



Public Interest Litigation as an Instrument for Social Change

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1. Introduction

Public interest Litigation“, in simple words, means, litigation filed in a court of law, for the protection of “Public Interest”, such as Pollution, Terrorism, Road safety, Constructional hazards etc. Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.

PUBLIC INTEREST LITIGATION is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is “Public Interest” there are various areas where a **PUBLIC INTEREST LITIGATION** can be filed. In normal cases, it is seen that the aggrieved party i.e. the victim, who is affected has to file his case in a court of law. That person should have an interest in the dispute. But in filing of Public Interest Litigation there is no such condition. Any person can file a Public Interest Litigation. The only condition being that the same has to be filed in Public Interest. Public Interest Litigation is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court’s jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts to protect interest of public at large. Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and precede *suomotu* or cases can commence on the petition of any public-spirited individual.

2. Legal History of Public Interest Litigation

The Indian PIL is the improved version of PIL of U.S.A. According to “Ford Foundation” of U.S.A., “Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace 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”. The emergency period (1975-1977) witnessed colonial nature of the Indian legal system. During emergency state repression and governmental lawlessness was widespread. Thousands of innocent people including political opponents were sent to jails and there was complete deprivation of civil and political rights. The post emergency period provided an occasion for the judges of the Supreme Court to openly disregard the impediments of Anglo-Saxon procedure in providing access to justice to the poor.

Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. 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.¹

The traditional view in regard to locus standi in Writ jurisdiction has been that only such persons who: a) Has suffered a legal injury by reason of violation of his legal right or legally protected interest; or b) Is likely to suffer a legal injury by reason of violation of his legal right or legally protected interest. Thus before a person acquired locus standi he had to have a personal or individual right which was violated or threatened to be violated. He should have been a “person aggrieved” in the sense that he had suffered or was likely to suffer from prejudice, pecuniary or otherwise. However, all these 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. Justice V. R. Krishna Iyer and P. N. Bhagwati recognised the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. In the post-emergency period when the political situations had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression, custodial violence, drawing attention of lawyers, judges, and social activists. PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists. This trend shows stark difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role. PIL is necessary rejection of laissez faire notions of traditional jurisprudence.

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*, 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 undertrial prisoners languishing in various jails in Bihar. These proceeding led to the release of more than 40,000 undertrial 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.²

A new era of the PIL movement was heralded by Justice P.N. Bhagwati in the case of **S.P. Gupta v. Union of India**.³ In this case it was held that “any member of the public or social action group acting bonafide” can invoke the Writ Jurisdiction of the High Courts or the Supreme Court seeking redressal against violation of a legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court. By this judgment PIL became a potent weapon for the enforcement of “public duties” where executed in action or misdeed resulted in public injury. And as a result any citizen of India or any consumer groups or social action groups can now 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. In 1981 the case of **Anil Yadav v. State of Bihar**.⁴ exposed the brutalities of the Police. News paper report revealed that about 33 suspected criminals were blinded by

¹ Legal Service India - Public Interest Litigation, (<http://www.legalserviceindia.com/article /1171-Public-Interest-Litigation.html>)

² Legal Service India - Public Interest Litigation, (<http://www.legalserviceindia.com/article /1171-Public-Interest-Litigation.html>)

³ S.P. Gupta vs Union Of India And Ors.SC Order on date 30 December, 1981.(<https://indiankanoon.org/doc/1294854/>)

⁴ Anil Yadav&Orsvs State Of Bihar &Anr.SC Order date 23 March, 1982, (<https://indiankanoon.org/doc/1247405/>)

the police in Bihar by putting the acid into their eyes. Through interim orders Supreme Court directed the State government to bring the blinded men to Delhi for medical treatment.

It also ordered speedy prosecution of the guilty policemen. The court also read right to free legal aid as a fundamental right of every accused. Anil Yadav signalled the growth of social activism and investigative litigation. In **Citizen for Democracy v. State of Assam**,⁵ the S. C. declared that the handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or while in transport or transit from one jail to another or to the court or back.

3. Meaning and Definition of "Public Interest Litigation"

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. "

In the case of People's Union for Democratic Rights v. Union of India, it was held that "Public Interest Litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two parties, one making a claim or seeking relief against the other and that other opposing such claim or relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed.

