



Public Interest Litigation: A Critical Review

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ABSTRACT

In this research paper the researcher has focused on the introduction of Public Interest Litigation in the Indian Judicial System. The innovative procedure of law has been introduced for betterment of the socially and economically deprived. Paper includes the positive impacts and negative impacts it curtails on the Indian society and explores the ways someone can use the judicial instrument for securing the rights of the deprived sections of society. The paper discusses about the writs that can be used to take the legal remedy. Also, includes certain landmark cases and judgments that show up the necessity public interest litigation has in the Indian society. The paper aims at critically analyzing the public interest litigation instrument introduced by the judicial system. The researcher also comments on the present scenario of the public interest litigation and aims to show its importance by discussing relevant case laws that made an impact on the judicial system. The conclusion part lays an overview of the research work done and tries to suggest the necessary steps to be taken or the loophole that exists, which needs to be mended.

INTRODUCTION

Public Interest Litigation: The term refers to any legal action conducted by the court of law for the benefit of the masses, irrespective of race, caste, religion, sex, or income, or any of them; for the purpose of enforcing the rights and seeking for the remedy. PIL is a new evolving concept arising in the field of adjudication. The main reason of formation of public interest litigation is to shatter the walls of existing technical, legal and procedural constraints and aim at providing justice to specially the poverty struck, illiterate who are unable to access the legal remedies provided by the judicial system for the infringement of their

fundamental rights and legal rights. It is a framework designed to make the judicial system free from formalistic and technical connotations and provide justice irrespective of wealth and social influences.

Public Interest Litigation can be filed on the grounds for –

1. Violation of human rights of the poor
2. Conduct of the government
3. Performance of public duty by municipal authorities
4. Violation of Fundamental rights
5. Environmental issues

The rule of “*Locus Standi*”, that the person, whose right is violated or is infringed can alone file a petition to seek redressal of the damage, has been considerably relaxed by the Supreme Court of India and permits public interest litigation through “Public-Spirited Citizens” for the enforcement of constitutional as well as legal rights. These citizens can move to the court of law and file the petition for public interest without having any personal interest under-

1. Supreme Court - Article 32 of the Constitution of India
2. High Court- Article 226 of the Constitution of India
3. Court of Magistrate- Section 133 of the Code of Criminal Procedure

BACKGROUND

Public interest litigation, an international movement, having its origin in the American and British system of laws has travelled far beyond those frontiers and with some variations and inculcation of indigenous features, entered other common law jurisdictions such

as India. Initially, however, this movement commenced in the United States wherein during the late 1960s there emerged certain public interest law firms to provide legal representation to unrepresented or underrepresented groups or interests. This firm specialized in different disciplines such as environment, consumerism, civil liberties, minority rights etc.¹

In India, the revolutionary change into judicial system was introduced by Justice P.N Bhagwati and Justice V.R Krishna through the cases of Fertilizer Corporation Kamgar Union; and S.P. Gupta vs. Union of India. (AIR 1982 SC 149) popularly known as "JUDGES TRANSFER CASE".

Justice Krishna Iyer in the Fertilizer Corporation Kamgar Union case enumerated the following reasons for liberalization of the rule of Locus Standi:-

1. Exercise of State power to eradicate corruption may result in unrelated interference with individual's rights.
2. Social justice wants a liberal judicial review administrative action.
3. Restrictive rules of standing are antithesis to a healthy system of administrative action.
4. Activism is essential for participative public justice²

Which enables a public-spirited citizen to move to court in the interest of the common citizens.

In the case of S.P. Gupta v Union of India, the Supreme Court made the jurisdiction clear and observed:³

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court

¹<https://www.sdpi.org/publications/files/W5-Public%20Interest%20Litigation.pdf> last visited on 11/07/2018 at 13:00

²<http://law.galgotiasuniversity.edu.in/pdf/issue6.pdf> last visited on 13/07/2018 at 17:30

³*Supra 1*

for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

Public interest litigation was indeed a native recipe for making socio-economic justice accessible to all. Justice Bhagwati explains:⁴

"The weaker sections of Indian humanity have been deprived of justice for long years; they had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights, and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice."

