

## BURNISHED LAW JOURNAL

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### MISUSE OF PUBLIC INTEREST LITIGATION

#### INTRODUCTION

Public Interest Litigation is the form of litigation which is undertaken so as to secure the interest of Public. Judiciary in India earlier tackled only those cases whereby the parties involved were either directly or indirectly affected or involved in the subject of the litigation. However over a period of time the Supreme Court started accepting those cases which related to matters of public interest. Thus, the Public Interest Litigation can be rightly said to be the relaxation to the traditional rule of Locus Standi. Public Interest Litigation is a way of using the law so as to advance human rights, equality and also to raise issues of broad public concern<sup>1</sup>. In *People's Union for Democratic Rights v Union of India*<sup>2</sup>, the Supreme Court said 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. It 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 seeing relief against the other and that other opposing such claim or relief. A Public Interest Litigation is brought before the court for the purpose of enforcing, promoting and vindicating public interest which means that violation of the legal and constitutional rights of the poor and disadvantaged strata of the society should be redressed and not allowed to be went away unnoticed<sup>3</sup>. It is a unique phenomenon of the Indian Constitution which has no parallel of it in any legal system of the world and has come to acquire a great significance in the modern matters of concern for the legal fraternity<sup>4</sup>.

The concept of Public Interest Litigation was in its nascent stage in India in the 1970s. Justice P. N. Bhagwati and Justice V.R. Krishna Iyer are the pioneers of the concept in the Indian legal system. They resorted to foregoing of the traditional rule of Locus Standi in the late 1970s and

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<sup>1</sup>*About Public Interest Litigation*, The PILS Project, <https://www.pilsni.org/about-public-interest-litigation> (Last visited on 4 May 2020, 05:00 PM)

<sup>2</sup>AIR1982SC 1473

<sup>3</sup>Ibid

<sup>4</sup>Shinsky P.S., *Abuse of Public Interest Litigation-A Major Threat on Judicial Process*, Legal Service India, <http://www.legalserviceindia.com/article/1469-Public-Interest-Litigation.html> (Last visited on 5 May 2020, 03:35 PM)

1980s for providing justice to the poor section of our society. The very first case of Public Interest Litigation in India after the relaxation of the Locus Standi Rule is Hussainara Khatoon v Union of India<sup>5</sup>. This PIL was filed by an advocate in relation to a newspaper article published in the Indian Express. It brought the attention of the judiciary to the plight of thousands of trial prisoners who were at that time languishing in the Bihar Jail. This PIL resulted in the release of 40,000 thousand under trial prisoners at that time and led to the emergence of right to speedy trial as a fundamental right intrinsic to the right to live with dignity under Article 21<sup>6</sup>. An essential landmark case related to development of Public Interest Litigation is S.P. Gupta v Union of India<sup>7</sup>. In this case the Supreme Court said that the members of a public or social group could file PIL in cases of infringement and violation of legal and constitutional rights.

### **REASONS OF MISUSE OF PUBLIC INTEREST LITIGATION**

As clearly depicted from a plethora of cases, Public Interest Litigation has been largely misused by various people for their private and political interests. The desperation among some for instant fame between poor people leads them into filing PIL on useless and non-serious matters. Some file PIL on personal matters under the garb of public interest as PIL is a cheaper way of seeking justice<sup>8</sup>. The courts had realized that care has to be taken so as to ensure that PIL remains to be Public Interest Legislation and not Political Interest Legislation or Private Inquisitiveness Legislation<sup>9</sup>. A section of people consider Public Interest Litigation as a way of becoming the hero of the masses. Such malicious motives degrade the judicial system of our nation. The relaxation of the traditional rule of Locus Standi in cases of PIL led to the inflow of many unnecessary and non-serious public interest litigation being filed. The courts find it to be a cumbersome process to look into the genuineness of the PIL filed. Earlier there was a lack of proper guidelines for regulating the filing and acceptance of PIL by the Supreme Court and High Courts. This further made it easier for certain section of people to exploit this legal provision.