That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality."⁶

4. The Growth of Public Interest Litigation in India.

Although the fundamental rights applicable to every Indian citizen could be enforced in the Supreme Court under Article 32 of the Constitution, and all other legal rights could be enforced in the High Courts under Article 226 of the Constitution, the procedures governing the use of these provisions were determined by the rules of each court and by accepted practice. Acknowledging that the application of procedures was limiting access to justice, some judges began to disregard the restrictions that had become established. It was Justice V.R. Krishna Iyer, during his tenure as a judge of the Supreme Court, who first noticed the possibilities: A new class of litigation - public interest litigation - where a section or whole of the community is involved (such as consumers organization or NAACP - National Association for the Advancement of Coloured People in America) emerges. In a developing country like ours, this pattern of public oriented litigation better fulfils the rule of law if it is to run close to the rule of life. The Bar Council clearly comes within the category of organizations

⁵ Citizens For Democracy vs State Of Assam And Ors SC Order date 1 May, 1995, (<https://indiankanoon.org/doc/730702/>)

⁶ Legal Service India - Public Interest Litigation, (<http://www.legalserviceindia.com/article /1171-Public-Interest-Litigation.html>) on Date 17-03-2018, 9:30 pm.

when a lawyer is involved.⁷ He described law:Procedural prescriptions are handmaidens, not mistresses, of justice. Test litigations, representative actions, pro bonopublicoand like broadened forms of legal proceedings arein keeping with the current accent on justice to the commonman.⁸

Certain legal developments of the 1970s fostered the growth of PIL. Legal aid was first discussed at a national level. Fundamental Duties were included in the constitution by the Forty Second Amendment Act 1976 in part and a number of enactments like the Bonded Labour (System) Abolition Act, 1976 were passed during to ensure that social justice was realized. During the period of internal emergency declared by Prime Minister Indira Gandhi in 1975 the Supreme Court's function as a forum for political battles became more overt. Judicial appointments became contingent on the support to the ruling party, and the Supreme Court was unable to uphold basic civil liberties such as the right to life.⁹ By 1979, when political circumstances had changed the Supreme Court found a new focus in prisoners' rights cases and concentrated on the procedural impediments to access to justice, with the support of subsequent constitutional amendments.¹⁰ Implicit was a recognition that few people had the resources or knowledge to approach the courts on their own accord. An advocate was allowed to approach the Supreme Court on behalf of the prisoners, and this relaxation of the rules governing habeas corpus petitions was soon extended to other petitions, as the courts began to allow anyone acting in the 'public interest' to petition on behalf of the disadvantaged and deprived, or to bring an issue of public importance to the court. **In Fertilizer Corporation Kamgar Union (Regd) Sindri and others**, the Supreme Court held that the procedures had to be relaxed to meet the ends of justice¹¹ **In People's Union for Democratic Rights and others**, the Supreme Court liberalized the procedural rule of locus standi to allow a petition to be filed on behalf of the workmen on the Asiad Games project¹². Letters were registered as writ petitions, and attempts were made to foster a more conciliatory form of justice. **In S.P. Gupta V. Union of India**, also known as the Judges Transfer Case, the Supreme Court enunciated a general need to relax procedures and¹³ in **Bandhua Mukti Morcha V. Union of India**, the importance of social action groups in furthering the cause of social justice was stressed.¹⁴ By 1981, Justice Bhagwati articulated the basis upon which a PIL could be filed:

“ Where a legal wrong or 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 position 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 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 any breach of fundamental right of such persons or determinate class of persons, in this court under Art.32 seeking judicial redress for the legal wrong or injury caused to such persons or determinate class of persons.”¹⁵

⁷ Bar Council of Maharashtra v. M.V.Dabholkar, AIR 1975 SC 2092 at 2014.

⁸ Justice V.R.KrishnaIyer in the Mumbai KamgarSabha, Bombay v. M/s. Abdulbhai and others, AIR 1976 SC 1455. Constitutional (Forty-Fourth Amendment) Act, 1978.

⁹ Additional District Magistrate, Jabalpur v. ShivakantShukla, AIR 1976 SC 1207.

¹⁰ AIR 1981 SC 344.

¹¹ AIR 1982 SC 1473.

¹² AIR 1982 SC 149.

¹³ AIR 1984 SC 802.

¹⁴ AIR 1984 SC 802.

¹⁵ AIR 1984 SC 342

Judges, lawyers' social activists, and media persons formed an informal nexus, exposing injustices and petitioning the Supreme Court and High Court that were to become the bases for many PILs. As many members of the political opposition had been imprisoned during the 1975-1977 emergencies, this contributed to the focus on the penal system, which was to become one of the first major sites of struggle in PIL.

5. Concept of "Public Interest Litigation"

According to the jurisprudence of Article 32 of the Constitution of India, "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". Ordinarily, only the aggrieved party has the right to seek redress under Article 32. In 1981 Justice P. N. Bhagwati in *S. P. Gupta v. Union of India*,¹⁶ articulated the concept of PIL as follows, "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 by reasons of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons."

