

PUBLIC INTEREST LITIGATION AS AN EFFECTIVE INSTRUMENT TO PROVIDE BETTER LIFE AND GREATER LIBERTY: A STUDY WITH SPECIAL REFERENCE TO JUDICIAL REVIEW IN INDIA

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Abstract:

The Indian court's inspired by the success of Public Interest Litigation in United States, adopted it to decide cases involving public interest. Protection of rights is duty of state but if they violate in publicly the remedy has to be given by constitution of India throw the public Interest Litigation. it has now become settled law that where any constitutional or Human rights of a person has been violated and that person himself unable to move that court for relief due to poverty, backwardness or any other disability another person on his behalf can file PIL petition for enforcement or vindication of aggrieved person's right. Generally, PIL writ directed to protect the interest of those who are unable to move the court for protection of their right due to poverty, illiteracy or ignorance etc. the concept of public interest litigation has evolved thought which legal remedies can be sought without investment of heavy court fees as required in private civil litigation. Hon'ble Justice Krishna Iyer were instrumental of this juristic revolution of eighties to convert the apex court of India into a Supreme Court for all Indian, and as a result any citizen of India or any consumer groups of social action groups can approach the apex court of country.

Key Words: Aggrieved, Court, Fundamental rights, Interest, Public, Right, Writs etc

1. Introduction:

“*Locus Standi*” is basic principle of law, generally only aggrieved person has right to stand before court .But under certain circumstances when the aggrieved person is not capable to approach to the court due this any inability, then the person other than that aggrieved person can file a petition before Supreme Court (under article 32) or before High Court(under article 226) Court treat them as writ petition, writ petitions litigation. Locus standi is the right to be heard in an appropriate court.

The seed of concept of PIL was introduced in India by Krishnan Iyer Justice in 1976 in case *Mumbai Kamgarsingha v. Abdulbhai*, after that seed of PIL converted into seal of judicial system.ⁱ Protection of rights is duty of state but if they violate in publicly the remedy has to be given by constitution of India throw the public Interest Litigation. Ambedkar said that “If any person asked me that which Article in our constitution you like then I prefer Art.32 and Art. 226 the reason behind it is these two Articles are the heart of our constitution because these two Articles are protected the rights of the citizen of India by Articles 32 Supreme Court has get the power of constitutional remedy and Article 226 has gave power to High Court constitutional remedy. Part III of our constitution gave right and freedom to citizen if these rights are violated by government or any individual then the person protect or get remedy by these two Articles so without these two Articles the rights provided in the so these [are very important in our constitution](#) .

“Public Interest law” is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interest such efforts have been undertaken in recognition that the ordinary market place for legal services fails to provide such services to significant interests.ⁱⁱ

2. Objects of P.I.L.:

From the very outset, the rationale behind legal aid is supposition that in every society there are individuals who are unable to participate in legal system. Therefore, it is of prime importance for the system of Justice and for society as a whole to provide such individuals voluntary services of advocates.ⁱⁱⁱ In the beginning, legal service was not provided on

humanitarian grounds as grant of legal services from advocates the poor client. It was a social service under the third-party subsidy of an independent organization legal aids was a diffused movement till 1919 when Herbart Smith an advocate with the Boston legal aid society published work justice and poor which gave way to some outstanding new ideas.

The important idea was that there was a collective social responsibility on the bar to provide opportunities for the unrepresentative masses to secure access to the justice system and it was indeed a crucial development in public interest law. The American civil liberties union was first public interest legal organization which look up many constitution rights cases in the period. Up to the mid- sixties unlike legal aid movement however, those local program grow out of purely local concern the local activities of the A.C.L.U to focused on important policy matters and issues A.C.L.U central structure and its approach to found rising. Viz. obtaining small contribution from a wide section of the public, to formed a model for such later organizations.

Therefore, it has now become settled law that where any constitutional or Human rights of a person has been violated and that person himself unable to move that court for relief due to poverty, backwardness or any other disability another person on his behalf can file PIL petition for enforcement or justification of aggrieved person's right.^{iv} Even in Joseph Bursty Vs Wilson^v U.S Supreme Court adopted liberal interpretation of Freedom of Speech Act 1971 and held that it includes protection to expression through cinema films because the object of constitutional law is to meet.

