

PIL and India: A Judicial Diagnosis

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Abstract:

Public interest litigation or PIL has played such a vital role in the justice delivery system that our judicial system could hardly achieve those objectives through conventional method of litigation processes. PIL provides a ladder to justice to the disadvantaged or poor sections of the society and enables the civil society or conscious people to take part in the decision making processes of the government and which could ultimately contribute towards the good governance by making a check and balance on the governmental activities and making government responsible and accountable towards the citizen.

PIL is such an innovative judicial procedure which is always trying to safeguard the interests of the marginalized groups in India. In recent past, however, a number of criticisms regarding the functioning of PIL have emerged, including

the encroachment of powers among legislature, executive and judiciary. Therefore, in this paper I would like to discuss mainly the various functions performed through PIL in India and will try to analyze the various judicial pronouncements made by our judiciary regarding protection of various rights of the needy and poor people.

Keywords: Public Interest Litigation, Justice Delivery System, Judicial System, Litigation, Decision Making Process, Good Governance, Government, Citizen, Marginalized Groups Etc.

1. INTRODUCTION

"Public interest Litigation" or "PIL", in simple words, means, litigation filed in a court of law, for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional Hazards 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. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a public interest Litigation can be filed.¹

PIL² examines the modalities and dynamics of litigation processes in order to assess the potential and limitations of litigation for shaping social policy in developing and transitioning countries. In a growing number of countries public interest litigation is used – and proposed – as a strategy to influence social policy in fields such as health, environment, housing, land, education and gender etc. Activists see it as a channel through which the voice of the marginalized can be articulated into the legal-political system and as a mechanism to make the state more responsive and accountable to their rights.

¹ PUBLIC INTEREST LITIGATION, available on http://www.lawyersclubindia.com/articles/PUBLIC-INTEREST-LITIGATION_3111.asp#.Uif55dIweK9 last visited on dated 05.09.2013 at about 8 P.M

² PUBLIC INTEREST LITIGATION, SOCIAL RIGHTS AND SOCIAL POLICY by Siri Gloppen, Christian Michelsen Institute, available on siri.gloppen@cmi.no <http://derechocambiosocial.pbworks.com/f/Gloppen.rev.3%5B1%5D.pdf> last visited on dated 05.09.2013 at about 9.20 P.M

1.1 Meaning and Definition of PIL³

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."

In the case of People's Union for Democratic Rights v. Union of India⁴, it was held that "Public Interest Litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, 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 parties, one making a claim or seeing relief against the other and that other opposing such claim or

³ Available on <http://www.legalserviceindia.com/article/I171-Public-Interest-Litigation.html> last visited on dated 05.09.2013 at about 6.20 P.M

⁴ A.I.R 1982, S.C 1473

relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed.

That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.⁵

⁵ Supra Note 3

1.2 The debate over label: PIL or social action litigation⁶

Given that the birth of PIL in India was connected to the evolution of PIL in the United States, it was natural for scholars to draw comparisons between the US experience and the Indian experience. One result of this comparison was that it was argued that PIL in India should be labeled as social action litigation (SAL). Baxi was the key scholar who mooted for such indigenous labelling of PIL because of its distinctive characteristics. He contended that whereas PIL in the United States has focused on “civic participation in governmental decision making”, the Indian PIL discourse was directed against “state repression or governmental lawlessness” and was focused primarily on the rural poor. Writing in the early 1980s, Baxi highlighted another contrast: that unlike India, PIL in the United States sought to represent “interests without groups” such as consumerism or environment. At least two comments could be made about the desire to designate PIL as

⁶ Deva Surya, Public Interest Litigation in India: A Critical Review, available on http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1424236, last visited on dated 10.09.2013 at about 11 P.M

SAL. First, the term “social action” probably implied the role that law could/should play in social engineering. However, considering that in PIL cases judges (rather than the legislature) play a key role and the law is judge made law, one should not over-estimate what courts could deliver through PIL/SAL in a democracy. No doubt, courts could help in providing an official recognition to the voices of minorities or destitutes that might be ignored otherwise, but it would be unrealistic to expect that they could achieve social transformation on their own. Secondly, as we will note in the next section, the character of the PIL in India has changed a lot in the second phase in that now it is not limited to espousing the interests of disadvantaged sections of society or to redressing state repression and governmental lawlessness. In fact, in the second phase, the focus of PIL in India has shifted from poor to the middle class and from redressing state exploitation of disadvantaged groups to pleas for civic participation in governance. Although there are still differences between how the PIL jurisprudence has unfolded in the United States and India, the distinction as to the subject-matter or the basic objective of the PIL is not that much as it

used to be when an argument was made to label PIL as SAL.