The rule of locus standi have been relaxed and 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 not for personal gain or private profit or political motive or any oblique consideration. The Supreme Court in **Indian Banks' Association, Bombay and ors v. M/s Devkala Consultancy Service and Ors.**¹⁷ held that "In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, The court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus a private interest case can also be treated as public interest case". In **Guruvayur Devaswom Managing Commit. And Anr. v. C.K. Rajan and Ors.**,¹⁷ the Supreme Court held, "The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, deprived, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice.

A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persona. It expanded its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the, real issues on the merits by suspect reliance on peripheral procedural shortcomings... Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity

¹⁶ S.P. Gupta vs Union Of India And Ors. SC Order on date 30 December, 1981. (<https://indiankanoon.org/doc/1294854/>)

¹⁷ Indian Banks' Association, vs M/S Devkala Consultancy Service & Order on Date 16 April, 2004, (CASE NO.: Appeal (civil) 4655 of 2000, <https://indiankanoon.org/doc/1916813/>)

cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice”.

6. What is the difference between PIL, writs and petition?

A writ is just a written command given out by a legal authority like a court. It can be to enforce an action, or stopping an action from happening. Now, a Public Interest Litigation (PIL) is a form of writ, with just one specification that the matter is related to the general well-being of the public instead of a particular litigant. A petition is another type of writ, where the people raise a request to a legal authority demanding an action in a particular cause in the interest of general public. Usually, it's signed by a number of people. So, in short, PIL and petition are writs but the reverse is not always true. Mr. M.V. Gupta, from one of the many law forums out there: Writs are filed by individuals/corporates and other persons for reliefs in their own causes whereas the PILs are applications filed by any citizen for remedying the hardships faced by the public at large. PIL is not defined in any statute. It is the outcome of judicial activism to take cognizance of a cause at the instance of any person (whether he is personally affected or not) affecting the public at large. It is an exception to the doctrine of Locus Standi applicable to actions in courts of law.

(1)PIL.

Public interest law loosely, refers to legal practices undertaken to help poor or marginalized people, or to effect change in social policies in the public interest, on 'not for profit' terms

(2)WRITS.

A form of written command in the name of a court or other legal authority to act, or abstain from acting, in a particular way

(3)PETITION.

A formal written request, typically one signed by many people, appealing to authority in respect of a particular cause.

PIL is writ only but PIL means litigation in the interest of public and not in the interest of the litigant. It is also important to understand basic difference between a regular Writ Petition and PIL Writ Petition.

Whenever a person affected by any illegal act or omission of Public Officials or of any Public office, he may approach the High Court for issue of appropriate Writ (authoritative direction).

However a person may approach the High Court for issue of appropriate Writ in the larger public interest even when he is directly not affected by illegal acts or omissions of Public Officials. I hope the difference is quite visible. Can a Writ Petition be treated as a Public Interest Litigation? Yes, a writ petition filed by the aggrieved person, whether on behalf of group or together with group can be treated as a PUBLIC INTEREST LITIGATION however, the writ petition should involve a question, which affects public at large or group of people, and not a single individual. Only the effected/aggrieved person can file a writ petition. There should be a specific prayer, asking the court to direct the state Authorities to take note of the complaint /allegation. Writs refer to constitutional remedy for all citizens under art 226. These can be in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose, where the complainant can directly approach the high court.

PIL stands for public interest litigation. Earlier it was only a person whose interest was directly affected along with others, whereby his fundamental right is affected who used to file such litigation. Now, the trend has changed, and, any Public-spirited person can file a case on behalf of a group of

person, whose rights are affected. It is not necessary, that person filing a case should have a direct interest in this Public Interest Litigation. Petition is a complaint filed by any aggrieved person for, award of remedy by court. Known also as 'case.

Writ: A formal, written order issued by the Court, which is to be obeyed by the individual/authority to whom it is addressed. The Indian Constitution provides for writs for the enforcement of Fundamental Rights. High Courts can issue writs for purposes other than the Fundamental Rights, while the Supreme Court can only issue writs for the enforcement of Fundamental Rights. Writs are of various types, such as Habeas Corpus, Mandamus, Certiorari, etc. **PIL (Public Interest Litigation):** A writ filed by an individual in the interest of the public at large (rather than in the interest of the litigant, who might or might not have been affected). The main objective of a PIL is to protect public interest. So, a PIL is a writ, but not all writs are PILs. Seeing relief on legal grounds. For example, a petition seeking issuance of a writ is known as a writ petition.

7. Features of PIL in India

Both in the United States and India, eight identifying features of PIL distinguish it from traditional litigation. In other words these eight features are nothing but eight ways in which this new kind of litigation differs so radically from traditional private law litigation.

