

PUBLIC INTEREST LITIGATION IN INDIA: AN OVERVIEW***Dr. Lora Aptaprava**

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Abstract

The concept "Public Interest" means the larger interests of the public, general benefit and interest of the masses and the word "Litigation" means "a legal action including all proceedings taken in a court for the purpose of seeking a remedy and enforcing rights and claims." Interest shared by the citizens generally in the affair of local, state or national government. Those matters which deal public at large public interest litigation is filed which are having any pecuniary interest or which affects their legal rights or liability. It is the power given to the public for the protection of their interest through judicial activism by the court. Such affordable litigation can be seen as a cheapest legal aid because of the nominal court fees involved in this. It deals with any public matter or issue related to the removal of some public grievance, consumer welfare, environment, and human rights. In respect to this, Judicial activism also plays an important role in the relaxation of the traditional rule of "locus standi" in which a person alone can file a petition for the infringement of his rights. In such situation the court allows PIL for the enforcement of rights, any citizen can move to the court for the public welfare, by filing a petition. Public interest litigation can be seen as an affordable legal aid because of the nominal court fees involved in this. It deals with any public matter or issue related to the removal of some public grievance, consumer welfare, environment, and human rights. Judicial activism plays an important role in the relaxation of the traditional rule of "locus standi" in which a person alone can file a petition for the infringement of his rights. Now the court permits PIL for the enforcement of rights, any citizen can move to the court for the public welfare, by filing a petition. In the landmark case, Justice P. N. Bhagwati stated: - "PIL is a cooperative or collaborative effort on the part of the petitioner, the state or public authority and the courts to secure observance of the constitutional or legal rights, benefits conferred upon the vulnerable section of the community and to reach social justice to them".

Keywords: Litigation, Locus standi, Social justice.

INTRODUCTION**Origin of Public Interest Litigation**

The origin of PIL was began in the late 1970s and continued through the 1980s the PIL cases were generally filed by public-spirited persons (lawyers, journalists, social activists or academics). The respective cases are mainly related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women. The relief was sought against the action or non-action on the part of executive agencies resulting in violations of FRs under the Constitution. During this phase, the judiciary responded by recognizing the rights of these people and giving directions to the government to redress the alleged violations. But during the second stage, the PIL was in the 1990s during which several significant changes in the chemistry of PIL took place. In comparison to the first phase, the filing of PIL cases became more institutionalized in that several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis. The breadth of issues which were raised in PIL also expanded tremendously from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government. The third phase on the other hand, began with the 21st century is a period in which anyone could file a PIL for almost anything. It seems that there is a further expansion of issues that could be raised as PIL, e.g. calling back the Indian cricket team from the Australia tour and preventing an alleged marriage of an actress with trees for astrological reasons.

From the judiciary's point of view, one could argue that it is time for judicial introspection and for reviewing what courts tried to achieve through PIL. In comparison to the second phase, the apex court has seemingly shown more restraint in issuing directions to the government. Although the judiciary is unlikely to roll back the expansive scope of PIL, it is possible that it might make more measured interventions in the future.

Issues in respect of exercising of judicial activism through public interest litigation

The misutilization of PIL in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which PIL was introduced. The dark side is slowly moving to overshadow the bright side of the PIL project. Public in PIL stands substituted by private or publicity. The major rationale is why the courts supported PIL was its usefulness in serving the public interest. It is doubtful, however, if PIL is still wedded to that goal. As we have seen above, almost any issue is presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). Sometimes it is not so easy to differentiate "public" interest from "private" interest, but it is arguable that courts have not rigorously enforced the requirement of PILs being aimed at espousing some public interest. The famous jurists and sociologists namely, Desai and Muralidhar confirm the perception that: "PIL is being misused by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes." It is critical that courts do not allow "public" in PIL to be substituted by "private" or "publicity" by doing more vigilant gate-keeping. Further, the PIL has the potential to contribute to an efficient disposal of people's grievances. But

considering that the number of per capita judges in India is much lower than many other countries and given that the Indian Supreme Court as well as High Courts is facing a huge backlog of cases, it is puzzling why the courts have not done enough to stop non-genuine PIL cases.

The most hurdle in such path or direction is that the courts are taking unduly long time in finally disposing of even PIL cases. This might render “many leading judgments merely of an academic value”. The fact that courts need years to settle cases might also suggest that probably courts were not the most appropriate forum to deal with the issues in hand as PIL. Judges are human beings, but it would be unfortunate if they admit PIL cases on account of raising an issue that is (or might become) popular in the society. Conversely, the desire to become people’s judges in a democracy should not hinder admitting PIL cases which involve an important public interest but are potentially unpopular. At the same time, the fear of judicial populism is not merely academic and this is clear from the observation of Dwivedi J. in *Kesavananda Bharati v State of Kerala*: “The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people.”

