

July 2010

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Recommended Citation

Samantaray, Manas Ranjan and Sharma, Mritunjay (2010) "Public Interest Litigation: A Conceptual Framework," *InterScience Management Review*. Vol. 3 : Iss. 2 , Article 4.

DOI: 10.47893/IMR.2010.1057

Available at: <https://www.interscience.in/imr/vol3/iss2/4>

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Public Interest Litigation: A Conceptual Framework

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Abstract – Public interest litigation (PIL) has a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation. PIL, for instance, offers a ladder to justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows them to participate in government decision making. PIL could also contribute to good governance by keeping the government accountable.

This article will show, with reference to the Indian experience, that PIL could achieve these important objectives. However, the Indian PIL experience also shows us that it is critical to ensure that PIL does not become a facade to fulfil private interests, settle political scores or gain easy publicity. Judiciary in a democracy should also not use PIL as a device to run the country on a day-to-day basis or enter the legitimate domain of the executive and legislature. The challenge for states, therefore, is to strike a balance in allowing legitimate PIL cases and discouraging frivolous ones. One way to achieve this balance could be to build in economic (dis)incentives in PIL and also confine it primarily to those cases where access to justice is undermined by some kind of disability.

Judiciary, being the sentinel of constitutional statutory rights of citizens has a special role to play in the constitutional scheme. It can review legislation and administrative actions or decisions on the anvil of constitutional law. For the enforcement of fundamental rights one has to move the Supreme Court or the High Court's directly by invoking Writ Jurisdiction of these courts. But the high cost and complicated procedure involved in litigation, however, makes equal access to jurisdiction in mere slogan in respect of millions of destitute and underprivileged masses stricken by poverty, illiteracy and ignorance. The Supreme Court of India pioneered the Public Interest Litigation (PIL) thereby throwing upon the portals of courts to the common man.

Till 1960s and seventies, the concept of litigation in India was still in its rudimentary form and was seen as a private pursuit for the vindication of private vested interests. Litigation in those days consisted mainly of some action initiated and continued by certain individuals, usually, addressing their own grievances/problems. Thus, the initiation and continuance of litigation was the prerogative of the injured person or the aggrieved party. However, these entire scenario changed during Eighties with the Supreme Court of India led the concept of public interest litigation (PIL). The Supreme Court of India gave all individuals in the country and the newly formed consumer groups or social action groups, an easier access to the law and introduced in their work a broad public interest perspective.

INTRODUCTION

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 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.

A new era of the PIL movement was heralded by Justice P.N. Bhagawati in the case of **S.P. Gupta v. Union of India**. 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 right 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**, exposed the brutalities of the Police. News paper report revealed that about 33 suspected criminals were blinded by 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.

Meaning and Definition:

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."

Concept Of PIL:

According to the jurisprudence of Article 32 of the Constitution of India [1], "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**, 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." [2]

Writ Jurisdiction under Articles 32 and Articles 226 of the Constitution of India, 1950:

The importance of Article 32 is referred to as the doctrine of "**Constitutional Remedy**" for enforcement of Fundamental Rights. Dr. B.R. Ambedkar described Article 32 as the heart and soul of the Constitution. The court justified such extension of standing in order to enforce rule of law and provide justice to disadvantaged sections of society. [3] Furthermore, the Supreme Court observed that the term "**appropriate proceedings**" in art.32 of the Constitution [4] does not refer to the form

but to the purpose of proceeding: so long as the purpose of the proceeding is to enforce a FR, any form will do. [5] This interpretation allowed the Court to develop epistolary jurisdiction by which even letters or telegrams were accepted as writ petitions. [6]

A Public Interest Litigation can be filed before the Supreme Court under Article 32 of the Constitution or before the High Court of a State under Article 226 of the Constitution under their respective Writ Jurisdictions. Article 21—"no person shall be deprived of his life or personal liberty except according to the procedure established by law"—proved to be the most fertile provision in the evolution of new FRs. [7]

Subjects of Public Interest Litigation:

The following are the subjects which may be litigated under the head of Public Interest Litigation:

(I) The matters of public interest: Generally they include

- Bonded labour matters
- Matters of neglected children
- Exploitation of casual labourers and non-payment of wages to them (except in individual cases)
- Matters of harassment or torture of persons belonging to Scheduled Castes, Scheduled Tribes and Economically Backward Classes, either by co-villagers or by police.
- Matters relating to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forests and wild life.
- Petitions from riot victims and
- Other matters of public importance.

(II) The matters of private nature:

They include (i) threat to or harassment of the petitioner by private persons, (ii) seeking enquiry by an agency other than local police, (iii) seeking police protection, (iv) land lordtenant dispute (v) service matters, (vi) admission to medical or engineering colleges, (vii) early hearing of matters pending in High Court and subordinate courts and are not considered matters of public interest.

(III) Letter Petitions: Petitions received by post even though not in public interest can be treated as writ petitions if so directed by the Hon'ble Judge nominated for this purpose. Individual petitions complaining harassment or torture or death in jail or by police, complaints of atrocities on women such as harassment

for dowry, bride burning, rape, murder and kidnapping, complaints relating to family pensions and complaints of refusal by police to register the case can be registered as writ petitions, if so approved by the concerned Hon'ble Judge.[8]

Procedure for Filing Public Interest Litigation:

(a) Filing:

Public Interest Litigation petition is filed in the same manner, as a writ petition is filed. If a PIL is filed in a High Court, then two (2) copies of the petition have to be filed (for Supreme Court, then (4)+(1)(i.e.5) sets. 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.

