

Public Interest Litigation: Tool for protecting Human Rights in India

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Abstract

Public Interest Litigation (PIL) means litigation initiated for the protection of Public Interest. In India, PIL is now considered to be effective medium to protect the public interest in India. This Litigation is recognized as a distinctive feature of the Indian judiciary.

In the beginning the PIL was seen as a tool used by the public spirited citizens and social activist to drum up the judicial concern for the victimized and exploited groups from society. It is powerful weapon of judicial activism to protect Public interest. Conventional rule is that when a fundamental right of any individual is infringed, he or she can move to Supreme Court for its enforcement. But in country like India we are still facing the issue like illiteracy, poverty, unemployment etc. Then it is hard to believe that the people are aware that they can initiate action if their fundamental rights are infringed they can move to court. This is because of two reasons, one they are not aware about the enforcement of fundamental rights and they scare because they are not having financial background to initiate legal proceedings. Therefore the idea behind the concept of PIL was that the one who without his any personal interest wants to do something for the victimized or exploited group then he can initiate litigation in higher courts on behalf of them. But this action must be bonafide. The introduction of PIL is nothing but the revolution bought by Indian judges to strengthen the democracy.

Introduction

Public interest litigation is powerful tool for imitating legal action for public at large. The important factor is the legal action is not taken by the aggrieved party but by any other person who is not having any interest or frivolous intentions or suomotu by Courts in India. This power is conferred by the courts through judicial activism in India. Various land mark judgments given by Supreme Court and High Courts are showing the correct path to socially spirited persons from society to initiate action in Courts to enforce the rights of distressed who cannot approach court for protecting their rights guaranteed to them by Indian Constitution.

In India two distinguished judges of Supreme Court Justice V.R. Krishna Iyer and P.N. Bhagwati introduced this concept of PIL. This Public interest litigation petitions became the important channel for those who cannot reach to Courts to get justice. We say that law is equal for all and every one will get equal protection of law but many people were left out the main stream and justice denied to the. Therefore these two stalwarts from legal fraternity initiated this petitions so as to protect public interest. Their thought ignited many socially spirited minds to do something for the victimized, distressed groups without any personal gain, interest or mala fide intentions just to give them justice.

Precisely the case of HussainaraKhatoon V/s State of Bihar¹ in 1979 was first PIL, but prior to that in 1976 Justice Krishna Iyer opined in the case of Mumbai KamgarSabhavs M/s AbdulbhaiFaizullahbhai and others that "Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties where the remedy is shared by a considerable number, particularly when they are weaker."²

After the famous case of HussainaraKhatoon's case country saw the revolutionary judgments because of PIL Petitions. Supreme Court of India through revolutionary judgments showed that PILs are

¹1979 AIR 1369

²(1976 (3) SCC 832)-

really very effective to bring social change as it touches different social issues. Some of the judgments can be noted here such as,

The Supreme Court's landmark judgments like Kanpur's tanneries case *M.C. Mehta vs. Union of India*³, *Bandhua Mukti Morcha v. Union of India and Others*⁴ PIL for child labour, *Sheela Barse v. State of Maharashtra*⁵ PIL which explained the term 'life' in Article 21 covers the living conditions of the prisoners, prevailing in the jails. Then the PIL for street vendors' case *Olga Tellis v. Bombay Municipal Corporation*,⁶ Then famous case of (Taj Trapezium Case), *M. C. Mehta v. Union of India*⁷, One more revolutionary PIL prohibition on sexual harassment, *Vishaka & Others v. State of Rajasthan & Others*⁸. Then the controversial PIL i.e. *Ganga Water Pollution Case M.C. Mehta v. Union of India and Others*⁹. Very recently some revolutionary judgments are given by apex court, like *St Mohd. Haroon v. Union of India*¹⁰. This PIL was with respect to the communal violence in Muzaffarnagar and neighboring areas and emphasized on the deteriorating condition of victims of these riots.

*State of M.P. v. Narmada Bachao Andolan*¹¹ regarding resettlement and rehabilitation of people displaced because of construction of Sardar Sarovar Dam

*Laxmi v. Union of India*¹² the PIL highlighted the need for stringent regulations under the Poison Act, 1919 in respect of acid attacks on women.

In the 2014 *NALSA case*¹³, the court acknowledged that those who identify as the third gender or who are transgender are entitled to fundamental rights.