The Indian Judicial system was willing to extend its helping hands to the underprivileged and exploited to get the benefits of the rule of law and secure its interests and rights. The extended help from the judiciary was not just limited to fight the social elite but also to fight against the mighty government. Justice Bhagwati, declared:⁵

"When the Court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor and the underprivileged continue to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the Court certainly can and must intervene and compel the Executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realise their social and economic rights.... It is vital

⁴*ibid*

⁵*ibid*

for the maintenance of the rule of law that the obligations which are laid upon the executive by the Constitution and the law should be carried out faithfully and no one should go away with the feeling that the constitution and the law are meant only for the benefit of a fortunate few and have no meaning for the large numbers of half-clad, half-hungry people of this country."

In cases of public interest litigation the jurisdiction of courts have been increased and the rule of *Locus Standi* been relaxed making it possible for public-spirited citizens to approach the courts.

THE 2 FACES OF PUBLIC INTEREST LITIGATION

Positive

The most important contribution of PIL according to me is bringing the courts to the disadvantaged sections of the society. The revolutionary judicial system has proved to be effective for the prisoners, bonded labourers, women, children and scheduled tribes/castes.

Public interest litigation is an inexpensive source of getting remedy as the court fees is very nominal for the cases filed under PIL.

Protection of Human Rights is made possible through this system through the cases of public concerned issues such as – environmental issue, consumer welfare issues etc.

It acts as instrument to increase demand fairness, promote rule of law, increase transparency, fight corruption in administration and enhance the accountability of the government sector and executive sector.

The Indian judiciary, courtesy of PIL, has helped in cooling down a few controversial policy questions on which the society was sharply divided. One could think of the controversy about the reservation of seats for SCs/STs and other backwards classes in employment or educational institutions, the government policies of liberalisation and privatisation, and the contested height of the Narmada dam as examples of this kind of contribution.⁶

⁶<https://pdfs.semanticscholar.org/8530/2cf2447c26d50a78a322b03f1af93a5e9fdd.pdf> last visited on 14/07/2018 at 13:00

Acts like a watch keeper on the executive sector and if executives fail to act like they were supposed to, then it comes into play and lets judiciary take the control.

An important use of public interest litigation is to make public and scrutinize hidden or obfuscatory information, including cost of potential social programs, which the state and corporate entities on occasion have reasons to exaggerate or hide.⁷

PIL enables judicial monitoring of State institutions such as juvenile homes, jails, asylums etc, and helps courts to keep a watch on their administration and management. For protection of human rights in these institutions the court takes over the administration.

Devising new techniques of fact-finding. In most of the cases the court has appointed its own socio-legal commissions of inquiry or has deputed its own official for investigation. Sometimes it has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or experts to inquire into human rights violations. This may be called Investigation Litigation.⁸

The Indian Judicial System has earned public confidence and established its legitimacy in the society and has earned public respect across the nation.

One positive contribution of PIL in India, which has extended outside the Indian Territory, deserves a special mention. The Indian PIL jurisprudence has also contributed to the trans-judicial influence—especially in South Asia—in that courts in Pakistan, Sri Lanka, Bangladesh and Nepal have cited Indian PIL cases to develop their own PIL jurisprudence.⁹

Negative

The phenomenal growth of Public Interest Litigation in India has given to various other litigations in the garb of Public Interest Litigations. It is not far from the truth to say that in many cases, these public interest litigation are in fact nothing but Publicity Interest Litigations or Politically Interested Litigations. Taking advantage of the Judiciary's desire

⁷<http://www.indiaenvironmentportal.org.in/files/Public%20Interest%20Litigation%20in%20India.pdf> last visited on 14/07/2018 at 17:30