3. Origin of PIL in India:

The civil procedure code 1908 already provides that in case of public nuisance or other wrongful act affecting or likely to affect the public two or more persons may apply to court for issue of an injunction,^{vi} through no special damage has been caused to such persons by reason of such public nuisance or wrongful act section 133 of C.P.C provides settlement of disputes in relation to public right in the general interest of public at large.

The Indian court's inspired by the success of public interest litigation in united states, adopted it to decide cases involving public interest. And Indian Judges have trying to settle the disputes or handled the disputes like to PIL Mr. [Justice Krishna Iyer first time applied the doctrine in Mumbai Kamgar Sabha v. Abdul Bhai](#) though he did not specifically name it as PIL It would not be out of place to state that real credit for popularizing public interest litigation in Indian goes not to public spirited persons or organizations but to Judicial Activism.

The tradition that was follows is that petition can be filed only by a person whose fundamental right is infringed that remedy which is asked must be connected to one of fundamental rights sought to be enforced the remedy must be sought through appropriate proceeding this tradition is called the rule of locus standi. In these circumstances one of the best things that have happened in the country in recent years is process of social reform interest litigation or social action litigation.

A complete change in the scenario in the 1980s with efforts taken by justice P. N. Bhagwati and justice V. R. Krishna Iyer was marked by attempts to bring wider issues affecting the general public at large within the ambit. As a result, the concept of public interest litigation has evolved thought which legal remedies can be sought without investment of heavy court fees as required in private civil litigation.

4. Some Important PIL within India:^{vii}

□ **Bandhua Mukti Morcha c. Union of India and others AIR 1984 SC 802**– Instructions have been issued to end the system of forced or bonded labor by the Supreme Court of India.

□ **M.C. Mehta & Another v. Union of India & Others AIR 1987 SC 1086** – After the Oleum gas leak, this PIL was deposited from the Shriram Food and Fertilizers Ltd. complex. in Delhi. The Court established the concept of absolute liability.

- **Sunil Batra v. Delhi Administration et al. AIR 1978 SC 1675** – The case concerned prisoners' rights reforms. There is no total denial of the rights to life and liberty of a detainee. In addition, the Court focused more on the right to protection against torture and the right to expeditious execution.
- **People's Union for Democratic and Other Rights c. Indian Union et al. (1982) 3 SCC 235** - The scope of section 23 is broad and unlimited and affects “trafficking in human beings” and “beggars and other forms of forced labor” wherever they are found.
- **Sheela Barse v. State of Maharashtra AIR 1983 SC 378**– The term “Life” in section 21 covers the living conditions of prisoners, which prevail in prisons. According to the article, detainees are also entitled to the benefit of the guarantees provided, subject to reasonable restrictions.
- **Dr. Upendra Baxi (I) c. State of Uttar Pradesh et al. 1983 (2) SCC 308** - Case concerning the inhumane conditions in the Agra Women's Welfare House. The petition was heard by the court for several days and provided vital guidance through which the living conditions of the detainees were significantly improved in the home.
- **Shri Sachidanand Pandey & Another v. State of West Bengal et al. (1987) 2 SCC 295** - Property belonging to the State or to the public domain should not be dealt with at the absolute discretion of the administration. Principles such as the public interest must be observed. The Court is bound to bear in mind s. 48 A and art. 51A (g) of the Constitution whenever an ecological problem is brought before the Court,
- **Kharak Singh v State of UP AIR 1963 SC 1295** - Individual liberty is what remains after the suppression of freedom of expression under Article 19. Under Article 21, the right to privacy is not guaranteed.
- **Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180** - The Supreme Court ruled that the right to subsistence includes the right to life because no one can live without the means to live what means of subsistence. This is the case with street vendors.
- **Citizens for Democracy v. State of Assam & Others (1995) 3 SCC 743** - Shackling and handcuffing in public should be avoided as an affront to human dignity inside and outside prison.
- **M.C. Mehta v. Union of India (1997) 2 SCC 353- (Taj Trapezium Case)** -The Supreme Court ordered the unconditional closure of all brickyards located within a radius of 20 km around the Taj and in the Taj Trapezium area. Under Article 32, the case also extended the concept of environment to include the national heritage and also widened the scope since it declared that even foreigners have the right to enjoy our national heritage and , therefore, their rights should be limited.
- **D. K. Basu v. State of West Bengal (1997) 1 SCC 416**– A specific directive to be followed during arrests has been established by the Supreme Court.
- **Avinash Mehrotra v. Union of India and Others (2009) 6 SCC 398**- The Supreme Court of India interpreted the right to education to include the right to the provision of a safe environment in schools, and imposed on schools the obligation to comply with strong fire protection which were detailed in the judgment.
- **Vellore Citizens Welfare Forum v. Union of India and others AIR 1996 SC 2715** - The concept of sustainable development as reflected in the Stockholm Declaration and the Rio Declaration was discussed by the tribunal. The Court declared that this was part of customary international law. Emphasis was placed on the need to balance development with ecological concerns. In addition, stressed that the polluter pays and the precautionary principle are part of the law of the land.
- **Vineet Narain & others v. Union of India & Another AIR 1998 SC 889**– This case concerns the Hawala scandal in India, which exposed possible bribe payments to several senior Indian politicians and bureaucrats from financial support linked to terrorists presumed. The guidelines were established by the tribunal to guarantee the independence

