lapsed. While there was difference with Parliament on this, the judiciary also felt that PIL was useful and that the judiciary could regulate and monitor PIL and prevent its misuse. In matters where the Legislature and the Executive fell short of their roles, the PIL could be very useful. In matters relating to the environment and poor, unorganized people and also where enlightened citizens took up important social issues, PIL is very important. It provides one more forum for social justice. Though certain sections are against it, and they have generally vested interests, PIL provided much relief to many sections of the people on several issues of importance. Hence, in spite of some opposition, it has become to be an important pillar of India's judicial system and it continues to grow nationally in importance. I have discussed and explained in this paper the meaning, nature and scope of PIL. I have also explained the principles evolved by the Supreme Court for PIL, misuse or abuse of PIL. Besides, I have explained the social dimension of PIL.

Introduction

There is a socioeconomic movement generated by the judiciary to extend justice, called public interest litigation. What has been the extension of this petition for the

weaker section of the society, even after independence, they are wandering from door to door for justice. In fact it is the process of getting justice to those people of the society. A Public Interest Litigation (PIL) is not defined in any law, statute or act. It is filed before the courts under

^{*}Corresponding author.

E-mail address: amitbaisoyatips@gmail.com (Amit Baisoya)

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the Constitution of India to protect public rights and promote general welfare. The concept of PIL originated in India from the power of judicial review. A PIL is filed in a court not by the aggrieved person but by a private person interested in public welfare and betterment of society. PIL is a vital tool to enforce the human rights of those people who do not have access to them due to poverty or such other reasons. It also helps judicially monitor state institutions like protective homes, prisons, asylums, etc. PIL aims to facilitate common people to access the courts to seek redress in legal matters. It is a crucial tool for social change, accelerating the attainment of justice and law and upholding the rule of law.

Those who cannot reach on the doors of the courts, due to socio-economic poverty. It represents a high benchmark of judicial creativity and sensitivity towards the problem of the weak and vulnerable of the society. It is a strategy to bring justice to the weak, motivated by the judges, led by the judges. It is a means to clear the complex task of mediating between social reality and social change, which represents an integral extension of the judicial process. Through which this judicial strategy is being implemented as an instrument of social development and social change to extend social welfare. Disgraced confined workers, victims of custodial violence and rape, prisoners, humiliated inmates of foster care, children of untouchables and prostitutes, and many other oppressed and victimized groups are attracting the attention of the courts. The judge is making all kinds of serious efforts to get justice for the Indian suffering society. In fact, the judiciary has been successful to some extent in providing justice to the Indian society after independence, and continuous efforts are also going on in this direction.¹

The idea of PIL came from *action popularis* of the Roman jurisprudence, which allowed court access to every citizen in matters of public wrongs. In India, inspiration to court for the development of this strategy come from the oath which is judge takes to defend the constitution, where in socio-economic justice and equal court access are the prime principles. Thus this innovative strategy provides tool in handoff public-spirited individuals and social group for combating exploitation and injustice and securing for underprivileged segment of society, their social and economic entitlements. Today it has become a powerful weapon of the judicial activism for involvement in social political and economic affairs of the society².

¹Paramanandsingh, *Public Interest Litigation*, 239, Annual survey of Indian Law Institute, 1992.

²State of H.P. v. Parent of a student of medical college, (1985) 2 SCC 169: Air 1985 SC 910.

ORIGIN OF PIL

The term “Public interest litigation’ was first time used by Prof. Abram Chayes in 1976 to refer to cases seeking social change through court directives, which articulated public norms of governance and also enforced the public norms. The council for public interest law set up by the Ford Foundation in USA”, defined PIL as follow: “Public Interest law is the name that has recently been given to efforts to provide legal representative to previously unrepresented groups and interest. Such efforts have been undertaken in the recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interest. Such groups and interest include the poor, environmentalist, consumers, racial ethnic minorities and others.”³

The SAL (Social Interest Litigation) and PIL are terms interchangeably in India. This concept of SAL in India was initiated by Krishna Iyer, J. in the year 1976 in *Mumbai Kamgar v. abduallahai*⁴ observed :