⁸<http://www.legalserviceindia.com/article/I273-Public-Interest-Litigation.html> last visited on 15/07/2018 at 10:00

⁹*Supra* 6

to render justice to the downtrodden, many a time interested parties, camouflaging themselves as Public interested personalities, have instituted litigations before courts espousing clandestinely their personal or publicity interest. If the Judiciary does not lay down a parameter within which it should entertain Public Interest Litigation, it is likely that the noble cause for which the Judiciary has developed this concept is likely to denigrate the Judiciary.¹⁰

Since it is an instrument that is inexpensive many people have started using it as a tool to harass others by filing frivolous cases against them at very nominal fee as compared to private litigations.

The judiciary oversteps its jurisdiction by exercising its control over other pillars of the constitution and acting against their workings.

The judicial system is already backlogged with pending cases and the increased number of public interest litigation cases including most of them to be of frivolous nature has made the working of judiciary really slow. The wrong PIL's waste the energy and time of court as well as the public and violates their right of speedy trial and justice.

There lies no proper system which separates the good intention PIL's from the PIL's filed with malice. The Indian judiciary system lacks the no. of judges required to serve such a huge population and has already a huge number of backlogged cases making it more difficult for focusing at public development and thus has to cater so many frivolous cases along with the correct ones that aim to secure the rights of human beings.

Writs used for filing the PIL's

One can file a PIL to the Supreme Court Of India, under Article 32 of the Constitution of India or before the High Court of State under Article 226 of the Constitution of India with their writ jurisdiction. The five types of writs available are-

1. Writ of Mandamus:

The English meaning of the Latin term is "WE COMMAND". The writ allows the superior court to issue an order to its lower court, public authority or tribunal to perform some act that falls under its duty.

¹⁰<https://www.nls.ac.in/students/SBR/issues/vol4/401.pdf> last visited on 15/07/2018 at 16:00

The writ is issued to make sure that public duties are performed and proper enforcement of private rights that are withheld with public authorities. Basically, it is a writ that reminds a public official to do an act which he forgot to do. But the writ cannot be claimed as a right and the discretionary power lies with the court.

2. Writ of Habeas Corpus:

The term means "Let us have the body". It plays as one of the most important writ for personal liberty of someone as when used the writ allows the arrested person to be produced in front of the Magistrate and if the court finds his detention to be illegal, issues an order for his release.

3. Writ of Prohibition:

A writ of prohibition is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice. It is issued by Supreme Court to inferior courts for the purpose of preventing inferior courts from usurping a jurisdiction with which it was not legally vested, or in other words to compel inferior courts to keep within limits of their jurisdictions. Thus, the writ is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction.¹¹

4. Writ of Quo-Warranto:

The English meaning of the term is "By what warrants?". It is a writ issued to restrain a person acting as a public officer which he is not in actual or is not entitled to be. To prevent from illegal assumption of any public office.

5. Writ of Certiorari:

The literal meaning of the term is "Certified". The writ is issued by the Supreme Court to the inferior courts or tribunals to transfer the case to SC or any other superior authority for its proper consideration of the case. This writ is also used for quashing of any order by the Supreme Court or High Court of State that is passed by any inferior court.

Judicial Trends –

In the case *Simran Singh Mann v Union of India*¹² the question of law was whether a third party to a case

¹¹Dr. J. N Pandey, *The Constitutional Law of India*, page no. 630, 50th edition, 2013

¹²(1992) 4 SCC 653.

can challenge the conviction and sentence awarded to the convicts through PIL, having no Locus Standi to do so. It was held that the one filing the PIL had no locus standi as he was totally a stranger and also not authorised by the prisoners.

In Bihar Legal Support Society v Chief Justice of India¹³, the court of law made it clear that the introduction of public interest litigation system has been done by the courts with a vision to make justice come within the reach of the poor and downtrodden sections of the society.

