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## “Public Interest Litigation: Judicial Trends in India”

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**ABSTRACT:** *The concept of Public Interest Litigation is one of the most important innovations in the Indian judicial process. It emerged in the late seventies of 21<sup>st</sup> century in response to the urgent need to make judicial process more accessible to poor, downtrodden, socially and economically disadvantaged sections of the society. It brought justice to the doorstep of the poorest sections of the society. It was primarily the judges of the apex court who innovated the concept of public interest litigation through judicial activism. During this period, the doctrine of judicial review has assumed a new aspect which is popularly known as judicial activism. The old orthodox and mechanistic theory that a judge never creates law and only declares law has been replaced by the concept of judicial activism. Thus, the judicial activism opened up new dimension and vistas for judicial process and has given a new hope to the justice – starved millions. The paper examines the concept of Public Interest Litigation and its scope and role of judiciary in expanding the horizons of the concept.*

### MEANING OF PUBLIC INTEREST LITIGATION (PIL):

PIL means litigation filed in a court for the protection of wider public Interests like environmental pollution, terrorism, road safety, constructional hazards and human rights mentioned under article 14 and article 21 of Indian constitution etc. 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.

Justice V.R. Krishna Iyer, said that “PIL is a process of providing justice for the people at large and raising the voice of people grievances through the legal process. The object of PIL is to give to common masses access to courts and obtain legal redressal against the injustice done to them. Justice P.N. Bhagwati, pointed out that “PIL is not in the nature of adversary litigation but it is a challenge and an opportunity to the Govt. and its officials to make basic human rights meaningful to the deprived and vulnerable masses of the society and to assure them social and economic justice which is the mandate of our Constitution. Justice V.R

Krishna Iyer and Justice P.N. Bhagwati, have delivered some landmark judgements which opened up new vistas in Indian judiciary.

The main aim behind PIL was to bring radical changes in the society through the judiciary by enforcing fundamental rights of deprived citizens effectively. The new technique opened by the pioneers of PIL would bring radical changes in the judicial system of the nation. PIL is not in the nature of adversary litigation but a challenge and an opportunity to the government and the administrative system to make basic human rights meaningful to the unprivileged and vulnerable sections of the society and to assure them social and economic justice which is the significant object of our Constitution.

There are three new essentials main introduced in PIL:

- a) Liberalisation of law in context to “locus standi”
- b) Adoption of new approach of simple procedure in entertaining PIL petitions
- c) Expansion of the scope of Articles -14, 21 and 32 of the Indian Constitution

## WHAT IS ‘LOCUS STANDI’?

The word “locus standi” means who can file a suit or litigation in a court of law. It means that only the person whose rights were infringed could sue for judicial redressal. No one could institute a petition in the court on his behalf.

The traditional interpretation of ‘locus standi’ has been relaxed to bring justice within the reach of the poor masses by the SC when the rights of an individual or a class of persons are violated and they are unable to approach the court themselves due to poverty or disability. Then any public spirited-person or institution like NGO acting in good faith, not out of vengeance, can move the court for judicial redressal.

The strict rule of ‘locus standi’ was relaxed in the case of S.P. Gupta vs. Union of India.<sup>1</sup> Justice PN Bhagwati, in the judgment pronounced the concept of PIL as : “Where a legal wrong or a legal injury is caused to a person or to a particular class of persons by reason of infringement of constitutional or legal rights or any harsh 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 certain class of persons due to the

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<sup>1</sup> AIR 1982 SC 149

circumstances of poverty, ignorance, helplessness due to socially or economically disadvantaged position which disable them to approach the court for relief, then any member of public can file an application for an appropriate direction, order or writ in the High Court ( Article 226) and in SC court under Article 32.”

Regarding ‘locus standi’ the SC in the “Judges transfer case” ruled that any member of the public having sufficient interest can approach the court for enforcing constitutional or legal rights of other persons and redressal of a common grievance.

#### **PERSONS DISQUALIFIED TO FILE PIL:**

The following persons are not entitled to file a PIL petition:

- without sufficient public interest,
- Acting for self gain or personal profit,
- Have political motives and
- Have malafide intentions.

A third party who is a stranger to the proceedings and which resulted in the conviction of the accused, has no ‘locus standi’ to challenge the conviction and the

sentence awarded to the convicts, through a PIL<sup>2</sup>.

