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PUBLIC INTEREST LITIGATION

Public interest litigation (PIL) in India can serve as a vehicle for creating and enforcing rights and is critical to the sustenance of democracy. PIL in India can address the needs of its citizens when legislative inertia afflicts the Indian National Congress. This Note discusses how PIL in India can serve as a model for other developing nations struggling with legislative inertia and can provide recourse to marginalized and disadvantaged communities. Furthermore, while PIL obscures the traditional boundaries of power in a liberal democratic polity, democracy is in fact strengthened by the expansion of standing to include any citizen who has suffered a rights abuse.

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

The words 'Public Interest' mean "an expression which indicates something in which the general public or the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected." The word 'litigation' on the other hand means "a legal action, including all legal proceedings initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy.

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 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.”

EXPANSION OF LOCUS STANDI

The signature element of PIL in India is its expansion of locus standi to move the Supreme Court or one of the State's High Courts. The extremely liberal rendering of locus standi in India allows for any individual to move the courts on behalf of the individual or on behalf of another. The only rule is that the individual must assert a violation of a fundamental right. This uniquely Indian legal mechanism serves to provide a voice to the disadvantaged and socially immobile elements of India by democratizing access to the courts. Lowering the threshold has allowed for a multitude of suits to address social, economic, civil, and political rights abuses in India. The judiciary in India has recognized itself as a critical actor in legitimating the rule of law and instilling confidence in the demos that their rights will be protected.

WHEN CAN PIL BE FILED?

The concept of PIL was introduced as instrument in order to safeguard the rights of public at large. Therefore, whenever, a violation of fundamental rights or any other legal rights are being violated of the public at large, the PIL can be filed before the High Court or the Supreme Court. In other words, when there is a public injury or harm caused by any public or state authority or when it is a question of basic human rights of the weaker section of the society, the PIL can be filed.

SOME LANDMARK CASES RELATING TO PIL

The seeds of the concept of public interest litigation were initially sown in India by Justice Krishna Iyer, in 1976 in *Mumbai Kamagar Sabha vs. Abdul Thai*¹.

The first reported case of PIL was **Hussainara Khatoon vs. State of Bihar**² that focused on the inhuman conditions of prisons and under trial prisoners that led to the release of more than

¹ [1976 (3) SCC 832].

40,000 under trial 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.

Prem Shankar Shukla vs. Delhi Administration³ In this case, a prisoner sent a telegram to the judge of the court, complaining about the forced handcuff on him and demanded a protection against humiliation. The court considered the PIL petition and gave necessary directions considering the relaxed rule of locus standi. ²

In **Dr. Upendra Baxi (I) vs. State of Uttar Pradesh & Another**⁴ two law professors wrote a letter to the court stating about the inhuman condition prevailing in the Agra Protective Home for Women. The court considered the letter as a PIL and asked to improve the condition of the protective home.

A new era of the PIL movement was heralded by Justice **P.N. Bhagawati** in the case of **S.P. Gupta vs. Union of India**⁵.

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 (under article 226) or the Supreme Court (under Article 32) seeking redressal against violation of 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 executive 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 the public are at stake.

Justice Bhagwati did a lot to ensure that the concept of PILs was clearly enunciated. He did not insist on the observance of procedural technicalities and even treated ordinary letters from public-minded individuals as writ petitions.

² 1979 SCR (3) 532

³ AIR 1980 SC 1535

⁴ 1983 (2) SCC 308

⁵ AIR 1982 SC 149,

The Supreme Court in *Indian Banks' Association, Bombay & Ors. vs. M/s Devkala Consultancy Service and Ors* held :- “In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice.” Thus, a private interest case can also be treated as public interest case.

In **M.C Mehta vs. Union of India**⁶ a 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.

Vishaka v. State of Rajasthan⁷ case recognized sexual harassment as a violation of the fundamental constitutional rights of Article 14, Article 15 and Article 21. The guidelines also directed for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In **Citizen for Democracy v. State of Assam**⁸ the Supreme Court declared that 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.

Filing a PIL is not as cumbersome as any other legal case and there have been instances when even letters and telegrams addressed to the court have been taken up as PILs and heard by the court

In **Parmanand Katara v. Union of India**⁹ a writ petition in the Supreme Court. His basis was a newspaper report concerning the death of a scooterist after an accident with a speeding car. Doctors refused to attend to him. They directed him to another hospital around 20 km. away that could handle medico-legal cases. Based on the petition, the Supreme Court held that:

- Preservation of human life is of paramount importance.

⁶ 1987 SCR (1) 819,

⁷ (1997) 6 SCC 241

⁸ (1995) 3SCC 743),

⁹ 1989 SCR (3) 997.

- Every doctor, at a government hospital or otherwise, has the professional obligation to extend his/her services to protect life.
- There should be no doubt that the effort to save the person should receive top priority. This applies not only to the legal profession, but also to the police and other citizens part of the matter

In **Javed v. state of Haryana**¹⁰ The Court held that the disqualification provisions of the election law do not violate Article 21 (right to life and personal liberty) of the Indian Constitution, as fundamental rights are to be read in conjunction with fundamental duties of citizens and directive principles of the state which require the state to take steps for the welfare and development of the country, including implementing family planning policies.

In a 4:1 split verdict in **K.S. Puttaswamy v. UOI**¹¹, the Court upheld the constitutionality of the Aadhaar Act, but curtailed its wide ambit by striking down provisions which had allowed non-state parties to make Aadhaar mandatory.

In testing a religious custom, spanning centuries, against the tenets of gender equality, the Supreme Court in **Indian Young Lawyers Association v. State of Kerala**¹² by a 4:1 decision, held that the Sabarimala religious custom, which prohibits women in their 'menstruating years' from entering the Temple, violates fundamental rights guaranteed to women under the Constitution.

Public Interest Foundation vs. Union of India¹³ the Public Interest Foundation filed a Public Interest Litigation, which sought to prevent individuals against whom criminal charges have been framed from contesting elections.

GUIDELINES TO PREVENT MISUSE OF PIL:

The number of cases in which the misuse of PIL has been identified has reached its peak and so the Supreme Court has bothered to interfere with this issue and has framed guidelines which are to be followed by all the subordinate courts before entertaining a PIL petition. The

¹⁰ AIR 2003 SC

¹¹ (2017) 10 SCC 1

¹² AIR 2018 SC

¹³ (2019) 3 SCC 224

guidelines are the outcome of the case “**State of Uttaranchal vs. Balwant Singh Chauhal¹⁴**”.

The guidelines stated in this case are as follows:

1. The PIL should be genuine and bonafide.
2. Each High Court should formulate rules for encouraging genuine PILs and discourage PILs having malicious object.
3. The court should, at the very beginning verify the credentials of the PIL before entertaining it.
4. The court should be satisfied with the credentials of the PIL before accepting the PIL.
5. The court should also ensure that the PIL placed before it involves a public interest or not.
6. The courts should give priority to those PIL having larger public interest, gravity and urgency over other PILs.
7. The court should also ensure that the PIL redresses a genuine public injury and no personal benefits.
8. The court should further ensure that the PIL carrying ulterior motives should be disposed of with costs.

These public interest litigation case has brought lot of change and amendments. PIL cases in India is of great importance to the working of judiciary. PIL cases are thus need to be a encouraged as it can bring huge change.

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¹⁴ Civil Appeal No. 1132-1134 of 2002