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## PUBLIC INTEREST LITIGATION IN INDIA

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### ABSTRACT:

*Serious human rights violations mainly authored by the state and its different agents go unprosecuted and unpunished due to limitations attributable to the incompetence of mechanisms and institutions. Idyllically, such mechanisms and institutions should have been influential in the accomplishment and enforcement of human rights necessities enshrined in constitutions and other laws. Frequently, victims of violations of human rights locate it difficult to approach the courts due to illiteracy, unawareness, lack of financial resources, and holdup in disposal of cases. Justice is an idea that affirms social equality against any kind of favoritism or abuse out of social class or any other cause. It is a concept involving fair, moral and impartial treatment of all people who faces unfairness in some or the other way. In India Supreme Court and high courts have create a way out when they opened new avenue for public spirited people and groups or organizations to take up the causes of people pretentious by violation of their rights-including human rights. Public Interest Litigation generally known as PIL is a tool in the form of legal action initiated in a Court of Law regarding a matter which concerns public interest. Its aim to convert the society and paves the way for the removal of various social injustices such as environmental pollutions ,sexual harassment, monetary frauds and other issues etc. It's the sword of every one used only for taking the justice. In this framework it becomes necessary to critically consider and assess the role played by judiciary in enforcement of human rights through public interest litigation. Public interest litigation is a new evolving concept with potential to rescue and consolation the deprived sections, enabling them to seek redressal of their grievance and get their due rights and entitlements. Viewing public interest litigation in this viewpoint, we can dispute that it is no less than a rebellion in judicial administration aimed at dismantling the unfair and exploitative indulgence and empowering the poor and humble to get their due share in national wealth and power. The objective of this paper is to study the Public Interest Litigation (PIL) meaning, purpose and procedure.*

**KEYWORDS:** Public Interest Litigation, Cases, Justice, legal



## INTRODUCTION

India is a great country. All the people of this country and the people of other countries have praise for this land. Indian culture is one but full of diversities.<sup>1</sup> Public interest litigation or PIL has played such a very important role in the justice rescue system that our judicial system could barely achieve those objectives through conservative method of litigation processes<sup>2</sup>. Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, profit and privileges upon poor, browbeaten and susceptible sections of the society<sup>3</sup>.” The final goal of Public Interest Litigation is social transformation, to change structured inequalities and power relations in society in ways that reduce the weight of morally immaterial circumstances, such as socio-economic status/class, race, gender, religion or sexual orientation<sup>4</sup>. The greatest contribution of Public Interest Litigation has been to increase the accountability of the governments towards the Human Rights of the poor. Public Interest Litigation interrogates power and makes the courts as people’s court<sup>5</sup>. PIL has been used as a plan to combat the atrocities prevailing in society. It’s an institutional inventiveness towards the welfare of the needy class of the society<sup>6</sup>. The concept of PIL concept is unique to the Supreme Court of India only and maybe no other Court in the world has been exercising this strange jurisdiction<sup>7</sup>.

### 1. MEANING AND DEFINITION OF PIL

According to Black's Law Dictionary- "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

Advanced Law Lexicon has defined 'Public Interest Litigation' as under:-

<sup>1</sup> T. K. Suman Kumar India: Unity in Diversity, Anmol Publications, 1992, p.15

<sup>2</sup> DR. Malabika Talukdar, "PIL and India: A Judicial Diagnosis", International Journal of Research (IJR) Vol.1, 2014, P.601

<sup>3</sup> Monika Garg, Satinder Kumar, Public Interest Litigation Boom & Bane, International Journal Of Multidisciplinary Education Research, Vol.1, 2012, P.216.

<sup>4</sup> Arusha Conference, Public Interest Litigation, Social Rights And Social Policy "New Frontiers of Social Policy" December 12-15, 2005, P.4/ <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Gloppen.rev.3.pdf>.