In Hussainara Khatoon v State of Bihar¹⁴, in Bihar a large number of prisoners were kept in jails without having trails against them. Public interest litigation was filed for the benefit of the prisoners and for protection of their fundamental rights. The court held that Speedy trial is an integral and essential part of the fundamental right to life liberty under Article 21 of the Indian Constitution and considered the constitutional duty of the courts to enforce the right of accused.

In M.C Mehta v State of Tamil Nadu¹⁵, the court held that no children should be employed in match factories concerned directly with the production of matchsticks. They can be employed in packing process but not in manufacturing process as it is hazardous in nature and also every children working should be insured for sum of Rs.5000 with premium paid by the employer.

In Gaurav Jain v Union of India¹⁶, the court rejected a public interest litigation demanding the provision for providing separate schools and hostels for children of prostitutes, as the demand was not in the interest of such children. The application was made under Article 32 asking for such provisions to be made.

In M.C. Mehta v Union of India¹⁷, the petitioner filed the Public interest litigation asking the courts to order closure of Tanneries at Jajmau near Kanpur, which heavily polluted the sacred river Ganga. The court of law declared a date stating all the tanneries to install proper refinery system to stop pollution and if the

tanneries failed to do so, the court ordered their shut down.

In Delhi Judicial Service Association v State of Gujarat¹⁸, the case relates to the subject of protection of dignity and honour of courts, the court for the first time sent five police officers including I.P.S officer to the jail as they were guilty for criminal contempt of Judicial Magistrate Court. As they hand-cuffed him and also tied him to a rope on allegation of being drunk.

In Rudal Shah v State of Bihar¹⁹, in this case the court awarded a compensation of Rs. 30,000 to the petitioner who had to suffer being in the jail for 14 years due to the irresponsible nature of the state authorities.

In National Federation of Blind v U. P. S. C.²⁰ The Supreme Court held that the visually Handicapped will be eligible to write the civil services examination.

One of the best features of Public Interest Litigation is that it helps in Finding the SCAMS happening in the country like- Hawala Scam, Fodder Scam in Bihar, St. Kits Scam, Uria Scam and Ayurvedic Medicine Scam and Illegal allotment of government houses and Petrol Scam, these scams were uncovered by Public Interest Litigation.

CONCLUSION AND SUGGESTIONS

The inclusion of Public Interest Litigation in the Indian Judicial System has proved to be a boon for the society. It has bridged the gap between the judiciary and the poor and downtrodden section of the society. Also it directly effects the upper sections as in the form of PIL's filed for the environment issues, consumer welfare issues etc.

The established principle of "Locus Standi" seemed to get violated by the public interest litigation but the ruling of the Supreme Court made the boundaries of the maxim wide and stretched and included or expanded the boundaries for public interest litigation. Any Public- Spirited Citizen can approach the court without any of his personal interest in the case for the benefit of the society at large, for securing their rights and make sure they are shielded by the law.

¹³(1986) 4 SCC 767

¹⁴AIR 1979 SC 1369

¹⁵ AIR 1991 SCC 417

¹⁶ AIR 1990 SC 292

¹⁷ (1987) 4 SCC 463

¹⁸(1991) 4 SCC 406

¹⁹(1983) 4 SCC 141

²⁰(1993) 2 SCC 411

The current phase of Indian Judicial System is not very good as judges are overburdened with cases as there are very few judges to handle the burden of such a big population. Also, due to the lack of basic structure of PIL which differentiates between frivolous cases and the real cases, the courts are filled with more of PIL cases filed with malice intention. Thus a proper structure is needed that filters the PIL's filed rather than specific courts to be made for specific jurisdiction of PIL cases to be file within the country.

The Public Interest Litigation System in India seems to be under-achieving as it has the potential to cater the society but due to improper structure of its it has under-performed and also caused difficulties to the courts and public. If PIL evolution continues then surely it will fulfil all the needs of the society and also become one of the best tools of the Judicial System.

