

## EVALUATION OF PIL IN INDIA

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### PUBLIC INTEREST LITIGATION

Public interest litigation as the name suggests is the process of carrying out litigation for the favor of public interest and if we track down the origin of Public interest litigation in India we can say it emerged in 1976 *Kamagar Sabha v Abdul Thai*[1]. Public interest has been accepted in the High courts and in the Supreme Court of India. It must not be frivolous litigation. Thus, after giving freedom by relaxing the laws such as that earlier only the aggrieved party could file a PIL in the court but, now any person, a group of people or an organization can file a PIL in the court but, the PIL must qualify the pre-requisites.

Public Interest Litigation altogether is a very broad topic so the researchers would be narrowing down the research area to the jurisdiction of PIL in India only. PIL(s) have reduced the burden of the judiciary of India in providing Justice to the people and by the passage of time, the laws have been amended and have been relaxed. So, while it sets such a huge objective, the main question would be that what would be its merits and the demerits as well?

PIL(s) have been accepted in the courts in a prescribed manner but, in cases where the judges think that immediate action is required then the judges have even accepted the letters which have been sent by the individuals to the court addressing their issues. Well, is this legal? In India yes, a judge can even accept the letter as PIL and immediate action can be taken upon. The next merit which can be is that the cost for fighting a case in PIL will be cost efficient as it is not for personal gain and if it were for personal gain then such PIL would not be admitted in the court. So, these were the merits.

Talking about the demerits one would possibly think that what could possibly be the demerits of PIL. With the advent of relaxing laws in the state regarding the filing of the PIL in the court the PIL activists have found it a way of increasing the burden of the judiciary and by taking advantage of cost-efficient judiciary as compared to civil or criminal litigation.

A state as we see stands on the arms of the Judiciary and is dependent on it to seek justice. The main objective of every law set or stated in the Constitution is to set justice or we can say to

maintain equity but, if we see that the court can find a letter sent to it admissible enough to admit it as a PIL being filed in the court. The legislature on the other hand, to gain the upper hand argues that the judiciary cannot cross its boundaries to admit any letter sent to the court as a PIL but, if an immediate cause of action is required on the issue and no other body can set justice to it then judiciary without wasting time would admit that letter as a PIL.

## **EVOLUTION OF PUBLIC INTEREST LITIGATION IN INDIA**

Public Interest Litigation (PIL) is inspired by the principle enshrined in Article- 39A i.e. to deliver and protect prompt justice to the people. PIL may be filed by an individual in the Supreme Court or the High Court but if the person filing PIL has some personal interest in filing it then the Court may avoid entertaining these litigations, it may be filed by an individual for the sake of interest being involved of a large public.

In the year 1979, **Kapila Hingorani** filed a petition on behalf of the large number of prisoners being detained in the jails of Bihar, whose suits were pending in the Courts. It was filed by several prisoners being detained in the jails of Bihar. The case was filed in the Supreme Court before the bench headed by Justice P.N. Bhagwati.

This petition was filed by the name of the prisoner, Hussainara Khaton; hence the petition came to be known as Hussainara Khaton Vs State of Bihar[2]. In this case, the Supreme Court upheld that the prisoners should get the benefit of free legal aid and fast hearing. Because of this case 40,000 prisoners, whose suits were pending in the court, were released from the jail. There after many cases like this have registered in the Supreme Court, but the above-mentioned case was not the one where Court defined the term Public Interest Litigation (PIL) but the case which came later i.e. S.P. Gupta v. Union of India[3] was the case where it was defined by the Supreme Court in the Indian Context.

After these two cases being described under the ambit of Public Interest Litigation (PIL), there started a revolution in India of PIL being filed frequently into the Supreme Court as well as High Court of various States. The following cases referred below are the cases where the Courts specially the Supreme Court has accepted the letters sent in the name of anonymous personalities,

but the Courts have accepted these letters and have included these letters in the name of Public Interest Litigation, but at the same time the Court have also kept its view before the people that the letters would only be accepted in the case where the person filing it has bonafide intention and is seriously affected by a particular problem or his/ her right has been violated.[4]

**CASE- SUNIL BATRA (II) v. DELHI ADMINISTRATION (1980) 3 SCC 488**

In this case, the Court has accepted a letter from Sunil Batra, a prisoner from Tihar Jail, Delhi, complaining about the torture and inhumane practices he has been tolerating in the jail premises.