<sup>5</sup> [http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/16/16\\_chapter%207.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/16/16_chapter%207.pdf)

<sup>6</sup> Nikhil Jain Importance of Public Interest Litigation in India August 8, 2014 / [www.lawctopus.com/.../importance-public-interest-litigation-india/](http://www.lawctopus.com/.../importance-public-interest-litigation-india/)

<sup>7</sup> <http://supremecourtindia.nic.in/jurisdiction.htm>



"The expression 'PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected<sup>8</sup>."

According to BHAGWATI J in BANDHUA Mukti Morcha-V-Union of India

"Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice, which is the signature tune of our Constitution"<sup>9</sup>.

In Indian law, means litigation for the protection of public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party<sup>10</sup>.

The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others<sup>11</sup>."

## 1.1 TECHNICAL DEFINITION OF PIL

The term Public Interest Litigation (PIL) is calm of two words; 'Public Interest' and 'Litigation'.

The words 'Public Interest' mean "an expression which indicates something in which the general public or the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are

<sup>8</sup>Justice Bhandari Public Interest Litigation : Definition, Origin & Evolution : Supreme Court, February 5, 2011./ <http://www.legalblog.in/2011/02/public-interest-litigation-definition.html#sthash.jFkMY4WT.dpuf>

<sup>9</sup> AIR 1984 S.C

<sup>10</sup>Mohd Haris Usmani,PublicInterestLitigation, Article Constitutional Law, 1Dec.2008./<http://www.legalserviceindia.com/article/1273-Public-Interest-Litigation.html>

<sup>11</sup> DR. B.L. Wadhera, "Public Interest Litigation", Universal Law Publishing Co. Pvt. Ltd. New Delhi, 2009. P.144.

affected.” The word ‘litigation’ on the other hand means “a legal action, including all legal proceedings initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy<sup>12</sup>.”

In Stroud’s Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined as: "Public Interest a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest.

## 2. NATURE OF PIL

According to Justice V.R. Krishna Iyer, PIL is a process, of obtaining justice for the people and of expression people’s grievance through the legal process. The aim of PIL is to give common people entrée to courts and obtain legal redressal against injustice done to them<sup>13</sup>. Justice P.N. Bhagwati, opined that “PIL is not in the nature of opponent litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights significant to the deprived and susceptible sections of the community and to assure them economic and social justice which is the signature tune of our Constitution<sup>14</sup>.

The period after 1970s witnessed, due to these legal developments, a rapid growth of PIL on various issues such as protecting fundamental rights, environment and bribery and on several large-scale government projects<sup>15</sup>.

## 3. CONCEPT OF PIL

The traditional paradigm of the adversarial judicial process was designed for adjudication of disputes between private parties over contract, civil liability, property, or matrimonial matters. It was based on the following hypothesis: People are supposed to know the law and their rights, and the judicial process is the least desirable method of settling disputes and should be used only when other methods like inter-party settlement, conciliation, or mediation do not work<sup>16</sup>. Traditionally the right to approach the court for judicial redress is available only to a person who has suffered a legal injury because of violation of his legal right or legally

<sup>12</sup>Nikhil Jain Importance of Public Interest Litigation in India August 8, 2014 / [www.lawctopus.com/.../importance-public-interest-litigation-india/](http://www.lawctopus.com/.../importance-public-interest-litigation-india/)

<sup>13</sup>D. Mathew, Public Interest Litigation (PIL), Social Work Intervention with Individuals and Groups.P.311 [www.ignou.ac.in/upload/bswe-02-block6-unit-29-small%20size.pdf](http://www.ignou.ac.in/upload/bswe-02-block6-unit-29-small%20size.pdf)

<sup>14</sup>Vishnu, Article Public Interest litigation, lawyers club India, 01 sept 2010

<sup>15</sup>Dr. A.V. Raja And Francis Xavier. Economic Efficiency of Public Interest Litigations (PIL): Lessons from India, Munich Personal RePEc Archive, June 2005, P.9/ <http://mpa.ub.uni-muenchen.de/3870/>

<sup>16</sup>S. P. Sathe, “Judicial Activism: The Indian Experience”, Washington University Journal Of Law & Policy, Vol.6, 2001, P.63-64

protected interest<sup>17</sup>. While the earlier proposals and remedies were useful, they do not forever provide a practicable solution for India<sup>18</sup>. Under PIL, courts take up cases that concern not the rights of the petitioners but of the public at large. In the last two decades, PIL has emerged as one of the most powerful tools for promoting social justice and for protecting the rights of the poor<sup>19</sup>. 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<sup>20</sup>.