PIL petitions paved the way for social justice in India. People choose PIL because of low fees, speedy results, and relaxed procedural rules.

Meaning and Definition of PIL

As per Black's Dictionary 'Public Interest' means "*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 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.*"¹⁴

The idea of PIL was first time emerged in United States of America. This American concept of PIL was elaborately discussed by an Organization set up by Ford Foundation in USA. The organization was named as "The Council for Public Interest Law". As per this Organization Public Interest Law is nothing but the efforts done to give legal representation to the unrepresented groups, which includes poor environmentalist, consumers, ethnic minorities and others."

But here it is important to understand that the definition or concept of PIL in India is different from USA. Prof. Upendra Baxi in his opinion explained the difference. As per him it's "Social Action Litigation in the Supreme Court of India" Further he added that American PIL concept is not having focus on or given emphasis on state representation whereas in India PIL concept is based on moral and humane process while giving justice to any individual or group of people when fundamental rights infringed or denial of any civil rights. It is in short litigation based on social action."¹⁵

³ 1987 AIR 1086

⁴ AIR 1984 SC 802

⁵ AIR 1983 SC 378

⁶ AIR 1986 SC 180

⁷ (1997) 2 SCC 353

⁸ (1997) 6 SCC 241

⁹ (1988) 1 SCC 471

¹⁰ (2013) 11 SCALE 675

¹¹ (2011) 7 SCC 639

¹² (2013) 9 SCALE 290

¹³ Writ petition (civil) no.400 of 2012

¹⁴ Black's Law Dictionary/7th Edition states

¹⁵ <https://www.lawctopus.com/academike/importance-public-interest-litigation-india/>

It is important to note that there is no law to give exclusive definition of PIL. Indian Courts through judgments interpreted and defined the PIL. Hon'ble Supreme Court of India has, defined the concept of PIL in the case of Janata Dal v. H.S. Chaudhary opined that, the expression 'PIL' means a legal action started in a court of law for the enforcement of public/general interest where the public or a particular class of the public some interest that affects their legal rights or liabilities".¹⁶

PIL is proved to be most successful and commonly used legal tool to safeguard the fundamental rights of individual victim or group of unrepresented people. In India its is pertinent to not that to safeguard the environment PIL is most effective judicial means. Several judgments of Supreme Court and High court have set the Environmental norms to achieve the goal set in Directive Principle of state policies through PIL.

Locus standi in PIL

'Locus standi' is the Latin Maxim. The meaning of these two words is "locus" means place and "standi" means the right to bring an action.

Therefore together if we read these words, it means **the right to bring an action before the court.** As per this maxim, one **person needs to show his legal capacity before approaching the court.**

In short person can only approach the court when his personal interest is suffered or an injury is inflicted upon him.

In India Civil Procedure Code has incorporated the concept of Locus Standi in Order 7 Rule 11.

As per CPC to take any action first the Plaintiff or appellant should establish his locus standi then only court will initiate the trail. When there is Commercial Agreement between A & B. Wherein B commits fraud and A sustains monetary loss. Then in such case Only A will have Locus standi.¹⁷

Public Interest Litigation Exception to the rule of Locus Standi

In India after Independence Country saw many ups and downs. Especially issues like poverty and unemployment were at pick. Many people were facing issues in approaching Courts. Needy, poor, illiterate people could not address their issues to Court as they were not aware about court procedure and to whom to approach to enforce their fundamental rights. There was gross exploitation of their legal rights. The one ore reason behind not approaching the court was common man was not in position to afford the litigation cost. Therefore to eradicate this problem through Judicial Activism concept of PIL was emerged in India.¹⁸

The important aspect about PIL is that even though any individual's rights are not infringed, he can represent the others whose rights are taken away. Here in this case Locus standi will not be applied as this legal action is initiated for Public at large and not for any personal gain. It is bonafide activity.

Distinctiveness of Public Interest Litigation.

Public interest litigation is literally proved to be effective mode of enforcing fundamental rights of victims who cannot approach court. It is important to note that through Art. 32 and 226 any person who wants to initiate PIL can approach Supreme Court and High Court respectively. Further PIL can be initiated by approaching the court of the magistrate under sec 133 of Criminal Procedure code as well.

Phenomenal characteristics of PIL are as under

1. Any individual or group of people can initiate PIL
2. A mere post card is also PIL.
3. Court can allow PIL without taking any court fee.
4. PIL can be initiated against any State Government or against any private individual who is infringing the fundamental rights.