The fear articulated by some people regarding the liberal view of the SC on ‘locus standi’ is that it would lead the court flooded with writ litigations and therefore should not be encouraged.

To the above criticism the court proclaimed that “No State had the right to tell its citizens that because a large number of cases are pending in the courts, it will not help the poor to come to the courts coming for seeking justice until the staggering load of cases of people who can afford rich lawyers are disposed off.”

#### **SCOPE OF PIL:**

PIL can be filed in a court of law for the protection of "Public Interest" such as violation of fundamental rights, environmental pollution, road safety, constructional hazards, terrorism, maladministration and many more aspects of fundamental rights. Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to take the cognizance of issues of public interest at large. Although, the sole focus of such

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<sup>2</sup> Simaranjit Singh Mann vs. Union of India, 1992 (4) SC 65

litigation is public interest but there are various areas, where PIL can be filed e.g.

- a) Violation of basic human rights of the masses.
- b) Regarding the constitutionality of government policy.
- c) Compel municipal authorities to perform a public duty.
- d) Violation of religious rights, minority rights or other basic fundamental rights.

### IMPORTANCE OF PIL

PIL have paved the way to a new regime of human rights by giving a broader interpretation to the right to equality, life and personal liberty mentioned under Part III of the Indian Constitution. Some of the human rights have emerged as a result of PIL e.g.: Right to education, right to free legal aid and speedy trial, protection against sexual harassment at workplace, Right to live with dignity, Right to Clean environment etc.

Introduction of PIL democratise, the access of justice to a common man by liberalizing the traditional rule of “*locus standi*.” Now any **public spirited person** can seek remedy on behalf of the deprived classes by filing a PIL.

PIL has articulated new kinds of remedies or reliefs under Writ Jurisdiction -as interim compensation to the victim parallel with seeking any remedy under civil suit.

PIL functions as a tool for social change and social welfare and to combat the atrocities existing in the society.

### ROLE OF JUDICIARY:

The judges of the apex court have innovated the concept of public interest litigation through judicial activism which can be seen through various cases as under:

A new trend of the PIL was articulated by Justice P.N. Bhagawati in **S.P. Gupta v. Union of India case**.<sup>3</sup> In this case it was observed that "any member of the public or social action group acting bonafidely, can invoke the writ jurisdiction of the High Courts or the Supreme Court for redressal against violation of legal or constitutional rights of persons who by reason of social or economic unprivilegeness or any other disability, is unable to approach the Court." By this judgment, PIL became a potent weapon for the enforcement of public duties and inaction or misdeed resulted in public injury. And now, any citizen or social action

<sup>3</sup> AIR 1982 SC 14 at 189.

group can now approach the apex court for seeking legal remedies in all cases, where the interests of general public or a section of public are at stake.

**In Bandhua Mukti Morcha v. Union of India,**<sup>4</sup>The Supreme Court explained the philosophy of public interest litigation as under:

"Where a person or class of persons to whom legal injury is caused by a reason of violation of fundamental rights is unable to approach the Court for judicial redress on account of poverty or disability or socially or economically disadvantaged position, any number of the public acting bona fide can move the Court for ruling under Article 32 and 226 of the Constitution of India, so that the fundamental rights may become meaningful not only for reach and the well to do who have the means to approach the Court, but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress".

The evolution of PIL in India has an interesting background in the famous case of

**Kesavananda Bharati v. State of Kerala**<sup>5</sup>

the Supreme Court ultimately put a brake on the arbitrary and unreasonable power of legislature to destroy the "Basic features" of the Constitution. Thus, the seeds of PIL could never have been planted had the Supreme Court not brought justness and fairness in the "Indian Legal System" in the year 1973, by formulating the "Doctrine of Basic Structure".

Justice Krishna Iyer sowed the seeds of the new dispensation in **Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai**<sup>6</sup> and used the expression PIL and "epistolary jurisdiction" in **Fertilizer Corporation Kamgar Union v. U.O.I.**<sup>7</sup>

The Courts in India found that the oppression of the weaker and disadvantaged groups was considerably greater in India as compared to U.S.A. The political and legislative sensitivity was also missing. The Supreme Court was left with no choice but to assume a much more concerned guardian and protector of Fundamental Rights. The resources in India were always claimed to be limited. Hence the financing of legal aid programmes for giving a boost to PIL was

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<sup>4</sup> AIR 1984 SC 802 : (1984) 3 SCC 161.