2. HISTORICAL BACKGROUND OF PIL IN INDIA

The Indian PIL is the improved version of PIL of the U.S.A. According to “Ford Foundation” of U.S.A., “Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others”. The emergency period (1975-1977) witnessed colonial nature of the Indian legal system. During emergency state repression and governmental lawlessness was widespread. Thousands of innocent people including political opponents were sent to jails and there was complete deprivation of civil and political rights. The post emergency period provided an occasion for the judges of the Supreme Court to openly disregard the

impediments of Anglo-Saxon procedure in providing access to justice to the poor.⁷

Public Interest Litigation⁸ popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi (standing required in law) to file a case and continue the litigation and the non affected persons had no locus standi to do so. And as a result, there was hardly any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other. The traditional view in regard to locus standi in Writ jurisdiction has been that only such persons who: a) Has suffered a legal injury by reason of violation of his legal right or legally protected interest; or b) Is likely to suffer a legal injury by reason of violation of

his legal right or legally protected interest. Thus before a person acquired locus standi he had to have a personal or individual right which was violated or threatened to be violated . He should have been a “person aggrieved” in the sense that he had suffered or was likely to suffer from prejudice, pecuniary or otherwise.

However⁹, all these scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the Apex Court of India into a Supreme Court for all Indians. Justice V. R. Krishna Iyer and P. N. Bhagwati recognised the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. In the post-emergency period when the political situations had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression, custodial violence,

⁷ Supra Note 5

⁸ Id.

⁹ Ibid.

drawing attention of lawyers, judges, and social activists. PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists. This trend shows stark difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role. PIL is necessary rejection of laissez faire notions of traditional jurisprudence.

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*¹⁰, 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 undertrial prisoners languishing in various jails in Bihar. These proceeding led to the release of more than 40,000 undertrial 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.

¹⁰ AIR 1979, SC 1369

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*¹¹. 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 rights 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

¹¹ 1982 SC 1 (AIR 49)

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.¹²

In *Citizen for Democracy v. State of Assam*, the S. C. declared that the handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or while in transport or transit from one jail to another or to the court or back.¹³

2.1 Who can file a PIL?¹⁴

To file a PIL before a court one need not be a direct victim of violation of any law or right there under. Where matters of greater good are concerned the rule of locus standi has been relaxed and a person acting bona fide and having sufficient interest may approach the court to raise his voice against violation of fundamental rights and genuine defiance of laws.

¹² Supra Note 9.

¹³ Id.

¹⁴ Public Interest Litigation (PIL), available on http://www.maheshwariandco.com/repository/articles/downloads/public_Interest_Litigation.pdf, last visited on dated 05.09.2013 at about 6 P.M

2.2 When can a PIL be filed?¹⁵

A PIL may be filed in the following matters of public interest: (i) bonded labour matters, (ii) matters of neglected children, (iii) exploitation of casual labourers and non-payment of wages to them (except in individual cases), (iv) matters of harassment or torture of persons belonging to Scheduled Castes, Scheduled Tribes and Economically Backward Classes, either by co-villagers or by police, (v) matters relating to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forests and wild life, (vi) petitions from riot victims and (vii) other matters of public importance.

2.3 Where can a PIL be filed?¹⁶

A PIL may be is filed in the High Court of the state concerned as a writ petition under Article 226 of the Constitution. Article 226 of the Constitution of India empowers a High Court to issue writs, directions or order for the enforcement of fundamental rights and for any other purposes. Such writ, direction or order may be issued by the High Court to a

¹⁵ Id.