“Test litigation, representative actions, *Pro Bono Publico* and like broadened forms of legal proceeding are keeping with the current accent to common man and necessary distantness to those who wish to bypass the real issues on merits by suspect reliance on peripheral, procedural shortcomings....Public interest is promoted by a

spacious construction of locus standi in our social economic circumstances.....taking liberties with individualization of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker less litigation, consistent with fair process is the aim of adjective law.”⁵

P.N. Bahgwati. J. in one of his articles contributed under the caption ‘Social Action Litigation’: The Indian Experience;

“The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For the purpose it is necessary to make procedural innovations in order to meet the challenges posed by this new role of an active and committed judiciary. The submit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country has liberated itself from shackles of Western thought, made innovative use of power of judicial review, forged law tools, devised

³ Balancing the scale of Justice-Financing Public Interest Law (1976) pp 6-7 quoted by S.K. Aggarwal Public Interest Litigation in India, A critique. P.2

⁴ AIR 1976 SC 1455.

new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups....during the last four or five years however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice starved millions of India.”⁶

MEANING AND DEFINITION OF PUBLIC INTEREST LITIGATION

PIL as it is means which serves public interest. It is a litigation which vindicates a right of a large number of people, possibly millions or redresses a wrong done to them. In PIL, the *sine qua non* is that it must be for the enforcement of rights of others not the individual grievances of the petitioner. Even if the petitioner is interested in the matter, it must be an interest which he/she shares with other members of the public. The relief, if granted must benefit large section of society not a handful of individual.⁷

The expression ‘Public Interest’ means an act beneficial to the general public. It means action necessarily taken for public purpose. However, the requirement of public interest may vary from case to case. In *State of Bihar v. Kameshwar Singh*⁸ held that “public interest is not capable of exact definition and has not a rigid meaning and is elastic and take it colors from the statutes and what is public interest today may not be a decade later. Public interest is thus a dynamic concept. Its amplitude is wide. Anything which affects directly or indirectly or is likely to affect the rights and interest of the general public or any section of it would be public interest.”⁹

*Janta Dal v H.S. Chaudhary*¹⁰“the expression litigation means a legal action including all proceeding therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression PIL mean a legal action initiated in a court of law for the enforcement of public interest or general interest or class of interest are affected. PIL also works against the denial of those rights or the causation of those wrong, which are by their very nature diffuse, so that no individual is affected enough in his individual capacity, but all individual are affected collectively.”¹¹

⁵ Ibid.

⁶ Dr. B.B.ManiTripathi, “Jurisprudence legal theory” 433 (Allahabd Law agency, Faridabad, 22edn. 2018)

⁷ Ibid.

⁸ AIR 1952 SC 252: 1952 SCR 889: 1952 SCJ

⁹ ibid

¹⁰ (1992) 4 SCC AIR 1993 SC 892

NATURE OF PIL

PIL is not litigation in the real sense of the term; it is in fact a challenge and an opportunity to undo historical injustice done by a few too many. Therefore it is totally different from ordinary litigation which is essentially of an adverse character. In SAL or PIL litigation is not considered as a battle to be won but a disease to be cured. Unlike ordinary litigation, the purpose of PIL is not to enforce the right of one person against the other, but to extend justice to the deprived sections of the society and, hence, PIL is not so much for the benefit of an individual as it is for a class. Unlike ordinary litigation, it is largely preventive not punitive, corrective not compensatory and the, hence, involves the court and the petitioned on long term basis, as justice is done through directions. Such litigation involves wider questions of a law and policy and provides opportunity to the petitioner to determine the course of litigation.¹²

The liberalization of locus standi

The origin of PIL lies in the liberalization of *Locus Standi* by the Sc. For PIL to exists someone else should be able to approach the courts on behalf of others who cannot come and person cannot be person aggrieved in the traditional sense.

