

Problems Facing Public Interest Litigation in India

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Abstract - "A crucial new legal remedy has been public interest litigation (PIL). For at least a portion of our exploited & oppressed humanity, it has transformed the rhetoric of basic rights into a live reality. Undertrial inmates who spend disproportionately extended times in bars, asylum and care home residents who endure appalling living circumstances, kids who labour in dangerous jobs, and other marginalised groups. The majority of people were not aware of the rights & were much less able to exercise them. As a consequence, there was practically any connection between the large majority of illiterate individuals on the one hand, and the laws passed by the government and the rights provided by the Indian Union Constitution on the other.

Keywords - Public Interest Litigation, Illiterate Citizens, Victim, Judicial Remedy.

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INTRODUCTION

In India, public interest litigation is also being abused since there are no high court costs involved, as there would be in a typical civil lawsuit. There is a great deal of strain on the judiciary because of PILs that are filed indiscriminately because of the simple and noncomplex procedure of filing a PIL. As outlined in Article 39A of a Indian Constitution, the notion of public interest litigation (PIL) is ideal for ensuring and delivering social justice via the use of law. Only the offended party had access to the courts prior to the 1980s. During and after the emergency period, the Supreme Court extended out to the general public, creating a procedure that allows anybody to seek redress on matters of public concern before the court. PILs were first heard by Bhagwati & Judge V. R. Krishna Iyer. A PIL is not as time-consuming as a typical legal case; letters and telegrams sent to the judge have been considered as PILs in the past.¹

As a result, legitimate public interest lawsuits have been pushed to the margins, while reckless public interest litigation (PIL) activists from all over the nation have taken centre stage in the courtroom. In a recent example, a judge ruled that a PIL against by the sale of a parcel of land at public auction was only an attempt to air a personal grievance, not a matter of public interest.

Frivolous lawsuits may be launched without a large investment in court expenses as is necessary in private civil action, allowing PIL advocates to harass those who have received stay orders as a result of their so-called PILs. It's no different from how a defensive weapon may be turned into a weapon of

offence because to the relaxation of the locus standing requirement.²

Since PIL has been thoroughly studied in India's constitutional and judicial framework, I believe this 1980s phenomena has gained fresh importance of modern law and development study. For example, Davis and Trebilcock discovered in their recent analysis of literature of both law pessimistic and law optimists that there is empirical evidence that institutions may be reformed and not only determined by economic, cultural, or political factors. However, they believe and the different positions of "insiders" and "outsiders" in that process might take Because of this, Davis and Trebilcock argue that the data used in these research is insufficient to provide light on whether design aspects of legal institutions are causally linked to certain development outcomes. If we take Fukuyama as an example, even though he comes to the conclusion that institutionalists have prevailed in their debate with non-institutionalists over the causes of development, Fukuyama also points out that neither public administration nor macropolitical institutions can be formalised according to a set of universal guidelines and norms. Instead, the comprehensive definition of a good collection of institutions will be very context-dependent, will vary over time, and it will interplay with the unwritten rules, values, and traditions of the community in which they are entrenched.³

"There is emerging evidence that acceptable institutional structures contain a considerable element of context uniqueness, deriving from variations in historical trajectory, geography, political economics, or other beginning

circumstances," Rodrick, Trebbi, and Subramaniam write. On the ground, there is a lot of information that can be gleaned about how to improve institutional quality. This, we believe, is an area of investigation that has significant potential. Finally, Rohini Pande & Christopher Udry write, "Recent years have witnessed a surprising and exciting rebirth of interest in the empirical investigation of how a wide collection of institutions influences development." According to these studies, the quality of a country's institutions has a substantial role on its economic development. These results are crucial for developmental economists and policymakers because they imply that impoverished nations' and their people's quality of institutions may cause poverty to remain poverty. These results may be interpreted economically and have policy consequences only if we know how institutions effect growth and why they change or don't change in that way. "Much more micro-data analysis than has generally been the standard in this literature will best progress the study goal stated by institutions and growth literature."⁴⁻⁵

The Indian Judicial System And Litigation In The Interest Of The Public

In Hussainara Khatoon (I) case of *r v State of Bihar*, one of the first examples of public interest lawsuit was documented. The Indian Express ran a series of stories exposing the situation of under-trial inmates in the state of Bihar, and this case revolved around that series of articles. An counsel brought the suffering of these detainees to the Court's notice via a writ petition. Many of them will have been incarcerated for durations that exceeded the legal maximums for the crimes for which they were accused. The Supreme Court agreed that the lawyer had the right to pursue the writ of habeas corpus. This was followed by instances in which the Supreme Court delivered instructions that the "right to speedy trial" was considered an important and fundamental aspect of protecting life and liberty.⁶