After the germination of the seeds of the concept of PIL in the soil of our judicial system, the rule of locus standi of PIL was nourished, nurtured and developed by the Apex Court of this land by a series of outstanding decisions<sup>21</sup>.

### 3.1 Important factors that have contributed to the growth of PIL in this country are as:

1. The character of the Indian Constitution. Unlike Britain, India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) provides a framework for regulating relations between the state and its citizens and between citizens inter-se<sup>22</sup>.
2. Costs are a major factor for most people considering litigation. By taking strategic cases PIL create a positive impact for a wide group of people without each of them having to go before the courts themselves, thus saving time and money for both victims and the court<sup>23</sup>.
3. The compulsion for the judicial innovations of the technique of a public interest action is the constitutional promises of a social and economic transformation to usher an egalitarian social order and a welfare state<sup>24</sup>.

## 4. ORIGIN AND HISTORICAL BACKGROND OF PIL

The post emergency era in the India has been the appearance of several voluntary groups led by and consisting of middle class educated persons who want to make use of the law in the interest of the poor. The middle class base

<sup>17</sup> Prabir Kumar De, "Public Policy and Systems", Pearson Education India, 2012, P.178

<sup>18</sup> Michael G. Faure, A.V. Raja, Effectiveness Of Environmental Public Interest: Litigation In India Determining The Key Variables, Fordham Envtl. L. Rev.239, 2010. P.4

<sup>19</sup> krishnaa, "Changes in Indian legal System with the introduction of Public Interest Litigation" Constitutional Law, December 16, 2012.

<sup>20</sup> Mr. Rakesh Kumar, "Public Interest Litigation (PIL)", Global Journal For Reseach Analysis, Vol.3, 2014, P.93

<sup>21</sup> Janata Dal vs H.S. Chowdhary And Ors. on 28 August, 1992 <http://indiankanoon.org/doc/1830927/>.

<sup>22</sup> [http://www.sit.edu/global\\_capacity/gpdocs/articles/india.html](http://www.sit.edu/global_capacity/gpdocs/articles/india.html),

<sup>23</sup> <http://www.pilsni.org/about-public-interest-litigation>

<sup>24</sup> Prabir Kumar De, "Public Policy and Systems", Pearson Education India, 2012, P.182





is clearly shown by the vocabulary used 'Public Interest Ligation', the term which has been directly imported from U.S.A.<sup>25</sup> Public interest litigation has been the site of considerable change and creativeness in the last forty or fifty years. It must be ranked, over that period, among the most significant innovations in the way in which individuals participate in domestic legal systems<sup>26</sup>. United States can be said to be the Originators of the concept of PIL. In 1876, the first legal and office was established in New York City in connection with famous Gideon's case of U.S.A.

The history of public interest litigation can be traced from the Roman law *actio populari* which permitted anybody in the society to initiate an action for a public describe in the Court of law or to bring an action of compensation or injunction for the safety of public property or a religious charitable property<sup>27</sup>. During the first couple of decades when, for all practical purposes, India was functioning as a *de facto* one party political system, the Supreme Court focused on promoting the values of constitutionalism, separation of powers and checks and balances over and in each organ of the State<sup>28</sup>. Till 1960s and seventies, the concept of litigation in India was still in its basic form and was seen as a private pursuit for the exoneration of private vested interests. Thus, the initiation and continuation of litigation was the privilege of the injured person or the aggrieved party<sup>29</sup>.