¹⁶ <https://indiankanoon.org/doc>

¹⁷ <https://legalstudymaterial.com/locus-standi-meaning-and-essential-ingredients-of-locus-standi/>

¹⁸ <https://legalstudymaterial.com/locus-standi-meaning-and-essential-ingredients-of-locus-standi/>

Procedure to file PIL in India.

As mentioned above without any person or group of persons without any ill motive or personal gain can initiate the PIL in India to safeguard the interest of Public at large. The one who wants to initiate the legal action have to follow the following procedure.

1. To get the Information about the issue is very much important. The one who wants to initiate PIL is required to collect relevant information before drafting PIL.
2. Further all the supportive documents such as photos related to case to be compiled by the Petitioner.
3. Petitioner needs to fix the forum to file PIL. He must decide whether he wants to file it in Supreme Court or High Court.
4. While drafting PIL one must follow the guidelines given on the websites of Supreme Court and High Court.
5. Petitioner must clear about the appearance in the court. Either they can appoint lawyer or appear in person.
6. As far as drafting of PIL is concerned Petitioner's details must be clearly mentioned. Such as name, email id, contact no, occupation, annual income and PAN card. He should attach proof of identity, details regarding any nexus with the issue involve in PIL. Further the details as to whose benefit PIL is being filed and reasons for their incapacity to approach court and details about their financial capacity to pay court fees.

Issues on which PIL can be filed

As far as PIL in India is concerned PIL can be entertained by authorized forums on the certain issues on which like Bonded labour, Neglected Children, Petitions from Jail, Speedy Trials, Death in Jail, Petition against Police, Harassment by Police, Petitions against crime against women particular harassment of bride, bride burning, rape, murder, kidnapping, etc, Petitions against environmental pollutions, wild life, forest and matter of public importance etc.

But there are certain issues which cannot be considered and PIL can not be filed such as Landlord tenant matters, Pensions and gratuity, Admissions to medical and other educational institutions, Early Hearing Petition from High Court and Other courts.¹⁹

Grounds for rejecting PIL in India

Following are the grounds on which PIL can be rejected.

1. Infructuous petition

The word infructuous means ineffective, unproductive and unfruitful. Therefore in the petition legal action is not required or it cease to exist the petition becomes infructuous. In short the intention to file PIL was to initiate legal action, but now there is no legal action can be taken by court in the said petition. In the case of Mohit v. District Magistrate²⁰ Supreme Court rejected the petition as it became infructuous petition. In this case writ of habeas corpus was filed. But the detained person for whom this petition was filed was released during the pendency of the case. Hence Supreme Court dismissed the PIL.

2. Not impleading the necessary parties

In PIL its very much important to plead with necessary Parties. If Petitioner fails to plead necessary parties then Petition can be dismissed. In the case of Krishna Swamy v. Union of India,²¹ Supreme Court rejected the PIL on the same ground of non pleading of the parties to PIL.

3. Misrepresentation or suppression of facts

It is well accepted by now that one should approach court with all the facts. In short when you come to court you should disclose all the facts. If Court finds that you are misrepresenting or

¹⁹ <https://knowlaw.in/index.php/2022/01/13/public-interest-litigation-pil/>

²⁰ AIR 1974 SC 2237

²¹ AIR 1993 SC 1407

hiding the necessary facts then Court can reject the Petition. In one case²² Supreme Court rejected the Petition because Petitioner never disclosed the information regarding the complete Turnover which Supreme Court got to know later on which ultimately resulted in rejection of PIL.

4. **Res Judicata**

Section 11 of Civil Procedure Code has incorporated the provision of Res Judicata. It means that when one matter is pending before court, then one cannot file the same case in other court. When the content and nature of Petition is same then you cannot approach other court for same issue.²³

5. **Unnecessary delay**

It is observed in some cases that PIL is rejected due to unnecessary delay on the part of Petitioner. Thus on this ground PIL can be rejected by Adjudicating authorities.²⁴

6. **Malicious Petition**

A malicious petition means a legal action taken with malice and without probable cause.

It is observed many times especially when it's PIL that, some petitions are filed with malice. When Adjudicating Authorities find that the petition is not with pure intention and with bonafide interest, Petition will be rejected.²⁵

Abuse and misuse of PIL in India

The PIL emerged as tool for social justice but unfortunate now it is used tool for personal gain or personal interest. Therefore the very objective of the PIL is not achieved. People misused the PIL to harass people around them. People tend to misuse PIL as it's cheap than private litigation and any one can approach Court. We need to understand the difference between Private interest and Public Interest. People use it to settle their own issues through PIL. PIL used for political as well as commercial gain.