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<sup>5</sup> AIR 1973 SC 1461

<sup>6</sup> AIR 1981 SC 434.

<sup>7</sup> AIR 1981 SC 344

ignored by the government as much as possible. This led to the relaxing of the requirement of "procedures" and "locus standi" by the Supreme Court. The Court treated even a simple letter as a PIL. The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners.

### **EPISTOLARY AND LETTER JURISDICTION:**

The Public Interest Litigation or social Interest Litigation has been evolved with a view to render complete justice to the poorest of the poor, deprived, illiterate, the urban and rural unorganized labour sector, women children, handicapped by ignorance, indigence and illiteracy and other down trodden who have either no access to justice or have been denied justice. Its object is to make justice available to downtrodden having regard to the concept of human right.

In **Bandhua Mukti Morcha v. Union of India**<sup>8</sup>, an organisation dedicated to the cause of release of bonded labourers in Faridabad District of State of Haryana and prayed for the issue of writ for release of the bonded labourers and for proper implementation of the various provisions of

the constitution and statutes with a view to end suffering and helplessness of such labourers. The court treated the letter as writ petition and entertained it and appointed a commission to make inquiries and report to the court about the existence of bonded labourers in the said area. The Supreme Court said that Public Interest Litigation should not be taken to be in the nature of adversary litigation. It is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable section of the community and to assure them social and economic justice which is the rigid tune of the constitution. Even a letter given by 'public spirited' individuals or social action group is treated as writ petition by the court and the court readily responds to it.

In **Disabled Rights Group v. Chief Election Commissioner**<sup>9</sup>, a letter sent by Disabled Rights Group was treated by the Court as P.I.L. In **Hussainara Khaton (I) V. Home Secretary, State of Bihar**<sup>10</sup>, Habeas Corpus petition was moved on the basis of the news report. The court allowed the petition and ordered the release of all the

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<sup>8</sup> AIR 1984 sc 802

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<sup>9</sup> AIR2004 sc 4539.

<sup>10</sup> AIR 1979 SC 1360.

under-trial prisoners named in the news report.

The case of Lakshmi **Kant Pandey v. Union of India**<sup>11</sup> was initiated on the basis of a letter by an advocate complaining of mal-practices indulged in by social organizations in the matter of offering Indian children in adoption to foreign parents. He based his letter on press reports on this issue. The Court formulated a series of guidelines to be applied in such matters.

In some cases the affected parties addressed letter directly in the name of the judges of the SC and they used to convert the letters into writ petitions. This practice has been criticized on the ground that there would be a danger of litigations choosing a judge and in turn judges choosing their litigants. To avoid this defect, now the practice developed by the court is that the judge passes on the letter to the registrar for being dealt with according to the normal practice of the court.

In **Divine Retreat Centre v. State of Kerala**<sup>12</sup>, the Court has made it clear that in case of PIL, the litigant must disclose his identity so as to enable the Court to decide that the informant is not a wayfarer or

officials intervenor without any interest or concern. Anonymous letter cannot be entertained as P.I.L.

### **PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM:**

The powers of the Supreme Court for the protection of the constitutional rights of citizens are of the widest amplitude and there is no reason why the Court should not adopt activist approach similar to Courts in America and issue to the State directions for taking positive action with a view to securing enforcement of the Fundamental Right. The judiciary has been assigned this active role under the Constitution. They have to exercise their judicial powers for protecting the fundamental rights and liberties of citizens of the country. Therefore in order to achieve this mission the judiciary has to exercise and evolve its jurisdiction with courage, creativity and circumstances and with vision, vigilance and practical wisdom.

It is clear that this exercise of authority of the judiciary is not for glory but it is in discharge of its constitutional obligation. For otherwise the judiciary will become crippled which in turn will cripple democracy. When the executive and legislature are apathetic and fail to discharge

<sup>11</sup> AIR 1985 SC 652

<sup>12</sup> AIR 2008 SC 1614

their constitutional obligations and the bureaucracy shows a total indifference and insensitivity to its mandatory duties, this in turn affects the basic rights of the people. When the law enforcing authorities show their brutality in the process of implementation of law, the judiciary should check the excesses and also direct the authorities to effectively implement the welfare legislation.

