

A Concise Study on Public Interest Litigation in India

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Abstract:

Public Interest litigation, itself says that Public Interest Litigation is a litigation for any public interest. In the words of some learned people we can say that public interest litigation is a litigation which can be filed in any court of law by any public spirited person for the protection of public interest. This paper tells about definition, evolution and development of PIL (Public Interest Litigation), Jurisdiction along with criticism of PIL.

Key words: Public Interest Litigation, Supreme Court, High Court, Judicial Activism, Govt.

Introduction:

Public Interest litigation, itself says that Public Interest Litigation is a litigation for any public interest. In the words of some learned people we can say that public interest litigation is a litigation which can be filed in any court of law by any public spirited person for the protection of public interest.

In 1981, Justice P. N. Bhagwati, 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.”

In *Guruvayur Devaswom Managing Commit. And Anr. Vs. C.K. Rajan and Ors*¹, the Supreme Court held,

¹ J.T. 2003 (7) S.C. 312

“The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by ‘ignorance, indigence and illiteracy’ and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as ‘Social Interest Litigation’ or ‘Public Interest Litigation’ was evolved with a view to render complete justice to the aforementioned classes of persona. It expanded its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings... Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the

disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice.”

DEFINITION OF PIL

The term Public Interest Litigation (PIL) is composed of two words; ‘Public Interest’ and ‘Litigation’.

According to the jurisprudence of Article 32 of the Constitution of India, *“The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.”* Ordinarily, only the aggrieved party has the right to seek redress under Article 32.

Origin and Development of PIL in India

In India the first case of PIL was filed in 1976 named *Majdur Kaamgar Sabha v Abdul Bhai Faizulla Bhai*. Where Krishna Iyar allowed a group of people to file petition on behalf of others. The rights of the member were violated Krishna Iyar held either one individual or group of individuals

together can come to the court. But some time misuse of this petition also comes into picture. This is the problem in PIL that many time this misused by some people. There are various cases in which PIL is misused as S.P. Gupta v union of India. In this can misuse of PIL was cane into picture. And the secondly in the case of Shushes Kumar v Union of India. In this case there was a manager in a company and his boss faired him and he gave a PIL in spite of not being any ground of PIL.

Jurisdiction of Courts in respect of PIL:

A main question comes in the mind that where should a public spirited person file this petition to take remedy by this. So the answer of this main question is this that all PIL are used to filed in high court or Supreme Court. If a person want to go to high court to filing that then he can go under article 226 of Indian constitutional law and if any person wants to go to Supreme court then he can go under article 32 of the Indian constitutional law but Article 226 is something distinguished from article 32 of constitutional law. Thus, we can say that both of the courts have power to consider the public interest litigation.

Person competent to file a PIL:

As we already said that any public spirited person even a foreigner can file a PIL on behalf of others but this is necessary that only the person who is filing a PIL should not get benefit. Meaning there by any PIL whoever is filing should be only and only in for the benefit of peoples. If only one person is getting affected by any act then that is not a ground of filing PIL. Although earlier only the person whose interest in directly along with others can use such litigation.

So these are the essential point for that person who can file any public interest litigation as given below:

- He may be a member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury.
- He should not be a mere busy body or a meddlesome interloper.
- His action should not be motivated by personal gain or any other similar consideration.

Against whom it can be filed: Now this is a curious part of PIL that if any public spirited person wants to file PIL in court of law but the question is where? So the answer is this that any public spirited person can file any PIL but only against the state govt./ central

govt. or any municipality authority but against to the any private party but it doesn't mean that private party does not comes under the sphere of PIL. A private party also can be tried by the PIL by acting a role of respondent after making concern by the state authorities.

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 PUBLIC INTEREST LITIGATION against:

1. Government of Delhi
2. State Pollution Control Board, and
3. Also against the private factory

But public interest litigation can not file against only private party without concerning state govt. or central govt. as in the above case this case was against the union of India not to that corporation whose fault was there.

Procedure regarding PIL: Procedure to file a PIL is just like a filing a general writ in High Court or Supreme Court as mentioned below.

In High Courts: If a PUBLIC INTEREST LITIGATION is filed in a High court, then two (2) copies of the petition have to be filed. Also, an advance copy of the petition has to be served on the each respondent, i.e.

opposite party, and this proof of service has to be affixed on the petition.