A political crisis during the leadership of Indira Gandhi had culminated in the declaration of the Emergency of 1975. Gandhi issued Presidential Order suspending the right of any person to move any court (and any pending proceedings) for the enforcement of rights conferred by Articles 14, 21 and 22 of the Constitution. The Emergency lasted until the general elections in 1977 when Indira Gandhi was removed from office and a period of important change ensued<sup>30</sup>. During years leading up to the 1975-77 state of constitutional emergency, the court was marginalized, its pro-property decisions were neutralized by constitutional amendments; there were

<sup>25</sup> Praveen Kumar Gandhi, "Social Action Through Law: Partnership for Social Justice" Concept Publishing Company, 1985, P.83.

<sup>26</sup> James Fowkes, "Civil Procedure in Public Interest Litigation: Tradition, Collaboration and the Managerial Judge", Cambridge Journal of International and Comparative Law, Vol.1, 2012, P.235

<sup>27</sup> Ibid

<sup>28</sup> P.N. Bhagwati & C.J. Dias, "The Judiciary In India: A Hunger And Thirst For Justice", NUJS L. Rev., Vol.5 2012, P.172

<sup>29</sup> Mohd Haris Usmani, Article Public Interest Litigation, Legal Service India.1Dec 2008. <http://www.legalserviceindia.com/article/1273-Public-Interest-Litigation.html>

<sup>30</sup> Christine M. Forster and Vedna Jivan, "Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience" Asian Journal of Comparative Law, Vol. 3, 2008, P.3&4





transfers of ‘uncommitted judges’; and the practice of supersession served to further erode judicial autonomy<sup>31</sup>. The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies. The higher Courts exercised wide powers given to them under Articles 32 and 226 of the Constitution<sup>32</sup> The Court further expanded access to justice by establishing “epistolary jurisdiction,” stating that judges would “readily respond” to letters or postcards alerting them to constitutional rights violations and treat such submissions as formal writ petitions for PIL purposes<sup>33</sup>.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360, the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of under trial prisoners languishing in various jails in Bihar. These proceeding led to the release of more than 40, 000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases<sup>34</sup>. The case opened the floodgates to a litany of public interest claims, assuming virtually every form, including media reports, formal briefs, and letters<sup>35</sup>

Public Interest Litigation came into full bloom in 1980 when the Apex Court realized its constitutional power of intervention which could be used to mitigate the misery arising from repressive practices of government, lawlessness and administrative negligence and indifference<sup>36</sup>. PIL was a unique and singular event in the judicial history of India when the judiciary extended its support to the poor and expressed its solidarity with them. It was, of course, a purely indigenous response to address the problems of the underprivileged and give them access to justice<sup>37</sup>.

<sup>31</sup> Sarbani Sen, “Public Interest Litigation in India: Implications for Law and Development”, Mahanirban Calcutta Research Group, 2012, P.7

<sup>32</sup> Justice Bhandari, Legal Blog: Public Interest Litigation : Definition, Origin & Evolution : Supreme Court Feb. 2011.

<sup>33</sup> Avani Mehta Sood, “Gender Justice through Public Interest Litigation: Case Studies from India”, Vanderbilt Journal Of Transnational Law, Vol. 41, 2008, P.839

<sup>34</sup> Advocate Jasper Vikas George Article Social Change and Public Interest Litigation in India, 08/03/2005./ [http://www.ngosindia.com/resources/pil\\_sc.php](http://www.ngosindia.com/resources/pil_sc.php)

<sup>35</sup> Zachary Holladay, “Public Interest Litigation in India as a Paradigm for Developing Nations”, Indiana Journal Of Global Legal Studies, 2012, P.559

<sup>36</sup> D. Mathew, Public Interest Litigation (PIL), Social Work Intervention with Individuals and Groups.P.311 [www.ignou.ac.in/upload/bwe-02-block6-unit-29-small%20size.pdf](http://www.ignou.ac.in/upload/bwe-02-block6-unit-29-small%20size.pdf)

<sup>37</sup> Bihar Legal Support Society v Chief Justice of India, (1986) 4 SCC p 768.



## 5. DEVELOPMENT OF PUBLIC INTEREST LITIGATION

The development of public interest litigation has been extremely significant development in the history of the Indian jurisprudence<sup>38</sup>. The Supreme Court of India stated that the traditional rule of standing insisting that only an aggrieved person having suffered legal injury by reason of actual or threatened violation of his rights or interests can bring an action, is contrary to the norms of justice as it restricts access to justice by a large section of the population who may not fulfill the condition of being aggrieved though they may have special or sufficient interest in the matter<sup>39</sup>.