The Supreme Court's has played a marvelous role in sensitizing the central investigating authorities to discharge their legal obligations in the various scams cases and if various judgments ranging from the need for Uniform Civil Code<sup>13</sup>, pollution control<sup>14</sup>, preservation of historical monument like Taj Mahal<sup>15</sup>, cleaning and keeping the big cities more hygienic<sup>16</sup>, directing removal of encroachments<sup>17</sup>, interim compensation to rape victims<sup>18</sup>, protecting working women from sexual harassment<sup>19</sup>, punishing senior Karnataka

IAS Officer, Vasudevan<sup>20</sup> and Chief Election Commissioner T.N. Seshan.<sup>21</sup>

In **Hussainara Khaton v. State of Bihar**,<sup>22</sup> the Supreme Court has held that speedy trial is an essential and integral part of the fundamental right to life and liberty enshrined in Art. 21

In **Bandhu Mukti Morcha v. Union of India**,<sup>23</sup> SC held that “the provisions of constitution conferring power on the Supreme Court to enforce Fundamental Rights in the widest possible terms and show the intention of the Constitution-makers not to allow any procedural technicalities to stand in the way for the enforcement of Fundamental Rights. Public interest litigation for the enforcement of Fundamental Rights is very much included in Art. 32.

The Supreme Court has now realised its proper role in a welfare state, and it is using this new strategy not only for helping the poor by enforcing their Fundamental Rights of persons but for the transformation of the whole society as an ordered and crime free society.

<sup>13</sup> Sarla Mudgal v. Union of India, AIR 1995 SC 1531

<sup>14</sup> M.C. Mehta v. Union of India (1991) 2 SCC 137

<sup>15</sup> M.C. Mehta v. Union of India, AIR 1997 sc 735

<sup>16</sup> Subhash Kumar v. State of Bihar, (1991) 1 SCC 598

<sup>17</sup> Atmram Uikey v. State of Maharashtra (Bombay High Court decision on 5April 2011)

<sup>18</sup> Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SCC 14

<sup>19</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011

<sup>20</sup> Vasudev v. State of Mysore, AIR 1966 Mysore 92

<sup>21</sup> T.N. Seshan v. Union of India (1995) 4 SCC 611

<sup>22</sup> AIR 1979 SC 1369.

<sup>23</sup> AIR 1984 SC 802

The Supreme Court's pivotal role in making up for the lethargy of the legislature and the inefficiency of the executive is commendable. Those who oppose to the growing judicial activism of the higher courts do not realize that it has proved a boon for the common man. Judicial activism has set right a number of wrongs committed by the State.

The SC has issued directions on a PIL filed, to all States and Union Territories to issue orders for banning smoking in the public places and public transports and railways and also directed the Commissioners of Police to submit status reports of action taken against cigarette manufacturers violating advertising code. The orders banning smoking in public places would include hospitals, health institutes, public offices, public transports including railways, court buildings, educational institutions, libraries and auditoriums. Seeing the ill-effects of Delhi, Goa and Rajasthan have taken the lead in this matter and already enacted laws banning smoking in public places. The Centre has introduced an Anti-Smoking Bill in the Parliament which has been referred to a Parliamentary Select Committee. A major problem is regarding the implementation of the direction of the Court.

In **Sunil Batra v. Delhi Administration**,<sup>24</sup> it has been held that the writ of habeas corpus can be issued not only for relating a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment. The dynamic role of judicial remedies imports to the habeas corpus writ a versatile vitality and operational utility as bastion of liberty even within jails. "Wherever the rights of a prisoner either under the Constitution or under other laws are violated the writ power of the court can run and should run to rescue", declared Krishna Iyer, J. in **Veena Sethi v. State of Bihar**.<sup>25</sup> The Court has informed through a letter that some prisoners, who were insane at the time of trial but subsequently declared sane, were not released due to inaction of State authorities and had to remain in jails from 20 to 30 years. The Court directed that they be released forthwith.

In **Shriram Food and Fertilizer case**<sup>26</sup>, the Honorable SC directed the company that is manufacturing hazardous and lethal chemicals and gases and which pose danger to health and life of workers and people

<sup>24</sup> AIR 1980 SC 1759, Sunil Batra's case No. (1) AIR 1978 SC 1975; Rakesh v. B.L. Vig Supdt. Central Jail,

New Delhi, AIR 1981 sc 1767 (Prison torture not beyond the reach of the Court).