Advantages of PIL

It is an effective instrument for change in society and to remove the atrocities prevailing in society. Anyone can approach the court. It is a vehicle for creating and enforcing the rights of individuals or groups of individuals. It is very crucial for the sustenance of democracy because, under public interest litigation, the judicial process becomes more democratic because of public participation. It is an inexpensive remedy because of the nominal court fee involved while filing a PIL. Even though PIL had a small beginning in India, later on, the concept of PIL got widened in India, and SC and HC started intervening in policy issues as well. So, this led to the hyperactivity of the judiciary. It is an affordable means, those who can afford the procedure of courts; they have economic options to apply for PIL. It also talks about the common good because it is filed for a public cause.

Drawbacks of PIL

It seems that the misuse of PIL in India, which started in the 1990s, has reached such a stage where it has started undermining the very purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the PIL project. Frivolous petitions are filed in the court. A matter sometimes is just to ventilate a private grievance, instead of rising in the public interest. There is abuse of PIL because every matter which involves a public interest cannot be the basis of PIL. The doctrine of separation of power was not incorporated strictly by the framers of the constitution. PIL disturbs the constitutional balance of power. The procedure depends upon its flexibility as it gives an opportunity to opposite parties to ascertain the precise allegation and respond to specific issues. Interference in policymaking and policy interpretation by the judiciary through PIL. In order to remain effective, PIL should not be allowed to

become a routine affair that is not taken seriously by the Bench, the Bar, and most importantly by the masses.

Judicial Pronouncements of PIL

Vishaka v. the State of Rajasthan

One of the most remarkable case laws which marked a victory in the History of India for all those women who were facing mental or physical harassment at the workplace. In such case, a writ Petition was filed by certain social activists and NGOs after the rape of a girl in Rajasthan, it has been bringing as a class action suit in the court. Then, some guidelines were given by the Supreme Court of India. The provisions of CEDAW were laid down and some guidelines were given by Supreme Court of India to all the employers to be followed hiring the female employees. Some of the guidelines were given by the government popularly known as Vishaka guidelines which must be followed by every employer.

Parmanand Katara vs. Union of India

The human rights activists filed PIL in SC against the negligence and irresponsibility of hospitals and staff who do not use to handle medico-legal cases immediately. The SC passed a judgment in favour of petitioner and issues important guidelines which must be followed by hospitals and doctors while attending patients because the preservation of human life is the paramount importance and it is the professional obligation of every doctor with the expertise, whether at a government hospital or private, to protect the lives first, it must be their first priority to save the life of the patient and it is binding not only on the doctor, but also on police, citizen and everyone else.

Javed v. the State of Haryana

Another landmark PIL which challenged the constitutionality of an election law of the state of Haryana (Sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994) which disqualified “a person having more than two living children” from holding any offices in the panchayats.

Hussainara Khatoun v. State of Bihar

In this case, the attention was drawn on the issue of trials of under-trial prisoners detained in pending trials for a period far in excess of the maximum sentence for their offenses. The court recognized the speedy trial of cascades as the fundamental right of every accused and right to access free legal services to the poor under article 21 of the constitution. And it is the duty of the state to protect these rights. The SC passed an order of release of 40,000 under trials who had been undergone detention for a period exceeding the maximum term that they should have been convicted for.

M.C. Mehta v. Union of India

The most landmark and iconic PIL filed in India, against the authorities for allowing untreated sewage from Kanpur tanneries making its way into the Ganga River. A writ of mandamus was filed by MC Mehta which result into a passing into a no. of orders against more than 50,000 industries which were polluting the Ganga River and closure down of several tanneries and allowed to reopen only after these industries set

up sewage treatment plant because the protection of the environment is of paramount importance and must be saved from the effects of air and water pollution.

Conclusion

The aim of Indian public interest litigation, like most social causes, was likely over-determined; but most historians agree that it was partly an effort on the part of the courts to speak to the poverty, social exclusion, and powerlessness that the majority of citizens in India continue to suffer. Even PIL also suffers criticisms in recent years, including concerns related to separation of powers, judicial capacity, and inequality. While critics have been persuasive when pointing to particular cases, the sheer number of cases, as well as the variation in tendencies over time and among court benches, have made reaching a general conclusion difficult. Further, PIL "cases" shows that they do not appear to consume a significant share of the resources of the Supreme Court; they constitute less than 1% of the overall case load. The subject matter of PIL cases and orders remains difficult to discern because over 70% of them are classified as "other," which is problematic from the point of view of judicial transparency. Concerns regarding inequality appear to be validated by some of the quantitative data on Fundamental Rights cases.

Suggestions

1. The court should ensure that PIL addresses real public harm or injury.

2. The petitioner must have sufficient interest in the matter
3. It should seek to protect Fundamental Rights and better the living conditions of the poor.
4. The court should interpret the law correctly which would largely help the law keep improving.
5. Court should look into the critical issues.
6. It should promote equality and safeguard the right to life and personal freedom.
7. There is a need to mandate the public to act ethically, fairly and transparently within the limits of their legal authority.

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