**CASE- MISS VEENA SETHI v. STATE OF BIHAR 1982 (2) SCC 583**

In this case, the Court treated a letter sent by the Legal Aid Committee at Hazaribagh, Bihar as a writ petition under Article- 32 of the Indian Constitution.

To confine the ambit of the Public Interest Litigation (PIL), the Supreme Court in the case-

**SP GUPTA v. UNION OF INDIA**



The Court held that the PIL would be confined to the legal wrong or legal injury being caused to a class/ group of persona or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organization which can take care of such cases.

**CASE- DATTAJI NATHURI THAWARE v. STATE OF MAHARASHTRA AND OTHERS (2005) 1 SCC 590**

Later in this case the Court thought that although this Litigation would be used by people in the case public wrong or their public right being violated and not in the case where private or individual right in question and also not for individual interest, but also the Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times

from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves.

As the time passed the Court came to the view that it is dangerous and is against a Secular and Sovereign Institute to entertain a case on a letter which has no identity of a person filing it, and most of the time being against a reputed person the proceeding may harm the reputation and status of that reputed person and some identity should be attached with the letter.

The Supreme Court adheres to this view in the case *Bandhua Mukti Morcha Vs. Union of India and Others*[5], and observed that the document petitioning the court for relief should be supported by satisfactory verification. This requirement is all the greater where petitions are received by the Court through the post.

## **PUBLIC INTEREST LITIGATION & JUDICIARY**

PIL was been introduced with the idea to protect public interest by the legislature. And in India, Judiciary has a major role in strengthening PIL. Judiciary acts as an important limb in the governance of the country. As, the courts faces fundamental choices or we can say dilemma in understanding new laws majorly about public institutions and their interest and rights in such cases Judiciary acts as a backbone. Country has adopted various fundamental norms and constitutional and statutory provisions that have built up governmental institutions directing their lead alongside that of citizens and commercial purposes, in a wide scope of subjects, for example, social welfare, mechanical relations, purchaser insurance, improvement of condition and assurance of woodlands, modern well being, security of landmarks monuments and spots of national significance, welfare of citizens of the country. Judiciary is one of the three major organs of the government which ensures the power of checks and balances.

On the other hand, there has been a limit to judicial expertise wherein the excessive power out of their area can't be exercised. It has been found out that many people have filed a PIL for their gain as it is a cheaper way to seek justice. In the case of "*Ashok Kumar Pandey v. State of West Bengal*[6]", the court in its judgment stated that if it is found out that the petition filed in the name of PIL, is to foster personal disputes, then the court should dismiss the case. Though PIL has served

its best to safeguard the interest of the public, it is now being misused and if not steps taken, then the mere purpose of implementing this doctrine, would be unproductive.

Judiciary in this way ensures over-reaching of its powers by the governmental authorities, executives etc. wherein in the matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is breaking the law, or is about to break the law in a way which offends or injures thousands of subjects, then anyone of them offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their judgment or in their decision can grant whatever remedy is may think fit in the interest of public at large. The contention that Public Interest Litigation comprises judicial overreach, bringing about poor or wasteful basic leadership, isn't generally a separation of powers guarantee. These reactions concerning the partition of powers are better given a role as concerns identified with the effect of the judicial intervention on sectoral administration. Writ petitions as PILs have been acknowledged by the High Court's under Article 20, Article 47, Article 32 and Article 226 of the Indian Constitution.

In most creating/ developing nations, the legal routine of environmental laws is feeble and the laws are hard to authorize and now and then uncertain. Public interest litigation has helped connect this hole. The Indian judiciary received the technique and adopted it in the form of Public Interest Litigation for the reason for environmental protection much of the time. The Supreme Court and High Courts shaded the hindrances against declining outsiders to exhibit the petitions for animals whose voices can't be heard. In Public Interest Litigation a public lively individual or organization can keep up requests for the benefit of poor and unmindful people. In this manner, Judiciary assumes the essential job in the protection of the environment as well.

### **GUIDELINES TO PREVENT MISUSE OF PIL**

The guidelines are the outcome of the case “State of Uttaranchal vs. Balwant Singh Chauhal<sup>[7]</sup>”. The guidelines stated in this case are as follows:

- The PIL should be genuine and Bonafide.