A short time afterwards, two eminent legal scholars filed writs with the Supreme Court, alleging constitutional violations based on Article 21. A wide range of abuses were reported, including trafficking in women, importing youngsters for gay activities, and non-payment of salaries to bonded labourers, among other things. The Supreme Court acknowledged its responsibility to reflect the plight of the disadvantaged and issued rules and rulings that improved their lives. Another reporter, Ms. Sheela Barse, was concerned about the treatment of female detainees in Bombay's police prisons. She claimed that they had been the victims of abuse at the hands of their caregivers. The Director of the School of Social Work, Bombay, received instructions from the Court. The Mumbai Central Jail was instructed to conduct interviews with a variety of female inmates to determine whether or not they had been tortured or otherwise ill-treated. In this respect, the Court requested that he provide a report to them. He

concluded that female inmates should only be held in female lockups guarded by female constables, and that only female suspects might be questioned in the presence of the a female police officer.⁷

'Epistolary jurisdiction' was added to public interest litigation in the matter of Sunil Batra against the Delhi Administration. An inmate in prison sent a letter to a Supreme Court judge, which sparked the whole process. A Head Warder allegedly brutally assaulted another inmate, according to the prisoner who made the complaint.⁸

In *Municipal Corporation, Ratlam v. Vardichand*, a group of individuals argued that the local Municipality Council should be held accountable for the odour and disease-inducing open drains in their area. The Court, acknowledging the group's right, said that if:

"...the court must analyse the problems as there is a need to concentrate on the ordinary men," as the Preamble to the Constitution dictates, "from the conventional individuality of locus standi to the communal orientation of PIL."⁹

According to a lawyer, the Hindustan Times article "Law Helps the Injured to Die" published in a displays, the Supreme Court of India allowed an application in *Parmanand Katara v. Union*. Many hospitals and physicians refused to treat patients in medical-legal matters until specific procedural requirements were met, which the petitioner brought to light. It was ruled by the Supreme Court that hospitals must offer immediate medical attention to those who have been hurt, regardless of the procedures required under criminal procedure.¹⁰

Other times, the Constitutional Court has responded to shifting societal demands by taking aggressive measures to meet those demands itself. A flexible PIL system was created because the rule of locus standi was extensively liberalised. In the matter of *S.P. Gupta v. Union*, a seven-judge panel gave a significant boost to public interest litigation. It was held that bar organisations had standing to bring writs in public interest cases. They were recognised as having a genuine interest in criticising the executive's strategy of changing High Court justices arbitrarily, which undermined the independence of the judiciary in this specific instance.¹¹

It is a kind of PIL that has developed in India that not only addresses concerns like consumer protection and gender justice, but also aims to create political and social space for the underprivileged and vulnerable sections in society. The Courts have ruled on a wide range of issues, including the availability of food, supply of clean air, safe working conditions, representation in government, affirmative action, anti-discrimination

laws, and jail conditions. According to the People's Union of Democratic Rights v. the United States the Indian government was accused of using juvenile labourers and underpaying those who worked on facilities for New Delhi's Asian Games, which were being held at that time. These practises were found to be unconstitutional by the Supreme Court, which decided that they must be curtailed. PIL or SIL is now permitted by the court when brought by "public spirited citizens" for the policing of constitutional and legal rights of any individual or group of individuals who are unable to approach the court for relief due to their socioeconomic disadvantage. Action in the public interest is an important component of the justice process, and those who take a stance in civil cases of this kind should be treated with respect by the courts.¹²

LITIGATION FOR THE PUBLIC INTEREST

Liberation From The Locus Standi Rule Of Law

One of the Latin words for "place of standing" is Locus Standi. Is an indicator of a person's legal status. In legal terms, it refers to the individual's ability to pursue legal action or appear in a criminal court. It is a legal right to bring a case before a court of law. One can't be heard in court unless they have something called locus standi. Traditionally, a person who seeks justice in a court of law is expected to demonstrate that he or she has been harmed or is at risk of being harmed by a violation of his or her legal right and legal interest. The Supreme Court has liberalised the customary rule of standing in Public Interest Litigation. Anyone may file a lawsuit on behalf of someone who has been wronged in a Public Interest Litigation. It was done for reasons including such poverty, cluelessness, lack of knowledge & enslavement of vast masses, high costs of litigation, the democratisation of justice, remedy of public injuries & avoiding plurality of court action, curbing arbitrariness and ensuring a good government by reducing the locus standi.¹³