Supreme Court divided the development of PIL in three phases

### a. First Phase:-

The first phase began in the late 1970s and continued through the 1980s the PIL cases were generally filed by public-spirited persons (lawyers, journalists, social activists or academics). Most of the cases related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women<sup>40</sup>. During this phase, the judiciary responded by recognising the rights of these people and giving directions to the government to redress the alleged violations. In short, it is arguable that in the first phase, the PIL truly became an instrument of the type of social transformation/revolution that the founding fathers had expected to achieve through the Constitution<sup>41</sup>. In *Sheela Barse v/s State of Maharashtra* Sheela Barse, a journalist complained of custodial violence to women prisoners in Bombay. Her letter was treated as a writ petition and the directions were given by the court<sup>42</sup>. In *Nilabati Behera v/s State of Orissa* the Court directed that for contravention of human rights and fundamental freedoms by the State and its agencies, a claim for monetary compensation through a writ petition under Article 32 or Article 226 is justified<sup>43</sup>.

### b. Second Phase

The second phase of the PIL was in the 1990s during which several significant changes in the chemistry of PIL took place. In comparison to the first phase, the filing of PIL cases became more institutionalized in that

<sup>38</sup> Justice Bhandari, Legal Blog: Public Interest Litigation : Definition, Origin & Evolution : Supreme Court Feb. 2011.

<sup>39</sup> S.P. Gupta v President of India, op cit, p 195.

<sup>40</sup> Shyam Singh Karki, Dr Tara Singh, "Critical Review On Public Interest Litigation In India", Kaav International Journal Of Arts, Humanities & Social Sciences, Vol.1, 2014, P.44

<sup>41</sup> Ibid P.45

<sup>42</sup> AIR 1983 SC 378

<sup>43</sup> AIR 1993 SC 1960



several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis<sup>44</sup>. In the second phase, the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution passed a number of orders and directions in this respect<sup>45</sup>.

In *M.C.Mehta v/s Union of India* case, the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken in order to prevent the damage being done to environment and the life and the health of the people<sup>46</sup>.

### c. Third Phase

It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance. In the 1990's, the Supreme Court expanded the ambit and scope of public interest litigation further. The High Court's also under Article 226 followed the Supreme Court and passed a number of judgments, orders or directions to unearth corruption and maintain probity and morality in the governance of the State<sup>47</sup>. The case of *Vineet Narain & Others v. Union of India* is an example of its kind. The Court in that case observed that "it is trite that the holders of public offices are entrusted with certain power to be exercised in public interest alone and, therefore, the office is held by them in trust for the people."<sup>48</sup>

## CONCLUSION

Though accepted and nourished initially by few justices of the Apex Court as an act of judicial welfarism, the institution of public interest litigation has by now branched out to protect the human rights of millions of diverse spheres of life, be it the field of environment, sexual harassment or compensation to victims. The emergence of intensified human rights movement in post emergency period gave impetus to evolution of public interest litigation and courts started positively responding to the human rights violation situations. Public Interest Litigation is working as an important instrument of social change. It is working for the welfare of every section of

<sup>44</sup>Surya Deva, "Public Interest Litigation in India: A Critical Review", *Civil Justice Quarterly (C.J.Q.)*, VOL 28, 2009, P.27.

<sup>45</sup> *State Of Uttaranchal vs Balwant Singh Chauhal & Ors* on 18 January, 2010

<sup>46</sup> AIR 1987 SC 1086

<sup>47</sup> Ibid

<sup>48</sup> *Vineet Narain & Others vs Union Of India & Another* on 18 December, 1997. Available From <http://indiankanoon.org/doc/1203995/>



society. In essence, the PIL develops a new Law of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. In the end I hope once expressed by Justice Krishna Iyer, “The judicial activism gets its highest bonus when its orders wipe some tears from some eyes”. PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries.



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