Tushar Mehta, the Solicitor General, opined that now days people have started considering as PIL shops. As per him, the government officials waste their valuable to entertain such frivolous PILs. In short he meant that judiciary waste their time on deciding such PIL which are not for public interest but are for self gain or personal interest.

In recent times it is observed that, Lawyer, law students filed PIL for publicity and attention. Such petitions are called as "publicity interest litigation" by Courts. Court also opined that because of such PILs main objective of the PIL is not achieved rather it is harming public welfare.²⁶

Therefore PIL is misused in different forma such as publicity, private interest, and political rivalry.

In one judgment of Chief Justice Sabharwal in TN Godavarman Thirumalpad v. Union of India²⁷ observed that howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person whose bona fides and credentials are in doubt. It was held that the applicant, who was a man of scarce means, had spent huge amounts in litigation and was obviously nothing but a name lender; costs of rupees one lac were imposed on him. Such petitions are increasingly being filed in relation to matter of projects of public importance by unsuccessful tenderers, but the use of public interest litigation in such cases needs to be deprecated.²⁸

Former Attorney General Soli Sorabji once opined that there has to be guidelines to control the filing of public interest cases. Some guidelines he suggested firstly not to hear uncertain and doubtful PILs and quashing such PILs immediately. Secondly he recommended that that significant costs be imposed on the petitioners who filed such PIL for deterring them from filling such PIL in future. And

²²K Welcome Hotel v. State of Andhra Pradesh (AIR 1983 SC 1015)

²³Forward Construction Co. Vs. PrabhatMandal (AIR of SC 391)

²⁴TrilochandMotichand v. HP Munshi AIR 1970 SC 898

²⁵Kini v. Union of India 1985 AIR 893

²⁶<https://www.thelawgurukul.com/post/public-interest-litigation-1>

²⁷Writ Petition (CIVIL) NO.400 OF 2012

²⁸<http://racolblegal.com/pil-and-its-misuse>

lastly he said Petitions that have been filed for a long duration and are against a socioeconomic rule should be dismissed out-and-out.²⁹

Conclusion

The very motive of Public Interest Litigation is to help poor and needy and deprived people in getting justice. It can be considered as an effective tool for social change.

In country like India such kind of judicial activism has proved to be beneficial tool for getting justice. It is for public welfare.

PIL is a new jurisprudence which emphasis on responsibility of state to protect the constitutional mandate i.e. Fundamental rights of weaker sections of society.

Many PILs have proved to be revolutionary who brought the regulations for prevention on sexual harassment at work place, environmental issues etc.

Many Governmental Authorities were answerable through PILs when any fundamental rights of weaker sections of society are infringed by them. As we are aware everything with good feature has bad features too, which is misuse of PIL. We must not forget that it is tool for social change. If somebody misusing it for his/her personal gain the Courts must be cautious about the motive of the person filing PIL. Otherwise the people those who are in real need of this tool will be once again thrown out of the system and they will lose hope on judicial system. Frivolous Petitions should not be entertained by the Courts. Therefore to curtail the issue of miss use of PIL, the petitions should be checked at entry point only and speedy disposal will be effective remedy.

The framers of the constitutions visualized our judiciary as supporter and protector of rights and justice. It is expected that judiciary will protect the interest of Public at large through the PIL as PIL is too for Judicial review, activism. Which can be used only when there will be complete independence of justice machinery and due discharge of duties.

PIL play vital role in civil justice system specially to help disadvantaged section of society. Public interest litigation keeps government on toes.

PIL is essential as it creates awareness about human rights amongst the socially backward people. But it is fact that checks and balance is required to uphold genuine PIL and to restrict the frivolous petitions.

But as we are aware in country like India unfortunately the good social initiatives are misused for personal gains. This should not happen with social initiative like PIL which is outcome of judicial activism. PIL should not get entry from backdoor otherwise it will be absolutely spoil entire purpose of PIL and then many people will file PIL for self gain and to settle political issues and rivalries too. After all this discussions we can conclude that no doubt PIL bought phenomenal social change in India.

²⁹Monika Sangeeta Ahuja Public Interest Litigation in India; a socio-legal study, PhD Thesis, University of London