(b) The Procedure:

A Court fee of Rs. 50, per respondent (i.e. for each number of party, court fees of Rs 50) has to be affixed on the petition. Proceedings, in the PIL commence and carry on in the same manner, as other cases. However, in between the proceedings if the Judge feels that he may appoint the commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems, etc. After filing of replies, by opposite party, or rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

Against whom Public Interest Litigation can be filed:

A Public Interest Litigation can be filed against a State/ Central Govt., Municipal Authorities, and not any private party. According to Art.12, the term "State" includes the Government and Parliament of India and the Government and the Legislatures of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Thus the authorities and instrumentalities specified under Art.12 are –

- The Government and Parliament of India
- The Government and Legislature of each of the States
- All local authorities
- Other authorities within the territory of India or under the Government of India.

In *Electricity Board, Rajasthan v. Mohan Lal*, the Supreme Court held that "other authorities would include all authorities created by the Constitution of India or Statute on whom powers are conferred by law". However, "Private party" can be included in the PIL as "Respondent", after making concerned state authority, a party. For example- if there is a Private factory in Delhi, which is causing pollution, then people living nearby or any other person can file a PIL against

the Government of Delhi, Pollution Control Board, and against the private factory. However, a PIL cannot be filed against the Private party alone.

Aspects of Public Interest Litigation:

(a) Remedial in Nature: Remedial nature of PIL departs from traditional locus standi rules. It indirectly incorporated the principles enshrined in the part IV of the Constitution of India into part III of the Constitution. By riding the aspirations of part IV into part III of the Constitution had changed the procedural nature of the Indian law into dynamic welfare one. **Bandhu Mukti Morcha v. Union of India, Unnikrishnan v. State of A.P.**, etc were the obvious examples of this change in nature of judicial activism.[9]

(b) Representative Standing: It can be seen as a creative expansion of the well-accepted standing exception which allows a third party to file a habeas corpus petition on the ground that the injured party cannot approach the court himself. And in this regard the Indian concept of PIL is much broader in relation to the American. PIL is a modified form of class action.

(c) Citizen standing: The doctrine of citizen standing thus marks a significant expansion of the court's rule, from protector of individual rights to guardian of the rule of law wherever threatened by official lawlessness.

(d) Non-adversarial Litigation: In the words of Supreme Court in **People's Union for Democratic Rights v. Union of India**, "We wish to point out with all the emphasis at our command that public interest litigation...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 litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief". Non-adversarial litigation has two aspects:

1. Collaborative litigation: In collaborative litigation the effort is from all the sides. The claimant, the court and the Government or the public official, all are in collaboration here to see that basic human rights become meaningful for the large masses of the people. PIL helps executive to discharge its constitutional obligations. Court assumes three different functions other than that from traditional determination and issuance of a decree.

(i) Ombudsman- The court receives citizen complaints and brings the most important ones to the attention of responsible government officials.

(ii) Forum – The court provides a forum or place to discuss the public issues at length and providing emergency relief through interim orders.

(iii) Mediator – The court comes up with possible compromises.

2. Investigative Litigation: It is doctrine of investigative litigation because it works on the reports of the Registrar, District Magistrate, comments of experts, newspapers etc.

(e) **Crucial Aspects:** To curtail custodial violence, Supreme Court in **Sheela Barse v. State of Maharashtra**, issued certain guidelines. Supreme Court has broadened the meaning of Right to live with human dignity available under the Article 21 of the Constitution of India to a greatest extent possible.

(f) **Relaxation of strict rule of Locus Standi:** The strict rule of locus standi has been relaxed by way of:

- (a) Representative standing, and
- (b) Citizen standing.

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.

(g) **Epistolary Jurisdiction:** The judicial activism gets its highest bonus when its orders wipe some tears from some eyes. This jurisdiction is somehow different from collective action. Number of PIL cells was open all over India for providing the footing or at least platform to the needy class of the society.

Factors that have contributed to growth of PIL:

Among, the numerous factors that have contributed to the growth of PIL in this country, the following deserve special mention:

- 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.
- India has some of the most progressive social legislation to be found anywhere in the world whether it be relating to bonded labor, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
- The liberal interpretation of locus standi where any person can apply to the court on behalf of those who are economically or physically unable to come before it has

helped. Judges themselves have in some cases initiated suo moto action based on newspaper articles or letters received.

- Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the "right to life" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bar fetters and hand cuffing in prisons, etc.

- Sensitive judges have constantly innovated on the side of the poor for instance, in the **Bandhua Mukti Morcha case** in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer.

- In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

- The Court also held that the power to appoint commissioners is not constrained by the Code of Civil Procedure or the Supreme Court Rules. [10]

CONCLUSION:

Public Interest Litigation is working as an important instrument of social change. It is working for the welfare of every section of society. It's the sword of every one used only for taking the justice. The innovation of this legitimate instrument proved beneficial for the developing country like India. PIL has been used as a strategy to combat the atrocities prevailing in society. It's an institutional initiative towards the welfare of the needy class of the society.

However focus should be on ensuring that reasonable restriction is carried on with the execution of the representative processes to enhance the Fundamental & Legal rights of societies valid interest.

It would be appropriate to conclude by quoting Cunningham, "Indian PIL might rather be a Phoenix: a whole new creative arising out of the ashes of the old order." PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries.

REFERENCE:

- [1] "The right to move the Supreme Court by appropriate proceedings for the enforcement of

- the rights contained in this Part is guaranteed.” Constitution of India 1950 art.32 (1).
- [2] Gupta v Union of India (1981) Supp S.C.C. 87, 210. See also PUDR v Union of India AIR 1982 SC 1473; Bandhua Mukti Morcha v Union of India (1984) 3 S.C.C. 161.
- [3] Legality of Art 32 - Aharon Barak, “Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy” (2002) 116 Harvard Law Review 16, 107–108.
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