### **MEASURES TO PREVENT MISUSE OF PUBLIC INTEREST LITIGATION**

Tracing the abuse of PIL, the Law Commission recommended for the formulation of a Code of Conduct for effective regulation of the PIL cases in India. An attempt was made by the

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<sup>5</sup>AIR 1979 SC 1369

<sup>6</sup>The Indian Constitution, 1950

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

<sup>8</sup>Ashok Kumar Pandey v State Of Bengal , Writ Petition ( CrI ) 199 of 2003

<sup>9</sup>Shinsky P.S. , *Abuse of public Interest Litigation*, Legal Service India , <http://www.legalserviceindia.com/article/l469-Public-Interest-Litigation.html>

government to curb the misuse of PIL in the year 1996 when a private member bill was introduced in the Rajya Sabha which is the Upper House of the Parliament in India. The Public Interest Litigation (Regulation) Bill, 1996 made provisions for putting behind the bars and seeking damages from those who file frivolous PIL cases<sup>10</sup>. However the Bill was considered by the judiciary to be an attack on its independence. It also failed to gain the support of the different political parties which ultimately lead to the lapse of this bill.

The judiciary being well aware of the misuse of PIL has over time expressed its worry over it in a number of cases and has consequently laid down certain guidelines to tackle the menace. In some cases the courts have even filed the plaintiff for resorting to abuse of PIL for his or her personal gains<sup>11</sup>. The Supreme Court has also often criticized the various High Courts on the manner in which various PIL cases have been admitted by them. In *Janta Dal v H.S. Chaudhary & Ors*<sup>12</sup>, Jandian held the view point that only a person who is acting in a bonafide manner and has sufficient interest in the Public Interest Litigation proceedings can have a locus standi in such a case. Only such people can approach the Court so as to wipe the tears of the poor and the needy who are suffering from fundamental rights violation. Any vexatious petition under the color of Public Interest Litigation when brought before the court of law shall be out rightly refused and dismissed.

The case of *Chaitanya Kumar v State of Karnataka*<sup>13</sup> is the most cited and referred case of abuse of Public Interest Litigation in India. The legality of a government action was challenged in a High Court by the way of Public Interest Litigation. The government order was struck down as it was considered as arbitrary, illegal and shocking as to the conscience of the judiciary. The court stated that PIL cannot be encouraged as being indulged in besmirching the characters of others. However, it is also not possible for the Court to keep its eyes closed and persuade itself to uphold such actions of the executives which are mischievous in nature. The Court cannot shrink its duty and refuse a writ when perversion and arbitrariness are writ large. Hence in this case the Supreme Court upheld the decision of the High Court.

In *Ashok Kumar Pandey v State of West Bengal*<sup>14</sup>, the Court said that the judiciary has to be extra careful in seeing the ugly malice of personal gains hiding behind the garb of public interest. The Court also expressed its concern over the frivolous PIL cases affecting the speedy redressal of

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<sup>10</sup> Ashok H. Desai and S Muralidhar, *Supreme But Not Infallible- Essays In Honour Of The Supreme Court of India (2000)*, Pg 180

<sup>11</sup> *Janta Dal v H.S. Chaudhary* (1992) 4 SCC 305 ; *S.P. Anand v H.D. Dewe Gowda*, (1996) 6 SCC 734

<sup>12</sup> AIR 1993 SC 829

<sup>13</sup> AIR 1986 SC 825

<sup>14</sup> 2004 (3) SCC 349

justice to the genuine people. The Supreme Court also emphasized on its duty of discouraging the frivolous PIL cases by imposing appropriate fines as deemed fit as per facts of the case.