¹⁶ Id.

person or authority amenable to the Court's jurisdiction either by residence or location within the State, even if the petitioner and other parties are from other States. Alternately, a PIL can also be filed in the Supreme Court under Article 32 of the Constitution. Article 32 of the Constitution empowers the Supreme Court to issue writs, directions or order for the enforcement of fundamental rights. Such petitions can be filed at the filing counter of the High Court/ Supreme Court like any other writ petition for enforcement of fundamental right.

3. PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM IN INDIA

While discussing PIL and judicial activism in India; it is important to mention here that broadly there has been three different phases of PIL. First phase deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society; second phase deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers etc.; and third phase deals with the directions issued by the

Courts in maintaining the transparency and integrity in governance. Below, judicial pronouncements from all the three phases are discussed in detail:¹⁷

In the Judges Transfer Case¹⁸- Court held that Public Interest Litigation can be filed by any member of public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress. This is absolutely necessary for maintaining Rule of law and accelerating the balance between law and justice.

It is a settled law that when a person approaches the court of equity in exercise of extraordinary jurisdiction, he should approach the court not only with clean hands but with clean mind, heart and with clean objectives.

In Shriram Food & Fertilizer case¹⁹- Supreme Court through Public Interest Litigation directed the Company, Manufacturing hazardous & lethal chemical and gases posing danger to life and health of

¹⁷ Bhandari D, Judge, Supreme Court of India, Public Interest Litigation : Definition, Origin & Evolution : Supreme Court, Saturday, February 5, 2011, available on <http://www.legalblog.in/2011/02/public-interest-litigation-definition.html> last visited on dated 05.09.2013 at about 10 P.M

¹⁸ AIR 1982, SC 149

¹⁹ AIR (1986) 2 SCC 176

workmen, to take all necessary safety measures before re-opening the plant.

In the case of *M.C Mehta V. Union of India*²⁰- Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

In *Parmanand Katara V. Union of India*²¹- The Supreme Court of India held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

In *Council for Environment Legal Action V. Union Of India*²²- Public Interest Litigation filed by registered voluntary organisation regarding economic degradation in coastal area. Supreme Court

issued appropriate orders and directions for enforcing the laws to protect ecology.

In *Sunil Batra v. Delhi Administration & Others*²³, the Court departed from the traditional rule of standing by authorizing community litigation. The Court entertained a writ petition from a prisoner, a disinterested party, objecting to the torture of a fellow prisoner. The Court entertained the writ after reasoning that "these 'martyr' litigations possess a beneficent potency beyond the individual litigant and their consideration on the wider representative basis strengthens the rule of law." Significantly, citing "people's vicarious involvement in our justice system with a broad-based concept of locus standi so necessary in a democracy where the masses are in many senses weak," the Court permitted a human rights organization to intervene in the case on behalf of the victim.

In *Prem Shankar Shukla v. Delhi Administration*²⁴, a prisoner sent a telegram to a judge complaining of forced handcuff on him and demanded implicit protection against humiliation and torture. The court

²⁰ (1988) 1 SCC 471

²¹ AIR 1989, SC 2039

²² (1996)5 SCC 281

²³ AIR 1978 SC 1675

²⁴ AIR 1980 SC 1535

gave necessary directions by relaxing the strict rule of locus standi.

In *Municipal Council, Ratlam v. Vardhichand & Others*²⁵, Krishna Iyer, J. relaxed the rule of locus standi:

"The truth is that a few profound issues of processual jurisprudence of great strategic significance to our legal system face us and we must zero-in on them as they involve problems of access to justice for the people beyond the blinkered rules of 'standing' of British Indian vintage. If the center of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered...."

Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Don'ts the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice....."

²⁵ AIR 1980 SC 1622

In *Sheela Barse v. State of Maharashtra*²⁶, Sheela Barse, a journalist, complained of custodial violence to women prisoners in Bombay. Her letter was treated as a writ petition and the directions were given by the court.

In *Dr. Upendra Baxi (I) v. State of Uttar Pradesh & Another*²⁷, two distinguished law Professors of the Delhi University addressed a letter to this court regarding inhuman conditions which were prevalent in Agra Protective Home for Women. The court heard the petition on a number of days and gave important directions by which the living conditions of the inmates were significantly improved in the Agra Protective Home for Women.