In *A.B.S.K. Sangh (Rly) v. Union of India*¹³It was held that “the AkhilBhartiyaSoshitkarmachari, though an unregistered association could maintain a writ petitioner under art.32 for the redressal of a common grievance. Access to justice through ‘class action’, ‘public interest litigation’ and ‘representative proceeding’ is the present constitutional jurisprudence, Krishna Iyer,J., declared.”

In *S.P.Gupta v. Union of India*¹⁴(judge transfer case), Speaking for majority Bhagwati,J., stated the rule as follow:

“where a legal wrong or legal injury is caused to a person or to a determinate class of persons by a reason of violation of any constitutional or legal right and such person or determinate class of person is by reason of poverty, helplessness of disability or socially or economically disadvantage position unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction or order writ in the High Court under article 226 or in case of breach of any fundamental Right to this court under article 32. The SC will not

¹¹ ibid.

¹²I.P.Massy, “Administrative Law” 481 (Eastern Book Company,Lucknow, 8th edn.2012)

¹³ AIR 1981 SC 298.

¹⁴ AIR 1982 SC 149

insist on a regular writ petition to be filed by the public spirited individual espousing their causes and seeking relief for them. The SC will readily respond to a letter addressed by such individual acting *Pro Bono Publico*. It is true that there are rule made by the SC prescribing the procedure for moving it for relief under article 32 and they require various formalities to be of one through by a person seeking approach it. But it must not be forgotten the procedure is but a handmade of justice and the cause of justice may never be allowed to be wasted by any procedural technicalities. The court wills, therefore, unhesitant cast aside the technical rule of procedure in the exercise of its dispensing power and treat the letter of the public-minded individual as writ petition and ct upon it”¹⁵

However, the court said that it would have to be decided from case o case as to whether the person approaching the court for relief has sufficient interest and has not acted with mala fides or political motives. Bhajwati,J., held:

“We would, therefore hold that any member of the public *sufficient interest* can maintain an action for judicial redress for public injury arising from breach of public duty or form violation of some provision of the constitution or the law seek enforcement of such public duty and observance of such constitutional or legal provisions. This is absolutely necessary for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objectives.” What is the sufficient interest to give standing to a member of the public would have to be determined by the court in each an individual case. No hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting sufficient interest has been laid down.”¹⁶

*People Union for Democratic Rights v. Union of India*¹⁷“PIL is a strategy arm 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. PIL, as we conceive it, is essentially a co-operative and 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 section of the community and to make social justice reach them.”

*Bandhua Mukti Morcha v. Union of India*¹⁸: “Justice Bhagwati in that case explained the nature of PIL as follow “PIL is not in the nature of adverse litigation but it is s challenge and opportunity to the government and its officers to

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ AIR 1982 SC 1473 :(1982) 2 SCWR 202.

¹⁸ AIR 1984 SC 802: (1984) 3 SCC 161.

¹⁹ (1988) 4 SCC 26: AIR 1988 SC 2211

²⁰ (2005) 5 SCC 598.

make basic human rights meaningful to the deprived and vulnerable section of community and to assure them social and economic justice which is the significant tune of our constitution”.

*Sheela Barse v. UOI*¹⁹“the proceeding in PIL are intended vindicate and effectuate the public interest by prevention of violation of the right, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantage cannot themselves assert and quite often not even aware of those rights. The technique of public interest litigation serves to provide an effective remedy to enforce theses group rights and interest.”

*Ashok Lanka v. Rishi Dixit*²⁰“even in fact moved the HC in private interest and for redressal of his personal grievances; court can precede to inquiry the state of affairs of the subject of the litigation in the interest of justice and in furtherance of justice. Individual conduct of the party would not be of any relevance when the court entertain PIL and construed not only provisions of the statute but also had taken into consideration the subsequent event that means acquiescence or acceptance *sub-silentio*”.