- Each High Court should formulate rules for encouraging genuine PILs and discourage PILs from having a malicious object.
- The court should, at the very beginning verify the credentials of the PIL before entertaining it.
- The court should be satisfied with the credentials of the PIL before accepting the PIL.
- The court should also ensure that the PIL placed before it involves a public interest or not.
- The courts should give priority to those PIL having larger public interest, gravity and urgency over other PILs.
- The court should also ensure that the PIL redresses a genuine public injury and no personal benefits.
- The court should further ensure that the PIL carrying ulterior motives should be disposed of with costs.

### THE DARK SIDE

As far as the researchers have understood the concept of PIL it can be filed solely in the interest of general public have led to the emergence of some new problems as well.

In India, there has been a long list of pending cases in the courts and the concept has somewhere increased the burden on the superior courts. The lack of judicial structure has increased the gap between the promise and the reality. In the last two to three decades the superior courts have received various petitions in the form of PIL wherein there has been cases that are not related to Fundamental Rights. The High Court and the Supreme Court have been approached to redress issues such as Privatization of sectors, the prohibition of Smoking in public places, Traffic rules and regulations, death due to starvation, etc. and the surprising fact is that the Supreme Court has had entertained some of these matters but not under PIL and interpreted the logical conclusions separately. In the case of Vishaka v. State of Rajasthan [8] writ petition was filed before the court seeking justice against the acts of sexual harassment at workplace. The court concluded it as a clear violation of Article 14, 19(1) and Article 21 of the Indian Constitution which ensures equality, right to carry out occupation and Right to life and personal liberty. The major rationale

behind supporting the PIL was to serve public interest but in late 1990's the very purpose was seen defeated many times.

It was quite difficult to distinguish and make a clear difference in the 'public' and the 'private' interest. PIL has been used by the people for their private interest agitating in the way for public interest. On the one hand, Courts have done enough to stop non-genuine PIL cases and similarly on the other side High Court and the Indian Supreme Court have been facing huge backlogs of cases. An attempt was also made to curb the misuse of the power wherein the Public Interest Litigation (Regulation) Bill was introduced in the Upper House of the Parliament i.e. the Rajya Sabha. The bill proposed the idea of putting the petitioner behind bars and to pay the damages in the case of false or not so genuine PIL was filed. But, the bill couldn't get majority support from the political parties and eventually it was dismissed.

It is difficult to curb the misuse of PIL as the process is flexible and the courts have opened the doors for speedy trial by relaxing the procedure and the same time the courts can't busybodies at the doors and make them available for the selected cases and the bodies.

## CONCLUSION

Public Interest Litigation, everywhere throughout the country, have not taken in all respects generous to such court choices instances have been seen where abuse and maltreatment of Public Interest Litigation can just make it stale and inadequate. Since it is a phenomenal remedy accessible at a less expensive expense to all citizens of the country, it should not be utilized by all litigants as a substitute for common ones or as a way to record serious and important complaints in the interest of the public at large. Public Interest Litigation is functioning as an essential instrument of social change. It is working for the welfare of each segment of society. It's the sword of each one utilized just for taking justice. The advancement of this authentic instrument demonstrated gainful for the creating country like India. Public Interest Litigation has been utilized as a technique to battle the atrocities winning in the public arena. It's an institutional activity towards the welfare of the needy or weaker class of the general public.

Judiciary has utilized the instrument of Public Interest Litigation viably for the reason for environmental protection. Be that as it may, the judiciary has appeared in denying false petitions

looking to propel private interests through Public Interest Litigation as clear from the choice of the Supreme Court. Henceforth, PIL has turned out to be an incredible weapon in the hands of higher courts for protection of condition and our Judiciary has positively used this weapon of Public Interest Litigation in most ideal way. Public Interest Litigation has been considered as the first attempt by a developing common law country to transgress from the aggressive extension of authorities practiced for centuries. It challenges the presumption that the most western the law, the better it must work for monetary and social improvement such law delivered in creating states, including India, was the advancement of immature men. Public Interest Litigation builds up another jurisprudence of the responsibility of the state for constitutional and legal violations unfavourably influencing the interests of the weaker sections of the society.



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[1] 1976 AIR 1455, 1976 SCR (3) 591

[2] 1979 AIR 1369, 1979 SCR (3) 532

[3] AIR 1982 SC 149

[4] Janata Dal Vs. H.S. Chowdhary AIR 1993 SC 892

[5] 1984 AIR 802 , 1984 SCR (2) 67

[6] 18 November, 2003

[7] 18 January, 2010

[8] AIR 1997, SC 301



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