JURISDICTION BY EPISTLE

Epistolary jurisdiction distinguishes PIL from other types of litigation. Letters or even telegrams may be used to invoke the court's jurisdiction, which is known as Epistolary jurisdiction. When Justice Bhagwati declared that it would "readily react even to a letter sent by such person acting pro bono publico" and regard the letter as an official writ for PIL purposes in S. P. Gupta union Of india, this procedural novelty was created. For those who are denied their fundamental human rights, the court said, "we have to invent techniques and create new tactics for the aim of giving access to justice to enormous masses." An appeal by Ashray Adhikar Abhiyan to the Supreme Court was considered a petition for writ in this case, and the Supreme Court intervened. Ashray Adhikar Abhiyan members

expressed their displeasure that the bodies of deceased homeless people were not properly buried and questioned the entitlement of the departed to a respectful burial.

THE LACK OF AN ANTAGONISTIC DYNAMIC

The term "adversary system" refers to a legal framework in which two parties are at odds with one another and must go before a judge who is an objective third party. Two competing or conflicting parties don't exist in a non-adversarial system. Instead of pointing fingers at one another, they're working together to find solutions. Public Interest Litigation has a non-adversarial aspect, which the Supreme Court has adapted from conventional litigation with two adversaries as another important characteristic. In a PIL, there is no winning or losing. With this move, we want to eliminate any instances of unequal power dynamics between the competing political factions. PIL, as we conceive, is largely a pair work effort on the part of petitioner, State or public authority, and the court to secure observance of constitutional or legal rights and protections conferred upon the susceptible sections of the community and to achieve social justice for them.¹⁴

NOMINATION AND APPOINTMENT OF COMMITTEES

It is possible to submit a petition immediately before the Supreme Court or High Courts using Article 32 or 226 of the Indian Constitution, respectively, in a PIL. Before the proceedings begin, there is no reasonable chance for parties to put evidence on record. As a result, the courts are left in charge of gathering facts, data, and evidence. In order to alleviate this burden on the courts, commissions are formed and tasked with conducting investigations and reporting back to the courts. Commissioners have been selected by the Supreme in the past from the ranks of a District Judge, a law scholar, a journalist and even a social scientist.¹⁵

ISSUES AND CONFLICTS

A strong separation of powers idea wasn't included into the Indian Constitution, but rather a checks and balances. The executive and legislative branches of government are traditionally seen as the only ones capable of establishing and enacting policy, with the court enforcing the law. 'The doctrine of separation of powers has not been recognised by the Indian Constitution in its absolute rigidity, but the functions of different parts or branches of government have been manufacture different, and subsequently it can indeed be said that our Charter does not contemplate the assumption, by one organ or part of State of functions that largely belong to another,' the

Supreme Court has itself acknowledged." Courts can't takeover or abdicate the responsibilities of other institutions with the capacity of judicial review.

Due to its roots in English Old Law and judicial review principles, the Court has focused on the procedure rather than the result of decision-making. The Court has reaffirmed that the Court cannot intervene in questions of policy. PIL, on the other hand, tends to blur the lines between the roles of the different government agencies, which has sparked debate. The line between legislation and practice has been blurred on occasion by the Supreme Court. The Court's approach to policy problems is to determine whether or not the policy implementation or non-compliance resulted in a violation of basic rights. Interdicting and enforcing orders may be issued if the violation occurs. After the Environment (Protection) Act, 1986 was enacted, the Court highlighted how the condition of the environment had deteriorated, notwithstanding the Act's passage. "The needed attention seems to have been accorded by the authorities involved," the Court remarked, citing multiple PILs that had been filed. Despite this, "the State has failed to take essential actions to perform its obligation." There can be no more delays in the Central Government's discharge of its responsibilities. According to the legislation, a court must now provide appropriate instructions to the Central Government to ensure that it fulfils its obligations. The Court, on the other hand, demanded that the central government provide details on the efforts it had already done and any national policies it had developed to safeguard the environment.

PROBLEMS IN PIL

Another set of issues has arisen because of the PIL's ability to be flexible in its procedures. Opposing parties have a chance to verify the specifics of the accusation and reply to relevant concerns. A good example of this is the PIL about the loss of forest cover. In its original form, the petition complained against the needless destruction of Kabir trees in the Indian state of Jammu and Kashmir. The court has now widened the definition of the PIL to include all forests in India. There is no way for each state to reply to the initial petition since it may have no bearing on them. Concerns have been raised about the usefulness of reports provided by commissioners appointed by courts.

