

CONCEPT OF PUBLIC INTEREST LITIGATION: AN OVERVIEW

Jayashree Khandare*

Assistant Professor, Bharati Vidyapeeth (Deemed to be University), New Law College, Pune

Anisa Shaikh**

Assistant Professor, Bharati Vidyapeeth (Deemed to be University), New Law College, Pune

ABSTRACT

The time honoured form of litigation mandates that a person had to be competent to approach the Court i.e., only an aggrieved person could bring about a cause of action. This requisite greatly prejudiced the representation of interests of the weaker sections of the society owing to poverty, illiteracy, lack of information etc.. Public interest litigation was formulated to dismantle this concerning issue. The role that this form of litigation plays in our country has widened significantly causing it to be vulnerable to wrongful use. This paper will focus on tracing the origin of public interest litigation, its growth and its potential abuse over the years.

Key words: *Public Interest Litigation, Locus Standi, Redressal, Fundamental Rights, Epistolary Jurisdiction*

I. INTRODUCTION

The age old traditional approach to litigation in Courts mandated legal competence to bring about and maintain a cause of action. This condition or mandate is called 'locus standi' or legal competence. It refers to the legal standing one must have to approach the court. This would in essence limit the people approaching the court to only those people who have personal grievances. The term Locus Standi is the Latin word wherein locus means place and Locus Standi means place to Stand. Section 31 (1) of the Supreme Court Act, 1981 of UK which also called as Senior Court Act, stated that, the person is making application should prove that he has sufficient interest in the matter that he is bringing in. A person who approached the court should show himself that he has suffered a legal injury.

Over the years, this stringent mandate was watered down to serve the purpose of social welfare. It was in this path that the concept of public interest litigation took birth to ensure that justice was accessible to the impoverished and deprived sections of the society.

P. Ramanatha Aiyar's Concise Law Dictionary attaches the following definitions to the term locus standi -

- A place of standing, right of appearance in the court of Justice.
- Locus standi signifies a right to bring an action and to be heard.
- A person must have a sufficiency of interest to sustain his standing to sue.¹

In P. Ramanatha Aiyar's Concise Law Dictionary, the term PIL has been defined as, the litigation is an exception to the traditional view that a petition could only be maintained by the aggrieved person.^{II}

Interest Litigation means a legal action taken for the enforcement of public interest in which the community have economic interest by which their legal rights or liabilities are affected.

Though there is no exact definition of public interest litigation is available in any of the Indian statutes, it has over time acquired the status of a weapon to protect or serve to the interests of the less privileged while also being a method of redressal of public grievances.

II. ORIGIN OF PIL

One often traces the origin of public interest litigation to U.S.A. The landmark judgment of United States Supreme Court in *Gideon vs. Wainwright*^V where it ruled that states are, under the sixth amendment to the US Constitution, required to provide counsels to defendants for representation in criminal cases, if they are unable to afford to engage their own attorneys led to the establishment of the first legal aid office in New York

Public interest litigation in USA goes by the name public interest law. When the movement started receiving funding from the government agencies, it grew to include larger numbers of legal practitioners who took up cases of the underprivileged. It further branched out to bring within its comprehension several other initiatives. Several organisations also sprung up in the 1960s and 70s that contributed to the growth of the movement.

It is widely acknowledged that the PIL movement in India is based on and has drawn from the concept that exists in the USA. In the 1960s and 1970s, the concept of PIL was in its nascent stage within this country. The judiciary cautiously ventured into this field and sowed seeds of litigation representing the interest of public at large.

Professor Upendra Baxi opined that the concept of PIL in India differed from that which existed in USA as the latter focused more on “civic participation in government decision-making” and not so much on state repression or governmental lawlessness as in India. Professor Baxi emphasised that PIL in India should be referred to as social action litigation as it differed from public interest litigation or public interest law that exists in the USA as it is at variance in its “history, growth and possible decay”.^V

The concept took firm root in the Indian soil in the post emergency period. The period witnessed utter chaos and general unrest. It was during this time that the problem of inaccessibility or unattainability of justice to a large portion of the country’s masses took centre stage. There was extensive dialogue that traced this problem to poverty, illiteracy, lack of means etc. amongst other factors. It was recommended that law should look at possible options to cure this problem.

It was this urgent recommendation that found expression in the judgement of Hon’ble Mr Justice Krishna Iyer in *Mumbai Kamgar Sabha v M/S Abdulbhai Faizullabhai and ors*^{VI}, where it was stated that, this branch will not deals with rich litigants but the poorest of the poor, the urban layman and the weaker section of the society for whom setting aside the problems are difficult.

Though the specific words ‘public interest litigation’ did not find themselves in the judgment, it was this view that introduced the concept of litigating for the interests of others or the general public in the country.