<sup>25</sup> AIR 1983 sc 339

<sup>26</sup> M.C. Mehta v. Union of India, (1986) 2 SCC 176.

living in the vicinity, to take all necessary safety measures before starting the plant. There was a leakage of chlorine gas from the plant resulting in death of one person and causing hardships to workers and residents of the locality. This was due to the negligence of the management in maintenance and operation of the caustic chlorine plant of the Company. In this case the Apex court established the “Principle of Absolute Liability” in the legal system.

In a significant judgment in **Vineet Narain v. Union of India**,<sup>27</sup> Court has issued directions to make the CBI independent agency so that it may function more effectively and investigate crimes and corruptions at high places in public life which poses a serious threat to the integrity, security and economy of the nation and to take necessary measure to prosecute the guilty. The matter was brought before the Court by way of public interest litigation under Article 32 of the Constitution. It was contended that the government agencies, like the CBI and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they have failed to investigate matters arising out of the seizure of the “Jain diaries” and to prosecute all

persons who were found to have committed an offence.

Under Article 32(2), the court is empowered to issue necessary directions, orders or writs of “habeas corpus”, “mandamus”, “writ of prohibition”, “quo-warranto” and “certiorari” for the implementation and enforcement of Fundamental Rights guaranteed under Part III of the Indian Constitution. By this Article the Supreme Court has been constituted as a protector and guarantor of Fundamental Rights conferred by Part III. Once a citizen has shown that there is infringement of his Fundamental Right the court cannot refuse to entertain petitions seeking enforcement of Fundamental Rights.<sup>28</sup> In discharging the duties assigned to protect Fundamental Rights the Supreme Court in the words of Patanjali Sastri, J., “has to play a role of a sentinel on the qui vive”.<sup>29</sup>

In **Munna v. State of U.P.**<sup>30</sup> public interest litigation was filed in the Court on the basis of a news report about sexual exploitation of children by hardened criminals in Kanpur Jail. The SC issued directions to the District Judge, Kanpur to visit the jail and submit

<sup>28</sup> Romesh Thapper v. State of Madras, AIR 1950 SC 124.

<sup>29</sup> State of Madras v. V.G. Row, AIR 1952 SC 196.

<sup>30</sup> (1982) 1 SCC 545

<sup>27</sup> AIR 1998 SC 889.

report in this concern. The report confirmed that crime of sodomy was committed against the children. The Court gave the direction to shifting victims to children's home.

In the case of **D.C. Wadhwa v. State of Bihar**,<sup>31</sup> the petitioner, a professor of political science who had done substantial research and deeply interested in ensuring proper implementation of the constitutional provisions, challenged the practice followed by the State of Bihar in repromulgating a number of ordinances without getting the approval of the legislature. The Court held that the petitioner as a member of public has 'sufficient interest' to maintain a petition under Art. 32. Every citizen has right to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional limitations. The Court directed the State of Bihar to pay Rs. 10,000 to Dr. Wadhawa whose research brought in light this repressive practice. Under Article 32 of the Constitution the Supreme Court has power to award compensation by way of exemplary costs to the petitioner whose constitutional right is violated by the illegal and mala fide action of the State and its officials.

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<sup>31</sup> AIR 1987 SC 579

In **Gaurav Jain v. Union of India**<sup>32</sup> the Court rejected the demand for providing separate schools and hostels for children of prostitutes as it was not in the interest of such children. The application under Article 32 was made through public interest litigation asking for direction to the government for making such provisions for children of prostitutes.

In **Indian Council for Enviro-Legal Action v. Union of India**<sup>33</sup> the Supreme Court has held that if by the action of private corporate bodies a person's Fundamental Right is violated the Court would not accept the argument that it is not 'State' within the meaning of Art. 12 and therefore, action cannot be taken against it. The Supreme Court directed the Government and the authorities concerned to perform their statutory duties.