In order for a court to come at a judgement based on facts, such facts must first be proven legally. An opponent has the right to cross-examine them or at least to provide counter-affidavits. There may be doubts regarding the court's function in certain situations. It's not only the courts that there's been a lot of discussion about the limitations of judicial activism. Political leaders have expressed worry over the judiciary's attempts to influence

polymaking and policy execution via PILs. Public Interest Litigation (Regulation) Bill, 1996 was introduced to the Rajya Sabha by a private member of parliament in the name of an individual. It was claimed that the PIL had been abused. On top of that, the court gave PIL lawsuits precedence over other matters that had been sitting there idly for years. The petitioner must be jailed and forced to pay damages if a PIL application fails or is shown to be fraudulent.

Only if the letter addressed to the court by an aggrieved party or if the letter is accompanied by a writ petition is the court justified in considering it as such.

A selfless person or organization.¹⁶

In order to enforce the constitutional or legal rights of an individual or group of individuals unable to apply to the court for remedy because of poverty, disability, or other social or economic disadvantages, a community building group is formed.

It is critical that the PIL be properly regulated, but those that are not conscious of its misuse and associate any type of control with the axing of their basic rights are outraged by the government's efforts to do so.

CONCLUSION

Judicial activism relies heavily on the use of procedural jurisprudence. It empowers the court to protect its citizens. As a result, it's critical that the idea spread extensively without being misused for selfish advantage. The PIL has been abused and used in the past, and these cases should serve as a warning to others not to do the same. PIL may be a benefit to the people if utilised correctly and for the appropriate reasons.¹⁷

In the interest of the general public PIL litigation, as it is sometimes referred to, is a kind of lawsuit brought for the benefit of the public at large, which is a quite vague concept. The victim or even the aggrieved person could not be represented by another person at the doors of justice prior to the 1980s; only the offended person may physically knock and seek redress for his grievance. Other people were unable to bring a lawsuit or participate in the action because they did not have locus standi to do so.

REFERENCES

1. 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.
2. Abram Chayes, 'The Role of the Judge in Public Law Litigation', 89 Harvard Law Review 1281 (May 1976)

3. Ashok S. Desai and S. Muralidhar, 'Public Interest Litigation: Potentials and Problems' (Oxford University Press, 2000)
4. C.K.Allen, *Law and Orders*, 3rd edn, 256, while commenting on *Liversidge v Anderson* 1942AC206.
5. Declared by the President under Article 352 of the Constitution on the advice of the Prime Minister Indira Gandhi and inforce between 26 June 1975 and 21 March 1977 (see Basu's *Commentary on the Constitution of India*, Vol. N., 1988, 198 and 202).
6. Granville Austin, *The Indian Constitution: The Cornerstone of a Nation*, Oxford University Press, New Delhi, 1999, p. 50.
7. In *A.K.Gopalan v State of Madras* 1950 SCR 124, the Supreme Court illustrated the principle of procedural due process by citing the English Parliament, namely that the Bishop of Rochester's cook be boiled to death (*supra* n. 3 at 320).
8. *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.
9. P.M.Bakshi, 'Public Interest Litigations', (Ashoka Law House, New Delhi, Edition: 1998) 13
10. *Report on National Judicare: Equal Justice-Social Justice*, August 1977, 128. Also see *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235 at 240.
11. Reproduced in Jagga Kapur (ed.), *Supreme Court on Public Interest Litigation*, Vol. 1, SCALE, A-43 at A-53.
12. S.P.Gupta v. Union of India, AIR 1982 SC 149
13. Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109
14. The Legal Aid Office provided for legal assistance to the German immigrants in USA. The German Society of New York assisted these immigrants.
15. Then in the Kerala High Court. ¹⁵ *Report of the Expert Committee on Legal Aid: Processual Justice to the People*, May 1973, 208-10. Thereafter Justice Krishna Iyer developed this theme in *Mumbai Kamgar Sabha v Abdulbhai* where he said: 'Test litigation, representative actions, pro bono publico and like broadened form of legal proceedings are in keeping with the current accent on justice to the common man'. ((1976) 3 SCC 832 at 857).
16. This is brought out in the film *Aakrosh* by Govind Nihalani, in which the accused is too afraid to speak to even the well-meaning lawyer provided to him.
17. Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in

the Supreme Court of India' (1983), Third World Legal Studies, Volume 4, Article 6 xiv Id xv Surya Deva, 'Public Interest Litigation in India: A Critical Review', Reprinted from Civil Justice Quarterly, Issue 1, 2009, Sweet & Maxwell, London.

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