In *Smt. Nilabati Behera alias Lalita Behera v. State of Orissa & Others*²⁸, this Court gave directions that for contravention of human rights and fundamental freedoms by the State and its agencies, a claim for monetary compensation in petition under Article 32 of 226 is justified. In a concurring judgment, Anand, J. (as he then was) observed as under:

²⁶ AIR 1983 SC 378

²⁷ 1983 (2) SCC 308

²⁸ AIR 1993 SC 1960

"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations."

In *Delhi Domestic Working Women's Forum v. Union of India & Others*²⁹, the Court expressed serious concern about the violence against women. The Court gave significant directions and observed that compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

In *M. C. Mehta v. State of Tamil Nadu & Others*³⁰, the Court was dealing with the cases of child labour and the Court found that the child labour emanates from extreme poverty, lack of

opportunity for gainful employment and intermittency of income and low standards of living. The Court observed that it is possible to identify child labour in the organized sector, which forms a minuscule of the total child labour, the problem relates mainly to the unorganized sector where utmost attention needs to be paid.

In *Vishaka & Others v. State of Rajasthan & Others*³¹, this Court gave directions regarding enforcement of the fundamental rights of the working women under Articles 14, 19 and 21 of the Constitution. The Court gave comprehensive guidelines and norms and directed for protection and enforcement of these rights of the women at their workplaces.

In *Rural Litigation and Entitlement Kendra, Dehradun & Others v. State of U.P. & Others*³² the Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology. While commenting on the closure of the lime-stone quarries, the court stated that this would

²⁹ (1995) 1 SCC 14

³⁰ (1996) 6 SCC 756

³¹ (1997) 6 SCC 241

³² AIR 1985 SC 652

undoubtedly cause hardship to owners of the lime-stone quarries, but it is the price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment.

The case of *M.C. Mehta v. Union of India & Others*³³, relates to pollution caused by the trade effluents discharged by tanneries into Ganga river in Kanpur. The court called for the report of the Committee of experts and gave directions to save the environment and ecology. It was held that "in Common Law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river. But in the present case the petitioner is not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga

³³ (1988) 1 SCC 471

and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case, the petitioner is entitled to move the Supreme Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974".

In *Vellore Citizens Welfare Forum v. Union of India & Others*³⁴, this court ruled that precautionary principle and the polluter pays principle are part of the environmental law of the country. This court declared Articles 47, 48A and 51A(g) to be part of the constitutional mandate to protect and improve the environment.

In *M.C. Mehta v. Union of India & Others*³⁵, this court observed that the effluent discharged in river Ganga from a

³⁴ AIR 1996 SC 2715

³⁵ AIR 1988 SC 1037

tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks. The court further observed that the financial capacity of the tanneries should be considered as irrelevant without requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large.

In *M.C. Mehta v. Union of India & Others*³⁶, this court observed that in order to preserve and protect the ancient monument Taj Mahal from sulphurdioxide emission by industries near Taj Mahal, the court ordered 299 industries to ban the use of coke/coal. The court further directed them to shift-over to Compressed Natural Gas (CNG) or re-locate them.

The case of *Vineet Narain & Others v. Union of India & Another*³⁷ is an example of its kind. In that case, the petitioner, who was a journalist, filed a public interest litigation. According to him, the prime

investigating agencies like the Central Bureau of Investigation and the Revenue authorities failed to perform their legal obligation and take appropriate action when they found, during investigation with a terrorist, detailed accounts of vast payments, called 'Jain diaries', made to influential politicians and bureaucrats and direction was also sought in case of a similar nature that may occur hereafter. A number of directions were issued by the Supreme Court. The Court in that case observed that "it is trite that the holders of public offices are entrusted with certain power to be exercised in public interest alone and, therefore, the office is held by them in trust for the people."