and autonomy of the CBI and ordered that the CBI be placed under the supervision of the Central Vigilance Commission (CVC), an independent government agency intended to be in charge of free from executive control or interference.

□ **Centre for Public Interest Litigation c. Union of India and other AIR 2003 SC 3277**– This PIL arose out of improper allocation of radio spectrum / licenses by the Ministry of Communications and Information Technology in January 2008 to provide 2G services. The licenses issued to the private respondents and the subsequent allocation of spectrum to the licensees were declared illegal and cancelled. Instructions have been issued for further licensing and allocation of frequencies for 2G services based on new recommendations from TRAI.

□ **Manohar Lal Sharma v Principal Secretary (2014) 9 SCC 516**– The Court declared the 1993 and 2009 coal allocation to be illegal, arbitrary, non-transparent and devoid of any procedure.

□ **RK Garg v Union of India AIR 1976 SC 1559** - The Supreme Court directed the legislation. Constitutional validity of the 1981 law on special bearer obligations (immunities and exceptions). Declaring that morality was not an element to be taken into consideration in judging the constitutional validity of a law.

□ **Harshad J. Pabari v. State of Gujarat (2013) 3 GLR 258** - PIL urged authorities to take appropriate action against officer / staff responsible for disclosing the identity of HIV / AIDS patients by affixing a band to forehead patients with the words "HIV positive" printed on it. The High Court's instructions were given to immediately end such unfair bias against HIV / AIDS patients by doctors, including nurses at a hospital.

□ **Laxmi v. Union of India (2013) 9 SCALE 290**- The Supreme Court has set out the measures for the appropriate treatment, after care and rehabilitation of victims of acid attack. And also, the needs of victims of acid attacks, and compensation payable to victims of acid attacks by the state or the formation of a separate fund for the payment of compensation to victims of acid attacks.

□ **S.P. Gupta v. Union of India (1997) 3 SCC 433** – The locus standi of bars for filing PILs has been recognized by the Supreme Court. In the present case, they had a legitimate interest in challenging the transfer procedure for judges.

□ **PUCL c. Union of India (1997) 3 SCC 433**- The tribunal recognized that the right to food is part of article 21 and, therefore, justiciable. The government has optimistic work to help prevent malnutrition and starvation.

□ **Bachpan Bachao Andolan v. Union of India (2013) 7 SCALE 507** - in this case the Supreme Court has ordered that in the event that a complaint with observation against a missing child is filed at a police station, the same should be concentrated in an FIR and should take appropriate action to ensure that the follow-up investigation was initiated instantly.

□ **Kapila Hingorani v. State of Bihar, 2003 (6) SCC 1** – As PIL, a letter was admitted which brought to the Supreme Court numerous cases of death due to starvation or malnutrition due to non-payment of salaries of workers of PSU companies. The court retained the corporate veil in this case and also recognized the responsibility of the State of Bihar.