ABUSE AND MISUSE OF PIL JURISDICTION

Having regards to the misuse and abuse of his jurisdiction by some persons or organization for consideration other than public interest, the courts have cautioned to deal with the matters appropriately in exercise f discretion in giving necessary directions. Many a times, issues are raised in the name of PIL to embarrass political opponents or to terrorize rival business house or to earn media attention. The PIL should not be encouraged where one seeks to serve a political interest or personal interest or publicity.²¹

In the name of PIL, filling petition to further one owns interest has been strongly discouraged by SC. In a case where petition was filed in the guise of PIL but it was meant to serve petitioner own interest, the court held it to be abuse of the process of law and the petitioner was directed to pay the cost of appeal.²²

The SC has been held that a PIL would only be entertained if a segment of public interested and the petitioner is not aggrieved in his individual capacity alone.²³

SOCIO-ECONOMIC DIMENSION OF PIL

Judges decide PIL cases according to the social picture. Consequently the social dimensions of PIL have been expanding. PIL has covered a large number of areas in socio-economic sphere. Accordingly, a large number of

cases have been taken decided by the court in response to socio-economic challenges. Such cases are sought to be classified and discussed under the following sub-heads:

(1) Policing criminal justice: PIL cases have been decided for introducing reforms in the system of criminal justice issues involved in this area relate to under trials, detenu, convicts and prisoners. It was the inhuman and torture committed by the police on the accused inside the prison walls which attracted the interest of the court. In *Hussainara Khatoon v. State of Bihar*²⁴ The SC decided that the state was under obligation to provide free legal aid and it's implicit on the guarantee of Art. 21 to the person concerned. If the circumstance of the case and the needs of justice so require, provided of course the accused person did not object to the provision of such lawyer.²⁵

(2) Labour welfare and liberate of bonded labour: PIL cases have been decided to promote the labour welfare and liberate bonded labour. "In *People Union for Democratic Rights v. UOI*²⁶ Known as *Asiad* case, a petition by one public spirited organization on behalf of persons belonging to socially and economically weaker sections employed in the construction work of various projects concerned with the Asian Games, 1982 complaining of violate of various provisions of labour laws was held maintainable.²⁷ The pitiable condition of bonded labour came up for the consideration before the court in *Bandhua Mukti Morcha v. UOI*, the SC laid down that when an social action is initiated in the court through PIL alleging the existence of bonded labour the

(3)

(4)

Government should welcome it as it may give the government an opportunity to examine whether bonded labour system exists and as well as to take appropriate steps to eradicate that system."²⁸

(5) Protecting of woman from exploitation: woman have been subject of exploitation in a male dominated society, they are subject of sale and purchase for the abuse, misuse and sexual exploitation. Their sufferings reached the court through PIL by social activist. The inhuman treatment and custodial violence to the woman in police lockup was brought to the court in *Sheela Barse*²⁹. "In this case the writ petition was based on a letter addressed by sheela Barse, a journalist, complaining of custodial violence to woman prisoners whilst confined in the police lockup in the city

²¹ B.L. Wadhwa, "Public Interest Litigation" 86 (Universal law Publishing Co., New Delhi 3rdedn 2012).

²² *Sivamoorthy v. university of Madras* (2001) 10 SCC 483

²³ *Guruvayoor Devswami Managing Committee v. C.K. rajan*, 2003 7 SCC 546. ²⁴ AIR 1978 SC 1369

²⁵ Ibid.

²⁶ AIR 1982 SC 1473

²⁷ Ibid.

of Bombay. The court directed to the welfare of prisoners, the inspector general of prison in Maharashtra to issue a circular to all superintendent of police to send a list of all under trial prisoners to the legal aid committee of the district. In addition to this court issue numerous directions for the protection."³⁰

In *Gourav Jain v. Union of India*³¹ the court has issued a number of directions to the government and various social organizations for taking up appropriate measures for prevention of woman from taking prostitutes and rehabilitate their children through welfare measures³².

In *vishaka v. State of Rajasthan*³², "the court has laid down exhaustive guidelines to prevent sexual harassment of working woman in places of their work until legislation is enacted for this purpose by the legislature"³³.