In yet another case of *M. C. Mehta v. Union of India & Others*³⁸, a project known as "Taj Heritage Corridor Project" was initiated by the Government of Uttar Pradesh. One of the main purpose for which the same was undertaken was to divert the River Yamuna and to reclaim 75 acres of land between Agra Fort and the Taj Mahal and use the reclaimed land for constructing food plazas, shops and amusement activities. The Court directed for a detailed enquiry which was carried out by the Central Bureau

³⁶ AIR 1997 SC 734

³⁷ AIR 1998 SC 889

³⁸ (2007) 1 SCC 110

of Investigation (CBI). On the basis of the CBI report, the Court directed registration of FIR and made further investigation in the matter. The court questioned the role played by the concerned Minister for Environment, Government of Uttar Pradesh and the Chief Minister, Government of Uttar Pradesh. By the intervention of this Court, the said project was stalled.

In *M. C. Mehta v. Union of India & Others*³⁹, in another public interest litigation, a question was raised before the court whether the Apex Court should consider the correctness of the order passed by the Governor of Uttar Pradesh refusing to grant sanction for prosecution of the Chief Minister and Environment Minister after they were found responsible in "Taj Heritage Corridor Project". It was held that the judiciary can step in where it finds the actions on the part of the legislature or the executive to be illegal or unconstitutional.

In *Centre for Public Interest Litigation v. Union of India & Another*⁴⁰, two writ petitions were filed in public interest by the petitioner calling in the question of decision of the government to sell majority of shares in Hindustan

Petroleum Corporation Limited and Bharat Petroleum Corporation Limited to private parties without Parliamentary approval or sanction as being contrary to and violative of the provisions of the ESSO (Acquisition of Undertaking in India) Act, 1974, the Burma Shell (Acquisition of Undertaking in India) Act, 1976 and Caltex (Acquisition of Shares of Caltex Oil Refining India Limited and all the undertakings in India for Caltex India Limited) Act, 1977. The court upheld the petitions until the statutes are amended appropriately.

In *Pareena Swarup v. Union of India*⁴¹, a member of the Bar of this court filed a public interest litigation seeking to declare various sections of the Prevention of Money Laundering Act, 2002 as ultra vires to the Constitution as they do not provide for independent judiciary to decide the cases but the members and chairperson to be selected by the Selection Committee headed by the Revenue Secretary. According to the petitioner, following the case of *L. Chandrakumar v. Union of India & Others*⁴², undermines separation of powers as envisaged by the Constitution.

³⁹ (2007) 12 SCALE 91

⁴⁰ AIR 2003 SC 3277

⁴¹ (2008) 13 SCALE 84

⁴² (1997) 3 SCC 261

4. ABUSE OF PIL IN INDIA⁴³

The courts are not places for those who wish to meddle in things that are no concern of theirs, just for the pleasure of interfering, or of proclaiming some favourite doctrine of theirs, or of indulging a taste for forensic display.

The two important weapons, other than the law of standing, with which unmeritorious claims may be stayed off are; the Court's power to strike out vexatious or frivolous claims or pleadings on the basis that they constitute 'abuse of the process' of the court and, the power to declare that an individual is a vexatious litigant who may not be allowed to initiate further proceedings without the leave of the court.

Mr. Soli Sorabji, the former Attorney General of India while applauding the liberalization of the rule of locus standi by the Supreme Court of India benefiting under-trial prisoners languishing in jail for inordinately long periods, inmates of asylums and care homes living in sub-human conditions, children working in hazardous occupation and similar

disadvantaged persons, has lamented that PIL is being abused with increasing frequency. According to him, over the years, 'PIL has degenerated into Private Interest Litigation, Political Interest Litigation, and above all Publicity Interest Litigation'.

Litigation which attempts to attribute the provisions an irrational meaning or an interpretation contrary to the settled position cannot pass on as a 'test case' of a contentious legal question, and will not, in the real sense of the term, be in public interest. Similarly, the posing of a question for judicial determination that hinges upon the manifestly clear words of the statute, which the public authority is not called upon to implement before moving the court will not constitute public interest litigation.

