

Public Interest Litigation

By

Sanam Mansoor, Law Student

‘Public interest litigation’ means ‘litigation for the protection of public interest’.

Public interest litigation has gained its importance very recently. This concept is now being discussed and debated by the Bar, Bench, Jurists, Intellectuals, Journals, Academicians and General Public.

Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi (standing required in law) to file a case and continue the litigation and the non affected persons had no locus standi to do so. And as a result, there was hardly any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other

However, this entire scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. The splendid efforts of Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were instrumental of this juristic revolution of eighties to convert the Apex Court of India into a Supreme Court for all Indians. And as a result any citizen of India or any consumer groups or social action groups can approach the Apex Court of the Country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation.

This litigation is not in the nature of adversary to government and its functionaries to make human rights useful and meaningful to the deprived sections of the community and, to make it a point that social and economic justice is assured to the deprived, weaker, vulnerable sections of the community, which is the basic function of the constitution.

The Apex court has risen to the occasion in case titled Bandhua Mukhti Morcha v. Union of India (AIR 1984 SC 802). This Judgement lays down when and how to present a Public Interest Litigation and what is its scope. This judgement has given new

dimensions to the provisions of the constitution. The Courts have to exercise caution that under the garb of PIL private interest litigation is not agitated.

Public Interest Litigation focuses on Policy Orient Cases, where a decision will affect much number of people or advance a major law reform objective. It is designed to provide legal services to the undeserved groups on matters of immediate concern.

In India, Public Interest Litigation has been used for various types of cases in order to obtain relief for-

- Amelioration of the detenues.
- Under trial prisoners.
- Conditions of detenues (women) in protective homes.
- Medical check-up of inmates.
- Relief for the victims.
- Release of the bonded labour.
- Enforcement of labour laws etc.
- Full and direct payment of wages to the workers.
- Prohibiting the employment of children in construction work.
- Against custodial violations.
- Enforcement of general equity.
- Protection from sexual harassment.

The area in which PIL's contribution has been significant is environmental law. M.C. Mehta, a petitioner in person was a pioneer in bringing a large number of issues to the Court concerning environmental and ecological degradation. These includes the issues arising out of –

- The leak of oleum gas from a factory in Delhi - M.C. Mehta v. Union of India (1987) 1 SCC 395.

- Pollution in Delhi
- The danger to Taj Mahal from Mathura refinery
- Regulation of traffic in Delhi
- The degradation of Ridge area in Delhi-

The dangers of unchecked industrialisation have compelled Court to come down heavily on industry and develop the "Polluter Pays Principle". This principle has been applied in the cases concerning shrimp farms, tanneries, and chemical industries.

The other principle the Court has evolved is the "Precautionary Principle" which enjoins the State to anticipate the dangers of the use of hazardous technology. This Principle meant that the environmental measures taken by the State authorities must anticipate, prevent and attack the causes of environmental degradation.

Public Interest Litigation provides means to redress public wrongs which remain un-remedied.

The question of locus standi has no role to play. The individuals or groups suffering from adverse administrative action may not themselves be in a position to undertake litigation to vindicate their interests because of poverty, ignorance, illiteracy, fear and other forms of social economic disabilities. Justice Bhagwati has pointed out the uses of Public Interest Litigation in case titled S.P. Gupta v. Union of India (AIR 1982 SC 149). The Supreme Court has observed as under:

" Whenever there is a public wrong or public injury caused by an act or omission of the State or Public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury."

The Apex Court has also laid down that it should be ensured that a person invoking the jurisdiction of the writ has invoked the same bonafidely and not for personal gain or private profit or political motivation or for other reasons in a case titled Peoples Union for Democratic Rights v. Union of India (AIR 1982 SC 1473).

The Apex Court has laid down tests in various judgements reported in 1998 (9) SCC 589, 1996 SCC 734, AIR 1993 SC 892, AIR 1982 SC 1473, AIR 1979 SC1360.

PIL is essentially to ensure the mandate of the Constitution or law which can be achieved to advance the cause of public interest nature. The filing of Public Interest Litigation has so widened as to include problems relating to inhuman prison conditions, legal aid, speedy trial, basic needs, human dignity, protection of the environment, etc.

The stretch of Public Interest Litigation as evolved by the Apex Court is to bring justice within the easy reach of the poor, disadvantaged section of the community. Mere letters addressed to the Court have been treated as writ petitions in cases of gross violation of fundamental rights, thus led to the evolution of '**Epistolary Jurisprudence**'. By PIL, the real public spirit should be encouraged for the redressal of the grievances of the public but at the same time due care and caution is to be exercised.

The Apex Court has laid down in the case titled as Chairman and M.D. BPL. Ltd. v. S.P. Gururja and others (2003) 8 SCC 567, when and how to invoke jurisdiction of Court by the medium of writ of Public Interest Litigation. It is profitable to reproduce Para 28 of the said judgement herein:

"28. In Balco Employees Union (Regd.) v. Union of India and others (2002)2 SCC 333, it was held:

"Public Interest Litigation, or PIL as it is more commonly known, entered the Indian Judicial Process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the Court so as to secure justice for the poor and the weaker sections of the community who were not in the position to protect their own interests. Public Interest Litigation was intended to mean nothing more than what words themselves said viz. "**Litigation in the interest of the Public**".