Hon'ble Mr. Justice P.N. Bhagwati and Hon'ble Mr. Justice V.R. Krishna Iyer, rightly considered as the crusaders of the PIL movement, were amongst the first judges to entertain such cases.

The first case that cemented the concept of PIL is considered to be *Hussainara Khatoon and others v. Home Secretary, State of Bihar, Patna*^{VII} where Hon'ble Mr. Justice P.N. Bhagwati, while passing an order in the petition filed by Adv. Pushpa Kapila Hingorani, based on a newspaper article on the atrocious condition of under trial category prisoners who were rotting away in the jails in Bihar, held that 'Right to speedy trial' is a fundamental right and the prisoners should be given free legal aid in case they cannot retain lawyers on their own.

In *Hussainara Khatoon* case the court recommended to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A. Free legal service is an absolute component of 'reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.'^{VIII}

This judgement went on to cause the release of several under trial prisoners from various jails nationwide and paved way for public interest litigation.

The Hon'ble Supreme Court in *Fertilizer Corporation Kamgar Union (regd.), Sindri and Other v. Union of India and Others*^{IX} reasoned that the Locus standi must be liberalised to meet the challenges of the times. Ubi just ibi remedium must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets.^X

III. GROWTH OF PIL IN INDIA -

The PIL movement witnessed unprecedented growth in the 1980s. From the very advent of the movement, it has been clear that the Supreme Court is focused on ensuring that the judiciary came within the reach of people from all walks of life and was not a luxury or rarity. This thrust of the Indian judiciary towards the PIL movement can be ascertained in the following judgements:

The Supreme Court in *Sunil Batra v. Delhi Administration*^{XI} transformed a letter sent by a prisoner, alleging that torture was being perpetrated on another prisoner by a jail warden, into a writ petition.

The Supreme Court was pleased to entertain a letter sent by a couple of professors from Delhi University regarding the brutal and unbecoming living conditions of inmates in a state run protective home at Agra was treated as a writ petition in *Upendra Baxi v. State of Uttar Pradesh and Ors.*^{XII}

In *Mrs. Veena Sethi v. State of Bihar and Ors.*^{XIII}, the Supreme Court treated a letter from the Free Legal Aid Committee Hazaribagh laying out details of wrongful detention of certain prisoners in jail for years, as a writ petition.

The growth was by such leaps and bounds that in *State of H.P. v. A Parent of a Student of Medical College*^{XIV}, the Hon'ble Apex Court accepted a letter that was originally written by a student to his guardian and then forwarded to the Court by the guardian, as a writ petition.

The Supreme Court in *Kadra Pehadiya and Ors. v. State of Bihar*^{XV} issued directions to Sessions Court to take up cases on day to day basis of under trial prisoners who were lodged in jails for years and waiting for their trial to begin, on the basis of a letter addressed to the Court by addressed to the Court by a researcher working in Bihar.

The Supreme Court in *Bandhua Mukti Morcha v. Union of India and Ors.*^{XVI} observed that- "In public interest litigation, the role held by the Court is more assertive than in traditional actions".

IV. SCOPE OF PIL:

The scope of PIL in India keeps on widening and growing. The higher judiciary in India has recognized the merit and value in allowing PILs as it would more often than not represent the interests of the downtrodden, poverty stricken and the suffering.

The Hon'ble Apex Court and High Courts have given judgments on the following social issues amongst other-

- Unfair exploitation of labour
- Education related rights
- Women and child security and freedom from exploitation
- Environmental pollution and destruction
- Medical professionals and their ethics
- Rights of disabled
- Protection of rights of inmates in jails and other lodging institutions
- Electoral reforms etc..

The Hon'ble Apex Court in *Bihar Legal Support Society, through its President, New Delhi v. Chief Justice of India and Ors*^{XVII} made it clear that, the strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and the disadvantaged sections of the community.^{XVIII}

V. NATURE OF PIL

In *People's Union for Democratic Rights and Others v. Union of India and Others*^{XIX} the Supreme Court laid down the difference between traditional adversarial litigation and PIL as the a strategic arm of the legal aid movement.^{XX}

A three judge bench of the Hon'ble Apex Court in *Guruvayur Devasawom Managing Committee v. C. K Rajan*^{XXI} held that, the common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, deprived, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

PIL is employed by the Hon'ble Apex Court and High Courts as a route to effect social change within the country. By opening the doors of the judiciary to such petitions, there have been several positive social changes. In a country like India that is yet to achieve the status of a developed nation, public interest litigation has been vital to the upliftment of its population, majority of which is settled in rural and socially backward areas.

Public interest litigation as a concept aims at making justice accessible to all and the effective implementation of the fundamental right to redressal of their grievances.