4.1 Prevention of Abuse⁴⁴

To prevent abuse of the process of resorting to PIL the courts should provide procedural guidelines in their rules. These should specify persons who may be eligible to file public interest litigation. The legal practitioners, public institutions, NGO's registered as non-profit organizations, Legal Aid clinics, may be considered as eligible to apply. There should be a culture of pro bono

⁴³ Public Interest Litigation: Role of Public and Role of Courts by Ayush Gupta, Final year, B.B.A LL.B, Symbiosis Society's Law College, Pune, available on <http://www.goforthelaw.com/articles/fromlawstu/article71.htm> 5.9.2013 last visited on dated 16.10.2013 at about 3 P.M

⁴⁴ Id.

services among the PIL practitioners in the field of human rights and pro-poor law.

The applicant must set out in detail the anticipated impact of the matter on the advancement of constitutionalism and/or the development of human rights or public interest law. If the anticipated impact affects and/or advances the rights of a group or community, this should also be set out. The applicant should explain very precisely what rights will be advanced through the proposed litigation. The applicant should also state what alternatives to litigation have been considered and explain why these have not been pursued. Before issuance of notice on a PIL, the court should specifically direct itself to the nature of dispute that is sought to be raised and identified by the petitioner, and then tentatively decide whether it should initiate the proceedings.

To curb the perils of abuse of PIL, Mr. Soli Sorabji made the following suggestions:⁴⁵

- 1) Reject dubious PIL “at the threshold, and in appropriate case with exemplary costs”,
- 2) In cases where important projects or socio-economic

⁴⁵ Id.

regulations are challenged after gross delay, such petitions “should be thrown out at the very threshold on the ground of laches. Just because a petition is termed as PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them”.

- 3) PIL petitioners should be put on strict terms such as providing an indemnity or giving an adequate undertaking to the court to make good the damage, if PIL is ultimately dismissed. To avoid PIL that has rendered invaluable service from becoming an unruly horse, “a firm sober judicial jockey in the saddle is essential”.

Public interest litigation (PIL) must also be screened in some way to prevent floodgates of litigation. The court should punish with costs persons who might bring unnecessary actions. High costs are a strong disincentive to litigation, even where there is

no barrier in the form of a requirement of standing.

5. FACTORS THAT HAVE CONTRIBUTED TO THE GROWTH OF PIL IN INDIA

The following factors have contributed towards the growth of PIL in India:⁴⁶

- 1) The character of the Indian Constitution. Part III (Fundamental Rights) and part IV (Directive Principles of State Policy) provide framework for regulating relations between the state and its citizens inter-se.
- 2) India has some of the most progressive social legislations in the world relating to bonded labour, minimum wages, land ceiling, environmental protection, etc. This has made the court haul up the executives when they are not

performing their duties in ensuring rights of the poor as per the law.

- 3) The liberal interpretation of the locus standi where any person can apply to the court on Judges can take suo moto action based on the newspaper articles and letters.
- 4) Although social and economic rights given in the Constitution under part IV are not legally enforceable, courts have creatively read these into Fundamental Rights. For instance Right to Life under Article 21 has been expanded to include free legal aid, right to live with dignity, right to education, right to work.
- 5) Sensitive judges have constantly innovated on the side of the poor. For instance, in the Bandhua Mukti Morcha case in 1982, the Supreme Court put the burden of proof on the respondents stating it would treat every forced labour cases as bonded labour unless proven otherwise by the employer.
- 6) In PIL cases where the petitioner is not in a position to provide all necessary evidence, either because it is voluminous or because the parties are weak socially or economically,

⁴⁶ Various aspects of Public Interest Litigation in India, available on <http://www.legalservicesindia.com/article/article/various-aspects-of-public-interest-litigation-in-india-1065-1.html> last visited on dated 05.09.2013 at about 11 P.M

courts have appointed commissions to collect information on facts and present them before the bench.

Therefore, it can be noticed that there are several factors which have contributed a lot in making the PIL a remedy or a hope for the poor and needy people and because of this the public interest litigation is a very popular concept in our present day society.

6. 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.⁴⁷ Though India is a country of multiple diversities and differences, so, here, an instrument like public interest litigation is proved to be a boon for the poor and needy people. Therefore, I would like to make an appeal to

all the educated and societal conscious people to come forward and join hand in hand in making PIL really a sword by using that we can curb the social evil and can expect to live in a democratic country in true sense of the term.

⁴⁷ Available on legalserviceindia.com, last visited on dated 20.09.2013 at about 4 P.M