In Supreme Court: If a PUBLIC INTEREST LITIGATION is filed in the Supreme court, then (4)+(1) (i.e. 5) sets of petition has to be filed opposite party is served, the copy only when notice is issued.

In Present: In the past, many people have tried to misuse the privilege of PUBLIC INTEREST LITIGATION and thus now the court generally require a detailed narration of facts and complaint, & then decide whether to issue notice and call the opposite party.

However as there is no statute laying down rules and regulations for a PUBLIC INTEREST LITIGATION Still the court can treat a letter as a PUBLIC INTEREST LITIGATION. However the letter should bring the true & clear facts, and if the matter is really an urgent one, the court can treat it is a PUBLIC INTEREST LITIGATION. But still it depends upon facts and circumstances, and court has the entire discretion.

Relief by Public Interest Litigation:

By such a petition many kind of relief are available here to secure the public interest at large.

That relief is:

Interim Measures

The court can afford an early interim measure to protect the public interest till the final order for example:

1. Release of under trial on personal bonds ordering release of all under trial who have been imprisoned for longer time, than the punishment period, free legal aid to the prisoners, imposing an affirmative duty on magistrates to inform under trial prisoners of their right to bail and legal aid. Or
2. Closure of Industrial plant emitting poisonous gas, setting up victim compensation scheme, ordering the plaint reopening subject to extensive directions etc. Or
3. Prohibiting cutting of trees or making provisions for discharge of sewage, till the disposal of final petition.

Relief in most of the PUBLIC INTEREST LITIGATION cases in the Supreme Court is obtained through interim orders.

Final Orders

The court may also give final orders by way of direction to comply within a stipulated time.

Criticism of PIL:

The debates over the limits of Judicial Activism in the area of PIL, have been vigorous. A private members bill entitled “Public Interest Litigation (Regulation) Bill, 1996” was tabled in the Rajya Sabha. The statement of objectives and reasons stated that PIL was misused in the name of providing justice to the poor sections of the society and also that PIL cases were given more priority over other cases which led to pending of several “general section cases” in the court for years. However the bill was not passed.

Bearing in mind the power and importance of PIL in making the Constitution a living reality for every citizen and also the efforts channelled through the medium of PIL jurisprudence in providing justice to the deprived, the process is positively succeeding, following the logic of its nature. In a country Characterized by numerous “Variable Ethnicity” and religious diversity, working via the pattern through a comprehensive bureaucracy, a grieved, poor, deprived citizen does find it hard to seek justice because of economic disability or lack of “Know-How” or even due to red-tapism. The only option left before the deprived next to a miracle is a PIL petition.

Conclusion:

So by the all discussion this is conclusion that Public interest litigation is a process to put any public problem in the eyes of law but as it is said that nothing can be fully good so there are some good feature then some bad are also their as we have discussed about the misuse of PIL. In the misuse of PIL it can be possible that any person of society send PIL to tease any other person of the society in Indian law, means litigation for the protection of public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism.

References:

- [1] M.P. Jain, 'Indian Constitutional Law', vol-I (5th Ed., 2003, Wadhwa Nagpur)
- [2] Durga Das Basu, 'Commentary on the Constitution of India', vol-II (8th Ed., 2008, Lexis Nexis, Butterworth Wadhwa)
- [3] *Oshlack v Richmond River Council* (1997) 152 ALR 83.
- [4] *IRC v National Federation of Self-Employed and Small Businesses Ltd*, [1981] 2 All ER 93, at 105.
- [5] [www.scribd.com]
- [6] S. P. Gupta v. Union of India, 1981 (Supp) SCC 87
- [7] Ashok Kumar Pandey v. State of W. B., (2004) 3 SCC 349
- [8] Indian Bank's Association, Bombay and ors v. M/s Devkala Consultancy Service and Ors., J. T. 2004 (4) SC 587
- [9] www.legalserviceindia.com/article/1273
- [10] According to "Ford Foundation" of U.S.A.
- [11] www.wikipedia.com
- [12] Constitution of India by M.P. Jain
- [13] Public%20Interest%20Litigation-%20scribd.webarchive