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in the following words:

“PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).
- Where the affected persons belong to the disadvantaged sections of the society (women, children, bonded labour, unorganised labour etc.).
- Where judicial law-making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).
- Where administrative decision related to development is harmful to the resources such as air or water.

There is, in recent years, a feeling which is not without any foundation that Public Interest Litigation is now tending to become Publicity Interest Litigation or Private Interest Litigation and has a tendency to be counterproductive.

PIL is not a pill or panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public –spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There, have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same".

While going through this judgement, this Apex Court has cautioned that PIL is not just for the sake of publicity interest litigation or private interest litigation and tendency of being counterproductive should be avoided.

It is not a remedy for all wrongs but it is meant to protect basic human rights of the weak and disadvantaged and it would be invoked on behalf of the persons who on

account of poverty, helplessness or economic and social disabilities could not approach the Court for relief.

The Courts should exercise restraint and ascertain that this remedy is not being misused. It should be aimed at redressal of genuine public wrongs or public injury. It has been emphasized that the Courts should not exercise this jurisdiction lightly but should exercise it in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities. In service matters, it has been ruled that PIL should not be entertained.

It may be stated that the expression Judicial Activism gives a sour taste. It reflects as if the Judges are committing some legal or constitutional impropriety. It is the pessimistic approach. The Courts through PIL have, no doubt, introduced a new dimension to our public law. The legal culture incorporated, has brought about perceptible changes in the administrative culture. Also, it suits the current needs and current conditions. No legal system can ever be static. **Prof. Harold J. Laski** rightly explained:

“Law like life, has its periods of change and its periods of conservation, it is not a closed system of eternal rules elevated above time and place. The respect it can win is measured by the justice it embodies, and its power to embody ideals of justice depends upon its conscious effort to respond in an equal way to the widest demands it encounters.”

Judiciary, being the sentinel of constitutional and statutory rights of the people, has a special role to play in the constitutional scheme. It is vested with jurisdiction to review legislations and administrative decisions on the touchstone of the Constitution. Economic, social and political issues are, to a great extent, subject to judicial scrutiny. It, therefore, becomes its duty to render constitutional adjudication in tune with the objectives contained in the Preamble and the Directives of Part IV.

Recently a requirement of ‘Locus Standi’ of petitioner was a matter of consideration before the Apex Court in a case titled as Ashok Kumar Pandey v. State of West Bengal and others, reported in AIR 2004 SC 280. The Apex Court has cautioned that PIL is a weapon which has to be used with great care, caution and circumspection and Judiciary has to be very careful to avoid malafide interests.

Where there is material to show that a petition styled as a Public Interest Litigation is nothing but a camouflage to foster personal dispute, said petition is to be thrown out. Public Interest Litigation which has now come to occupy important field in

the administration of law should not be “Publicity Interest Litigation” or “Private Interest Litigation” or “Politics Interest Litigation” or the latest trend “Paise Income litigation”. If not properly regulated and abuse averted it also becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public interests involved in the litigation and not merely an adventure of a knight errant or poke one’s nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of Justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extra-ordinary jurisdiction. A person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but nor for personal gain or private profit or political motive or any oblique consideration.

A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective.

Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/ or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of Public Interest Litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

The Court must be careful to see that a body of persons or member of public who approaches the court is acting bonafide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by the rejection at the threshold, and in appropriate cases, with exemplary costs.

The Court has to be satisfied about:

- (a) Credentials of the applicant.

- (b) The prima facie correctness or nature of information given by him.
- (c) The information being not vague and indefinite.

The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests:

- (i) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and
- (ii) Avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions.

The Court has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

The Court has laid down tests i.e. Court has to be satisfied about the bonafides of the applicant, correctness of the information and gravity and seriousness of the information. The purpose behind it is that nobody should be allowed to invoke the jurisdiction of PIL in order to earn some gain. This means that he should not be allowed to indulge in reckless allegations.

In order to avoid misuse of PIL, the Apex Court has laid down that in case a person has filed a writ petition with malafide interests, he should be burdened with heavy costs.

In the judgement reported in AIR 2004 SC 280, the Apex Court has laid down that PIL being an important field in administration of law should not be misunderstood as "**Publicity Interest Litigation**" or "**Private Interest Litigation**" or "**Politics Interest Litigation**" or "**Paise Income Litigation**" and the tests have been laid down in the said judgement. The Court has laid down that extra ordinary care should be exercised in order to avoid misuse of PIL.

In December 2007, A bench comprising Justices **A.K. Mathur and Markandeya Katju** said,

“Judges must know their limits and must not try to run the government. They must have modesty and humility and not behave like Emperors. There is a broad separation of powers under the Constitution and each organ of the State- the Legislature, the Executive and the Judiciary- must have respect for the others and not encroach into each others domain.”

Pointing to orders passed on subjects like, identifying building to be demolished, legality of constructions in Delhi, nursery admissions, number of free beds in hospitals on government land and several such other decisions, it held that the Courts have **“apparently, if not clearly strayed into the executive domain or in matters of policy”**.