This form of litigation is rightly called a social change weapon. It is a laudable effort in answering pressing issues that continue to hamper the development of the country.

VI. CONSEQUENCES OF PIL:

- Dilution of locus standi rule

Public interest litigation in its true essence has to a very great deal diluted the concept or requirement of locus standi or competence to approach the Court in genuine cases where the interests of the downtrodden are being represented by public spirited individuals.

- New dimensions to existing human rights.

PIL as a concept has given birth to new facts to the existing human rights. Several new complementary and supplementary rights have now sprouted up owing to the social nature of PILs. Eg: freedom from forced labour, immediate medical aid post accidents, right to education, speedy trial etc..

- Diverse forms of relief.

PIL has brought along with it diverse forms of reliefs suited to the circumstances. The Courts aim at meaningful and effective redressal of the aggrieved and create relief suited to their needs. For example- interim reliefs during the pendency of the case, appointing of committees for determining facts relevant to the case.

- Transparency

With the advent of public interest litigation, several agencies or bodies of the state have come within the scrutiny of the judiciary thereby making them accountable and transparent in their transactions and dealing.

- Inception of Epistolary Jurisdiction in India

Recognizing and realizing the importance of public interest litigation, the Apex Court relaxed several rules relating to procedure, which resulted in the creation of 'Epistolary Jurisdiction'. This refers to the action of the Supreme Court on letters written by or on behalf of the less privileged or disadvantaged. These letters are converted into petitions by the Court on the logic that the term 'appropriate proceedings' under Article 32(1) of the Constitution would include such an action.

VII. FINDINGS

With passage of time, the noble nature of public interest litigation has witnessed taint. Multiple frivolous petitions are being filed in the courts to further personal interests, gains and political agenda. A private member, Suresh Pachouri's a Public Interest Litigation (Regulation) Bill, 1996 introduced on 20th December,

intended to penalize petitioners whose petitions failed or were laced with mala fide intent, was tabled in the Rajya Sabha. Though the bill did not make it to see the light of the day, it planted the seed of discussion about the abuse and ill-effects of PIL.

Former Chief Justice A. S. Anand while speaking at M.C. Bhandari Memorial Lecture on Public Interest Litigation stated that public interest litigation should remain public interest litigation and is not allowed to degenerate into becoming political, private or publicity interest.^{XXII}

The Supreme Court in *Ashok Kumar Pandey v. State of West Bengal*^{XXIII} observed that it is like a weapon which has to be used with great care and caution.

VIII. CONCLUSION

Public interest litigation is undeniably a highly effective weapon in the social objective of attaining justice for the common man. It has, over the years, become a significant part of the legal arena without any equals,

Though an appreciable effort, like any other, the concept of PIL does stand susceptible to evils and misuse. It is a departure from the traditional form of adversarial litigation that has existed in our country. The need of the hour with regard to public interest litigation is extensive scrutiny and refining in order to ensure that there is a significant and working mechanism that sieves out the frivolous, trivial and ulterior motives oriented petitions from amongst the thousands that are filed.

Kapil Sibal rightly said that the main motive of this is to hear the voice of poorest of the poor and giving justice to them.^{XXIV}

^I P. Ramanatha Aiyar's Concise Law Dictionary (4th ed. 2012)/

^{II} P. Ramanatha Aiyar's Concise Law Dictionary (4th ed. 2012)/

^{III} AIR 1993 SC 892/

^{IV} 372 US 385 (1963)/

^V Baxi, Upendra (1985) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," Third World Legal Studies:Vol. 4, Article 6.

Available at: <http://scholar.valpo.edu/twls/vol4/iss1/6>.

^{VI} AIR 1976 SC 1455.

^{VII} 1979 AIR 1369.

^{VIII} Ibid.

^{IX} 1981 AIR 344.

^X Ibid.

^{XI} (1978) 4 SCC 494.

^{XII} 1982(1) SCALE 502.

^{XIII} AIR 1983 SC 339.

^{XIV} AIR 1985 SC 910.

^{XV} AIR1981SC939.

^{XVI} 1984 AIR 802.

^{XVII} (1986) 4 SCC 767.

^{XVIII} Ibid.

^{XIX} 1982 AIR 1473.

^{XX} Ibid.

^{XXI} AIR 2004 SC 561.

^{XXII} (2001) 7 SCC (Jour) 1.

^{XXIII} Writ Petition (crl.) 199 of 2003.

^{XXIV} Kapil Sibal, Circumspection, My Lords Freewheeling use of Article 142 is raising questions about judicial diktats inattentive to consequences (April 21, 2017) available at <https://indianexpress.com/article/opinion/columns/circumspection-my-lords-article-142-use-judicial-diktats-4621562/>.