In **Ramesh v. Union of India**,<sup>34</sup> it has been held that public interest litigation for ensuring communal harmony is maintainable under Art. 32 of the Constitution. In **Subhas Kumar v. State of Bihar**,<sup>35</sup> it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free

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<sup>32</sup> AIR 1990 SC 292

<sup>33</sup> (1996) 3 SCC 212

<sup>34</sup> (1998) 1 SCC 668

<sup>35</sup> AIR 1991 SC 420

water and air which is included in the right of life under Article 21 of the Constitution. If anything endangers or impairs that quality of life in violation of laws a citizen has right to have recourse to Art.32 for removing the pollution of water or air which may be detrimental to the quality of life. Such a petition under Art. 32 is maintainable at the instance of affected persons or even by a group of social workers or journalists.

In **Vincent Panikurlangara v. Union of India**,<sup>36</sup> the petitioner, an advocate and General Secretary of Public Law Service Society, Cochin, filed a petition under Art.32 asking for directions for maintenance of approved standards of drugs and banning of injurious and harmful drugs. It was held that the public interest writ was maintainable as the issues raised by the petitioner were of vital importance, i.e. the maintenance and improvement of public health. The Court directed the Central Government to compensate and reimburse him for his expenses in recognition of his service for bringing the matter before the Court.

In **Bangalore Medical Trust v. B.S. Muddappa**,<sup>37</sup> an open space which was reserved for Public Park was allotted to a

private person for the purpose of construction of a hospital by the Development Authority, Bangalore. The residents of the locality challenged the allotment on the ground that it was contrary to the object of the Act. It was held that the residents of the locality have locus standi to challenge the allotment under Articles 32 and 226 of the Constitution. A private nursing home could neither be considered to be an amenity nor could it be considered improvement over necessity like a public park. A park is a necessity not a mere amenity. For maintaining ecology in urban areas open space and park is necessary.

In a significant judgment in **Parmanand Katara v. Union of India**,<sup>38</sup> the Supreme Court has held that it is a paramount obligation of every member of medical profession, Private or Government to give medical aid to every injured citizen brought for treatment immediately without waiting for procedural formalities to be completed in order to avoid negligent death. The matter was brought to the notice of the Court by petitioner, a human right activist fighting for general public interest. He appended to the writ petition a report entitled – ‘Law helps the injured to die – published in the

<sup>36</sup> (1987) 2 SCC 165

<sup>37</sup> (1991) 4 SCC 54

<sup>38</sup> AIR 1989 SC 2039

Hindustan Times. The Court held that it is the obligation of those who are in charge of the health of the community to preserve life of innocent as well as the guilty. Further the Court directed that the decision of the Court must be published in all legal journals and adequate publicity should be given by the national media as also through the Doordarshan and the All India Radio.

In **Harbans Singh v. State of U.P.**<sup>39</sup>, it was held the under Art. 32 very wide power has been conferred on the Supreme Court for due and proper administration of justice. This inherent power is to be exercised in extraordinary situations in the large interests of administration and for prevention of manifest injustice. Accordingly, the Court commuted the death sentence of the petitioner into the imprisonment for life on the ground that one of his co-accused's sentences was commuted by the Court. The Court recommended that the President should normally exercise his power under Art. 72 to commute the death sentence because he has considered petitioner's mercy petition and rejected it. But if he fails to exercise his power the Court will interfere to do justice in a particular case. Under Art.32 the Supreme Court has power to commute

death sentence into life imprisonment if there is undue delay in execution of sentence of death.

### **MISUSE OR ABUSE OF PIL:**

With the expansion of the scope of writ jurisdiction, more and more PIL came to be filed in the Supreme Court and the High Courts. Doubts and fears have been expressed against the abuse of PIL. While expanding the scope of the *Locus standi* rules in the case of **S.P. Gupta v. Union of India**,<sup>40</sup> Lordship J. Bhagwati, also expresses note of caution. He observed that

"But we must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bona fide and not for the personal gain or private profit or private motivation or other oblique considerations. The Court must not allow its process to be abused by politicians and others ..."

This observation makes it clear that his lordship was aware this liberal rule of *Locus standi* might be misused by vested interests. He, therefore, made it clear that in that case the court will not allow the remedy to be abused.