(6) Alleviation of poverty and ameliorating measures: Numerous PIL petitions have been decided by the court in the interest of justice of the poor. There are large segment of Indian population who live below the poverty line and unable to afford a square meal for a day. They are compelled to take shelter on the footpath and sleep thereon. The political slogan of ROTI KAPRA AUR MAKAN has been illusion. In this dismissal context when other two organs of state legislature and executive failed to improve their lot, the judiciary showed its sympathy and look up their matter through PIL. The issue of pavement and slums dwellers and their tight to livelihood came up before the court for consideration in pavement dwellers case. In *Olga Tellis v. Bombay Municipal Corporation*³⁴ order was issued to the pavement dwellers for eviction from the huts. Against this order a petition was filed against eviction. The court took a humanistic view in order to minimize their hardship involved in the eviction it directed the municipal corporation to remove them only after the end of the current monsoon season.

(7) Protecting Public Health: The health is one of the most important basic needs after the food, cloth and shelter. Attention of the court has been drawn to this social interest in the health through PIL petition. In *state of H.P. v. Parent of Student*³⁵ "The SC allowed a guardian of student of a medical college for complaining about ragging of junior students by senior students of the college. The court entertains the PIL and issued directions to the concerned authorities to take steps so as to prevent ragging." In

²⁸ AIR 1984 SC 802

²⁹ *Sheela Barse v. state of Maharashtra* AIR 1983 SC 378

³⁰ Ibid.

³¹ AIR 1990 SC 292.

³² AIR 1997 SC 611

³³ Ibid.

³⁴ AIR 1986 SC 180

³⁵ AIR 1985 SC 910

*Parmanandkatara v. Union of India*³⁶“The SC issued direction to the to the government that every injured citizen brought for medical treatment should instantaneously be given aid to preserve life and only thereafter the procedural criminal law should be allowed to operate negligent death to injured person”.

(8) Prevention of Corruption in Public Administration: PIL is involved to ensure fairness in the administration. On account of corrupt officials and their corrupt working, it is impossible to translate ideals of justice into socio-economic reality as desired in e consultation and welfare legislation. It is trite saying that the “power corrupts and absolute power of corrupts absolutely”. The discretion and arbitrariness are concomitant to each other. In this situation there is more chance for the authorities to be corrupt. At the same time there is needed to check the corruption in public administration. The role of judiciary in the context becomes significant although, the court is required to function within its limits. At tomes in PIL cases the court transgressed this limit and put a rider on the corruption in public administration. The court questioned the licensing power of the executive. In *Chaitanya Kumar v. State of Karnataka*³⁷“this case has political history but those concerned for the rule of law must remain unmindful and unruffled by the ripples caused by it. The legality of the action of the government of the state of Karnataka in awarding contracts for bolting arrack to the appellants and others was questioned in the HC of Karnataka and the order of the state Government was struck down on the ground that it was unlawful, arbitrary, capricious, in flagrant violation of the rule of law and as shocking the judicial conscience. One of the person to whom the bottling contract has been awarded by the government has preferred these appeals under art. 136 of the constitution.”

EPISTOLARY JURISDICTION

Epistolary jurisdiction which is free from the procedural techanalties is invoked and exercised in PIL. In exercise of this jurisdiction, even a letter addressed to the HC and SC as the case may be is treated as writ petition if he matter is concern public interest.

PIL AND RES JUDICATA: The Supreme Court has held that constructive *res judicata* is not applicable in each and every public interest litigation irrespective of its nature, its impact on the society and the large public interest involved. Between competing rights, public interest an individual interest, public interest would override³⁸.

CONCLUSION

There is no doubt that importance of PIL cannot be ignored in our country where the law enforcing agencies like police are involved in violation of fundamental rights of citizens. Insufficient and passive law enforcing machinery is a born to the law violators. India has been largely accused on the international front for the violation of human rights. A large number of Indiapopulations is poor and lives in the rural areas, for tem such a remedy will be a penance for all their problems. But at the same time the court should be cautions so that frivols litigation is not entertained. But we must be careful to see that the member of the public, who approaches the court in case of this kind is acting bonafide and not for personal gain or private profit or political motivation or other oblique consideration. They court must not allow its process to be abused by politician and others.

³⁶ (1996) 1 SCC 753

³⁷ AIR 1986 SC 825.

³⁸ V. Purushotam Rao v. UOI (2001) 10 SCC 305.