□ **City Council, Ratlam c. Vardichan (1980) 4 SCC 162** - In this case, under article 133 of the Code of Criminal Procedure, the court recognized the locus standi of the citizens of a neighbourhood to seek instructions against the municipality for having taken measures corrective measures and put an end to the nuisances caused by public excretion due to the absence of open toilets and drains, pits.

□ **G. Sundarrajan c. Indian Union (2013) 7 SCALE 102**– In this case, the PID was filed against the establishment of a power plant in Kudankulam. On the one hand the

court justified the establishment of the factory, insisting on the achievement of stability between ecology and the environment and on the other hand the public utility projects.

□ **Bodhisattwa Gautam c. Subhra Chakraborty (1996) 1 SCC 490-** Temporary compensation of Rs. 1,000 per month to a rape victim has been awarded by the Supreme Court. Suite observed that a woman, in our country, belonging to a group of society or to any class that is in a disadvantaged position due to several social barriers and obstacles and has, therefore, been the victim of tyranny, to hands of men with whom, under the Constitution, enjoy equal status.

□ **Bhartiya Janta Party v. State of West Bengal AIR 2013 Cal. 215 -** In this PIL, the government of West Bengal was challenged for the validity of the decision to grant honoraria to imams and muazzins of different mosques in the state of West Bengal. Violation of Articles 14 and 15 (1) of the Constitution. The state could not sponsor or promote a particular religion and reiterated that secularism is part of the basic structure of the Constitution.

□ **Khatri v. State of Bihar 1981 (1) SCC 627 -** Before the Supreme Court, a summons was filed under Articles 14, 19 and 21 of the Constitution challenging the violation of the fundamental rights of prisoners in Bhagalpur Central Prison, and the court went to their aid.

□ **Parmanand Katara v. Indian Union 1989 (4) SCC 286 -** Lawyer request that highlighted information titled "Law helps injured people die" was accepted by the Supreme Court. Continued In the context of forensic affairs, stressed the need for immediate medical aid to injure people in order to protect the life and the obligations of the state as well as of doctors in this regard.

5. Criticism over PIL:

In *Dattaraj Nattuji Thaware v. State of Maharashtra*^{viii} - the Supreme Court of India stated that Public Interest Litigation has now come to occupy an important field in the administration of law and stated that PIL should not become 'publicity' or 'private' interest litigation. The court stressed the necessity of imposing 'exemplary' costs on people for bringing frivolous petitions.

At present, the concept has started losing its meaning and heading to downfall as it is founded that people are misusing this concept. PIL being misused may be because of its easy working system. Lower cost of the filing and accessible. PIL is ruining because of frivolous cases has been filed in the name of PIL as it is an easy access. It could lead to overburdening of courts with frivolous PILs by parties with vested interests. PILs today has been appropriated for corporate, political and private gains. Today the PIL is not any more limited to problems of the poor and therefore the oppressed., The people with resources as using it for their personal interests. PIL is failing in Judicial Overreach by the Judiciary in the process of solving socio-economic or environmental problems can take place through the PILs.

PIL actions may give rise to the problem of competing with the rights. For instance, when a court orders the closure of a polluting industry, the interests of the workmen and their families who are deprived of their livelihood may not be considered by the court.

6. Conclusion:

The main aim of PIL is to ensuring justice to all citizens in welfare state. Generally public rights when violated then PIL can be filed. The aim of PIL is to protect the interest of public at large, it is not necessary that any right of the person filing a PIL petition should have been violated, he can file PIL on behalf of others.

Generally, PIL writ directed to protect the interest of those who are unable to move the court for protection of their right due to poverty, illiteracy or ignorance etc. Any person or social service institution can file a PIL writ for redressed of the grievance of public in

general though he may not have any personal interest in the case or any of his rights has not been adversely affected.

ⁱConstitutional law of India (Dr.pandey J.N.) edition 2005 Page No- 248

ⁱⁱ A Report by the council for public interest law, USA 1976

ⁱⁱⁱ Article 39 A of the Constitution of India

^{iv} Article 21 of the Constitution of India, Right to Justice flows from right to Life

^vJoseph Buesty v/s wilsen (1951) 347 U.S 495

^{vi}the section 19 (1)b of civilprocedure code 1908

^{vii}[Subodh Asthana](#), Leading Indian Cases, (2019) blog.ipleaders.in

^{viii}2005 (1) SCC 590