<sup>39</sup> AIR 1982 SC 849

<sup>40</sup> AIR 1982 SC 856

The case of **Janta Dal v. H.S. Chowdhari**,<sup>41</sup> is an example where the petitioner tried to abuse the public interest litigation for political purposes. This case relates to purchase of Bofors guns. It was alleged that bribe has been paid to some Indian politicians and defence personnel to secure the contract or the sale of Bofors guns. The CBI registered a criminal case against some persons. With the object to collect more information from the Swiss authorities the CBI filed an application before the Court for the issue of the letter of rogatory (request) to Switzerland for getting necessary assistance in conducting investigation. The special judge dismissed the petition on the ground that the petitioner has no “locus standi”.

Similarly, in **Krishna Swami v. Union of India**<sup>42</sup>, the petitioner filed a public interest litigation under Article 32 of the Constitution for quashing the motion given to the Speaker by 108 members of the ninth Lok Sabha for initiating proceedings for the removal from office of Mr. Justice V. Ramaswami of the Supreme Court against whom there were allegations of financial irregularities. The Supreme Court by majority held that the petitioners had no locus standi to file the

petition. The petitioners have no public purpose in filing the petition.

Likewise in **Simranjit Singh Mann v. Union of India**,<sup>43</sup> the question was whether a third party who is total stranger to the prosecution culminating in the conviction of the accused have any locus standi to challenge the conviction and sentence awarded to the convicts through public interest litigation. The Supreme Court has held that in criminal matters as far as possible, the Court should be moved only by the accused. The Court has observed that an aggrieved party is under some disability recognised by law; it would be unsafe to allow any third party to question the decision against him.

In **B. Singh v. Union of India**,<sup>44</sup> the petitioner, on the basis of a representation of one Ramsarup, addressed to the President, published in a newspaper, against a person likely to be appointed a judge of the High Court filed a public interest litigation challenging his appointment. The petitioner nowhere has stated that he has any personal knowledge of the allegations made against the respondent. The Supreme Court held that this was a clear and blatant abuse of PIL

<sup>41</sup> (1992) 4 SCC 653

<sup>42</sup> (1992) 4 SCC 605

<sup>43</sup> (1992) 4 SCC 653

<sup>44</sup> AIR 2004 SC 1923

filed with oblique motive. The Court held that the PIL filed with reckless allegations and vitriolic statements against judges and persons whose names were under consideration for judgeship must be sternly dealt with. The petitioner is a business person seeking publicity and not interested in welfare of judicial system.

In the case of **Guruvayur Devasawom Managing Committee v. C.K.Rajan**<sup>45</sup>, a three judge bench of the Supreme Court, with a view of checking the abuse of PIL, re-examined its scope and ambit in detail and reiterated the guiding principles for its exercise. In this case a special leave petition was filed in the Supreme Court by the management committee of the temple. The Supreme Court held that public interest litigation was evolved with a view to render justice to poor, deprived, the illiterate and downtrodden that have either no access to justice or had been denied justice. It cannot be used for removing corruption in a temple.

In the case of **BALCO Employees Union v. Union of India**,<sup>46</sup> the Supreme Court had made it clear that the public interest litigation is not meant to be a weapon to challenge the financial or economic decisions which are

taken by the Government in the exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but public interest litigation at the behest of a stranger ought not to be entertained.

Such litigation cannot per se be on behalf of the poor and the downtrodden, unless the Court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the Court. The decision to disinvest and implementation thereof is purely an administrative decision relating to the economic policies of the State and challenge to the same at the instance of a busy-body cannot fall within the parameters of the public interest litigation.

The Court has observed that whenever the Court has interfered and given directions while entertaining public interest litigations it has mainly been where they have been initiated for the benefit of the poor and the under-privileged who are unable to come to the Court due to some disadvantage. In those cases, also it is the legal rights which are secured by the courts. However, the public interest litigation is not meant to be a weapon to challenge the financial or economic

<sup>45</sup> AIR 2004 SC 561.

<sup>46</sup> AIR 2002 SC 350.

decisions which are taken by the government in exercise of their administrative powers.

Admittedly, there are some dangers in public interest litigation. Liberalizing the rule of *locus standi* and growth of epistolary jurisdiction do have some inherent dangers of abuse by vested interests impelled by personal vendetta, media – craze or other dubious motives. It has been held that PIL should not be used for personal gain, political motivation or oblique consideration and that it should be aimed at redressal of genuine public injury.<sup>47</sup>

This misuse comes in various forms. The first is what Justice Prasad in the case of **Ashok Kumar Pandey v. State of W.B.**<sup>48</sup> describes as "busybodies, meddling interlopers, wayfarers or officious interveners who approach the court with extraneous motivation or for glare of publicity". Such litigation is described as "publicity interest litigation" and the courts have been fraught with such litigation. Examples of this kind of litigation are innumerable. No sooner has an event of public interest or concern occurred than there is a race to convert the issue into a PIL.