The Supreme Court has also laid down and compiled certain guidelines for managing those letters and petitions which it receives in the form of a Public Interest Legislature. These guidelines are based on a full court decision dated December 1, 1988 and have been further modified in 1993 and 2003 on the orders of the Chief Justice Of India . These guidelines lay down those category of cases<sup>15</sup> which are admissible as a Public Interest Litigation Case. They are:

1. Matters related to bonded laborers
2. Children who have been neglected
3. Issues related to non-payment of minimum wages of workers and exploitation of casual workers and complaints related to Labour law violations which are not individualistic in nature
4. Petitions from jail concerning matters like harassment , seeking release after spending fourteen years in jail , death in a jail , transfer and release on personal bond etc .
5. Issues related to harassment in police custody, death in custody of police and refusal of policemen to register a certain case .
6. Petitions against matters of atrocities committed on women mainly rapes , sexual assault , etc
7. Matters of harassment of villagers by their co-villagers and of members of the Scheduled Caste and Tribes and economically backward classes.
8. Petitions related to matters of environmental pollution , disturbance of ecological balance , drugs , adulteration of food , maintenance of culture and heritage of the country , antiques , forests and other matters which are considered to be of importance to the public of the country
9. Petitions filed by victims of riots
10. Family Pension

These guidelines also make mention of certain matters which cannot be admitted as a PIL case in the Court. Matters related to those of landlords and tenants , service and admission in various educational institutions cannot be admitted in the Supreme Court or High Courts as a PIL case. The

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<sup>15</sup> Supreme Court of India, Compilation of Guidelines to be Followed for Entertaining Letters/Petitions received in this Court as Public Interest Litigation, Pg 1-3

Public Interest Litigation Cell screens the various letters and petitions received in light of the aforesaid guidelines after which they are placed in front of that Supreme Court Judge who has been nominated by the Chief Justice of India<sup>16</sup> .

In 2003 the Supreme Court made certain essential changes in the guidelines . The Supreme Court made it compulsory to file an affidavit in support of the statements as contained in the petition whenever it is not too onerous a requirement. The Court established an essential guideline stating that if the matter is not the one mentioned in the PIL guidelines and no public interest is involved in it , then the same can be lodged after getting the approval to do so by the Registrar who is nominated by the Chief Justice of India .

Despite these guidelines and the Supreme Court repeatedly expressing its anguish on the misuse of Public Interest Litigation, the misuse of PIL seems to not end at least any time soon. The number of frivolous and non-serious PIL cases reaching the courts has not reduced as such. The main reason behind this is the fact that the very concept of Public Interest Litigation was based on the idea of flexibility of legal procedures. This makes it difficult for the Court to stick strictly to the guidelines for long.

## CONCLUSION

PIL was welcomed by the judiciary at the time of its inception as it was an effective way of providing justice to the poor and needy many of whom were totally oblivious to the fundamental rights guaranteed to them by the supreme law of the nation. PIL is also an effective manner of keeping a check on the actions of the executive. PIL also enables the various civil societies to participate in the decision making process along with the government. It also enables them to spread awareness among the citizens about the Human Rights.

However it has been clearly seen that PIL has been used by certain people of malicious intent as a back door for entering the temple of justice either to fulfill their private and political interests or to gain publicity by easy means. The Indian Courts have rightly recognized the evils of PIL and have undertaken certain steps to combat the issue. It is a herculean task for the Courts to filter out the genuine PIL cases from the plethora of the PIL cases filed every year. The Supreme Court has started imposing heavy fines in certain cases so as to send out a concrete message to the public regarding the attitude and approach of Courts in frivolous PIL cases.

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<sup>16</sup>Ibid

The Courts have however never thought of retracting the practice of filing PIL cases altogether due to the benefits it provides to the general public at large. For this very sake, the Courts have no qualms in dealing with the cases of non-serious and frivolous PIL cases. The judiciary in the welfare state of India has always held the viewpoint that no innocent shall under any circumstances receive punishment under law even if any guilty person escapes from the clutches of law in the process. Hence the Supreme Court and High Court have been dealing with the menace of misuse of Public Interest Litigation formulating various methods to control it so that the positives of this system do not lose their significance.