They said that,

“these were matters pertaining exclusively to the executive or legislative domain. If there is a law, Judges can certainly enforce it but Judges cannot create a law and seek to enforce it”,

“The Judiciary should only act as Alarm Bell, it should ensure that Executive has become alive to perform its duties”, the bench said adding that it was unwilling to accept the “Justification” given for Judicial Encroachment- that the other two organs are not doing their jobs properly. “Even assuming if this is so, the same allegation can be made against the Judiciary too because there are cases pending in courts for half a century”.

These remarks came as the Apex Court set aside a decision of the Punjab and Haryana High Court wherein it had directed creating a post of tractor-driver and then regularising an employee, who had been working as Mali (gardener) in the Aravali Golf Club.

“Courts cannot direct creation of posts”, the Judges said.

Seeking to end the confusion created by the observations of a two-judge bench against “Judicial Activism and overreach”, the Supreme Court said that they were not binding a ruling that evoked mixed reactions.

“We are not bound by the two-judge bench order”, said a three-judge bench headed by **Chief Justice K.G. Balakrishnan** while entertaining a PIL on the condition of widows in Vrindavan and Mathura in UP.

Following the two-judge bench judgement, another two-judge bench of the Supreme Court had referred a PIL to a larger bench citing doubts over its jurisdiction.

The Chief Justice of India asserted that it was the job of Apex Court to intervene whenever citizen's fundamental rights were under threat.

Chief Justice Balakrishnan has defended the judiciary's interventions by saying that,

"it is incumbent on the Supreme court to take necessary steps to alleviate the dismal conditions of people".

The chief Justice also said that the Apex Court is the "Doyen of the PIL" and that it is crucial to safeguard civil liberties. He also said that "PIL is one of the many innovations that give life to the Supreme Court being the bulwark for maintenance of democracy and a bastion of civil liberties".

Justice J.S. Verma, a former Chief Justice, rightly observed: "If today the judiciary is forced to stretch its arms beyond what appeared to be its intended limits, it is with a view to undoing the excesses of the executive backed by a stifling majority in the legislatures. Once the legislatures start behaving with grace and the executive learns to manage within its genuine powers, the judiciary could also shrink back to its intended size" The state of equilibrium among three limbs of the State is undoubtedly ideal structure.

In discharging its high constitutional obligations, the judiciary has earned the popularity as the saviour of democracy, protector of Rule of Law and an effective agency for social transformation. Access to justice has become considerably easy through PIL.

Any attempt to curb the PIL through legislative measures to stifle the voice of justice, would be betrayal of the Constitution and the people of India. It would not only retard the assertion of vindication of citizen's fundamental rights, but also put a subtle clog on the Court's power of judicial review, an integral and essential feature, the basic structure of the Constitution. "**Common Law could not have grown**", holds **Mr. Justice A.M. Ahmadi**, "if judges had hesitated to enter the arena of judicial activism". The PIL is an instrument that allows citizens to bring unscrupulous individuals to task and secure justice for the common man.

In the words of **Mr. Justice Kuldip Singh**, PIL is a "**potent weapon**" in the hands of the judiciary and that it is for the judiciary to see that promises made to the people in the Constitution are fulfilled and the PIL is one of the mains to attain this. The learned Judge holds that PIL is part of the power of judicial review granted to the judiciary

under the Constitution. The Courts, he says, have thus come into these matters under the constitutional mandate.

Justice A.S. Anand, a former Chief Justice of India, has recently observed that PIL has come to stay, it fills an important gap and the results have been to partly mitigate people's sufferings and to partly sensitise the bureaucracy.

CONCLUSION:

Public Interest Litigation is a weapon which is in the armoury of Judiciary but the same weapon is to be used with great care and caution. It is just to check the administrative action which is not in the interests of public or weaker section of the society or poor or neglected sections of society.

It is for the activist Judge to see how to grant relief and what type of relief should be granted. The relief can be granted for the enforcement of right of public though there may be no direct and specific injury to the person who has filed the petition.

The Judge has to make distinction between meddlesome interlopers and a public benefecator. The Judge has to keep in mind the social perspective, the public interest and the provisions of the Constitution. It is for the Judge to create new social economic rights while interpreting Fundamental Rights and Directive Principles of State Policy.

It is the duty of the Judge to see what the jurisprudential basis of PIL is. It is also the earnest duty of the Judge to exercise great care and caution in order to avoid the misuse of the same. Incase, it is misused, that will amount to violating the basic foundation of the Constitution.

In PIL, it all depends upon the good sense of the Judge. Judges have to apply their mind as they have discretionary powers of entertaining PILs.

Justice J.S. Verma has rightly said that the," the need is to prevent misuse of the PIL and not to criticise the process. And this is what the courts will have to do so that misuse of PIL is prevented and proper use of it has not to be blunted. Every innovation takes time to get into proper shape. Any Attempt To Curb It **Would Be To Throw the Baby With The Bath Water**. It is primarily for the Courts who devised this procedure to practise self restraint and to also devise proper checks and balances to ensure that even persons who want to misuse it are not able to do so.