1. In PIL, the scope of the law suit is consciously shaped by the court and parties, rather than being limited by a specific past event, such as the breach of contract or personal injury.
2. The party structure is sprawling and amorphous, rather than limited to individual Adversaries.
3. The fact-inquiry resembles the kind of injury taken into current problems by legislative bodies, rather than a simple investigation of past historical events.
4. 'Relief is often prospective, flexible and remedial having a broad impact on many persons, rather than limited to compensation for a past wrong given only to the party to the law suit.
5. The parties often negotiate the 'relief than imposed by the court.
6. The judgment does not end the court's involvement but requires a continuing administrative judicial role.
7. The judges play an active role in organising and shaping the litigation, and are not passive.
8. The subject matter of the law suit is a grievance about public policy and is not a private suit.

The new public interest group of recent times, to represent 'diffuse' rights act as 'public spirited' or 'ideological plaintiffs'. This gradual rise and growth of ideological plaintiff is a multifaceted phenomenon, and is one aspect of this new role of the judge in PIL.

8. Procedure for Filing Public Interest Litigation

A "Public Interest Litigation", is filed in the same manner, as a writ petition is filed.

8.1 In High Court

If a Public Interest Litigation is filed in a High court, then two (2) copies of the petition have to be filed. Also, an advance copy of the petition has to be served on the each respondent, i.e. opposite party, and this proof of service has to be affixed on the petition.

8.2 In Supreme Court

If a Public Interest Litigation is filed in the Supreme court, then (4)+(1) (i.e. 5) sets of petition has to be filed opposite party is served, the copy only when notice is issued.

8.3. Court Fees

A Court fee of RS. 50, per respondent (i.e. for each number of opposite party, court fees of RS. 50) have to be affixed on the petition.

8.4 Procedure of filling Public Interest Litigation

- Proceedings, in the PUBLIC INTEREST LITIGATION commence and carry on in the same manner, as other cases.
- However, in between the proceedings if the judge feels he may appoint a commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems, etc.
- After filing of replies, by opposite party, and rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.¹⁸

9. Advantages and Disadvantages of PIL.

In the PIL, infringement of the right of a person or persons is not the only aspect to be considered. In most of the cases the infringement is the result of an executive and administrative lapse or excess which is always open to judicial review. Judicial review of administrative action is indeed the essence of democracy. It is a silver thread running underneath the constitutional and legal rights and guarantees. PIL has many advantages beneficial to the people at large, especially the indigent, ignorant, disadvantaged and exploited sections of the masses. Through PIL the court performs its real duty to do substantial justice to those who need it the most. It also helps large sections of public and thereby avoids many individual cases on the subject. PIL acts as a strong deterrent on public servants who have the tendency to transgress the limits of their power and authority at the cost of the people. Besides, it also encourages a sense of accountability in the public servants.

Further, PIL helps in making the executive more vigilant against the violation of people's rights. PIL also inculcates respect for the rule of law in the government and the people. Moreover, it creates awareness and sensitivity towards the sufferings of toiling masses and activates amelioration efforts. The PIL also gives the executive and the legislature an opportunity to know the mind and attitude of the judiciary to the problems of social welfare. It undoubtedly helps in reducing social tensions and promotes social stability by minimizing the sufferings of the poor and the disadvantaged. A major gain from PIL is that the judiciary is able to come out of the ivory tower and see the ground realities as they are. It may also help in reducing the traditional conservatism and insensitivity, which still persists in a section of the judiciary.

PIL has brought about revolutionary change in the judicial thinking, created new forms and procedures, invented new remedies and gave birth to a new progressive jurisprudence. The greatest advantage of the PIL is that it is the cheapest, quickest and the most effective means of giving relief to the poor, illiterate, ignorant, disabled and disadvantaged people who are silently suffering injustice, exploitation and degradation in contravention of the constitutional provisions. While PIL has many advantages, there are some possible disadvantages also, for which apprehensions have been expressed. The main argument advanced against PIL is that it will increase considerably the workload of courts by bringing too many cases of this nature. This apprehension does not appear to be well founded because; the courts have to see that only interested persons are allowed to bring such cases before the courts. The busybodies and meddlesome interlopers have to be weeded out.

In any case in today's busy life nobody has the time, money and energy to waste on litigation of this kind, unless a person is deeply committed to the cause, out of purely charitable motives.

¹⁸ Advocate khoj,

(<http://www.advocatekhoj.com/library/lawareas/publicinterestlitigation/procedure.php?Title=Public%20Interest%20%20%20Litigation&STitle=Procedure%20to%20File%20a%20Public%20Interest%20Litigation>)