Then, we have the misuse of PIL by political interests. In the case of **S.P. Gupta v. Union of India**,<sup>49</sup> Justice Bhagwati said, "But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rable has warned that 'political pressure groups who could not achieve their aims through the administrative processes and we might add, 'through the political process, may try to use the courts to further their aims'. These are some of the dangers in public interest litigation which the court has to be careful to avoid. "

Equally disturbing aspect is the misuse of PIL by hidden litigants. This is happening in all sorts of matters; rival business groups are setting scores by resort to PIL. Persons who describe themselves as "public spirited persons" and others as "social organizations" emerge suddenly and multiply. A case in point is the judgement of Chief Justice

<sup>47</sup> A.K. Pandey v. State of W.B. AIR 2004 SC 280.

<sup>48</sup> AIR 1982 SC 856.

<sup>49</sup> AIR 1982 SC 149.

Sabharawal in **T.N. Godavarman Thirumaulpad v. Union of India.**<sup>50</sup>

Following the decision in Janata Dal's case, and Justice Pasayat and Justice Kapadia's decision in **Dattaraj Nathji Thauvare v. State of Maharashtra,**<sup>51</sup> the learned judges observed that however genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person whose bona fides and credentials are in doubt. It was held that the applicant, who was a man of scare means, had spent huge amount in litigation and was obviously nothing but a name lender: costs of rupees one lac were imposed on him.

Such petitions are increasingly being filed in relation to matter of projects of public importance by unsuccessful tenderers, but the use of public interest litigation in such cases needs to be deprecated. Yet, this is happening all the time; there are various ways in which judges can and should see through the bona fides of such litigants.

Terming it as an "abuse of the process of law", a division bench of acting Chief Justice JN Patel and Justice BR Gavai said that the

tendency to file PIL on flimsy grounds needed to be curbed.

The Court remarked that it had become a practice to obtain information under the Right to Information Act. A flood of such RTI-based PIL, many with sketchy details, had been filed, added the court. "The petitioners who drag people to court themselves do not have anything to lose," said the court, adding that it caused harm not only to the finances of the respondents but also to their reputation.

In **Jhumman Singh v. CBI,**<sup>52</sup> the Supreme Court observed that where there is blatant abuse of process of courts and judicial system it is the duty of the Court to correct it. A writ petition will be maintainable whether power to do so is traced to Articles 32, 136 or 142. The court therefore entertained the petitions in that case. The Court refused to dismiss petitions on the ground that no Fundamental Right of the petitioners was violated.

A judge should be immediately suspicious when the petitioner, who has nothing to do with the tender, produces himself and sometimes even hidden documents before

<sup>50</sup> AIR 2006 SC 1774.

<sup>51</sup> AIR 2005 SC 540.

<sup>52</sup> (1995) 3 SCC 420.

the court official. The use of official documents by persons who ordinarily would have no access to them has been commented upon adversely.

#### **CONCLUSION:**

The concept of public interest litigation, through judicial activism have opened new vistas in the Indian legal system and make basic human rights meaningful to the deprived and vulnerable sections of the society and to assure them social and economic justice which is the mandate of our Constitution. . Thus, the judicial activism opened up new dimension for judicial process and has given a new hope to the justice starved unprivileged population of the country who till now were not in a position to reach the doors of the judiciary due the lack of knowledge and resources. After the relaxation of the rule of “Locus Standi”, any member of the public can file a PIL, even through a letter on behalf of a person or group of persons who for any reason may not be in a position to approach the Court.

The misuse of public interest litigation will stop only if the courts are vigilant. In every matter, the first question that the courts must ask themselves is whether the petitioners are

bona fide, whether the concern of the petitioner is real or whether there is something more than meets the eye. “I am not suggesting that all public interest litigations should be viewed with suspicion” - Justice P.B. Savant. A judge should develop a strong sense of smell. If something stinks, then he must be extra careful. It is the right judicial instinct and the skill of the judiciary which will stop the misuse of public interest litigations and restore it to its pristine and useful character.