

## ABUSE OF PUBLIC INTEREST LITIGATION<sup>1</sup>

### ABSTRACT

Public Interest Litigation, a concept that emerged in the 1980s in India aimed at the heart of it to provide justice to people who had no access to it. Justice D.Y. Chandrachud recently observed while hearing a PIL filed by BJP leader Subramanian Swamy challenging the Centre's recent policy guidelines on grant of security clearances to companies that PIL was a revolutionary concept aimed at "extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard". PIL has emerged as this powerful weapon for the poor which is enunciated by a plethora of cases where justice has come about the by the actions of public spirited third parties but in the same breath we have a plethora of cases which are filed by interested parties increasing the number of cases pending and the huge burden on the Indian Courts. The paper talks about how Public Interest Litigation emerged and revolutionized the Indian Justice system. It further states how PILs are now being abused by interested parties that are using this to go forth their own agenda.

### INTRODUCTION

"As the nation evolves, the role of the court must be as an institution which abides by constitutional principle, enforces the rule of law and reaffirms the belief that claims based upon fraud, expediency and subterfuge will not be recognized. Once these parameters are established with a clear judicial formulation, individual cases should pose no problem."<sup>2</sup>

In the laissez faire system the procedure for civil litigation reflected essentially an individualistic philosophy of the rights then prevailing. A right to access to justice meant the aggrieved individual's formal right to litigate. Justice could be purchased by those who could afford its costs. Soon the progressive social, economic and egalitarian forces compelled all modern societies to move beyond the individualistic laissez faire view of right to new social, collective and diffuse rights of the categories, groups, classes and communities. The new socially oriented urges gave rise to the mass-oriented welfare state assuring freedom from destitution, ignorance, discrimination, torture and exploitation. Because of this "massification phenomena"<sup>3</sup> human actions and relationships assumed a collective, rather than a merely individual character.<sup>4</sup> These new social rights could be protected only by new social, collective, diffused remedies and procedures since the complex concept of adversary justice became ill-suited to the enforcement of the rights of the poor, unrepresented and unorganized groups.<sup>5</sup>

PIL or public interest litigation is one of the efficient tools that help's law achieve this goal. PIL or Public Interest litigation refers to the filing of a petition by an individual or group of individuals who are not a direct party to the dispute but stands for a cause that concerns the interest of the public in general. PILs can be filed either under article 226 or under 32 of the constitution of India. The courts can also initiate PIL through suo moto. The notion of PIL reverberate the principle embedded in the Article 39A of the Directive Principle of State Policy that deals with the delivery of justice in a prompt and fair way and also upholds the doctrine of the Rule of Law. However, there are several PILs that are not filed out of a genuine public concern and hence act as an abuse to the machinery of PIL. In order to understand the importance of PIL and how this legal mechanism has been the subjected to abuse lately, it is significant to delve into the historical background, the landmark PIL cases that were instrumental in changing the social face of India and those cases that were filed for some malicious motive under the guise of PIL and how those cases aggravated the problem of pendency of cases in India. The theme developed by Professor Baxi has already shown that PIL [which he prefers to call social action litigation (SAL)] is the outcome of "judicial populism"<sup>6</sup> and the crucial role played by the media and individual crusaders in exposing the miseries and exploitation of the poor and the dispossessed. The most distinctive and unique feature of PIL is that it is "primarily judge-led and even judge-induced".<sup>7</sup>

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<sup>2</sup> Justice D.Y. Chandrachud, *Food Corporation of India v. Jagdish Balaram Bahira*, (2017) 8 SCC 670, para 4

<sup>3</sup> M. Cappelletti: "vindicting the Public Interest through the Courts: A Comparativist's Contribution" Vol. III Access to Justice p. 515, 517, 519 (1979: M. Cappelletti and B. Garth).

<sup>4</sup> Ibid.

<sup>5</sup> Parmanand Singh, "Thinking about the Limits of Judicial Vindication of Public Interest", (1985) 3 SCC J-1

<sup>6</sup> Upendra Baxi, *taking Suffering Seriously : Social Action Litigation in the Supreme Court of India*, 8-9 Delhi Law Review, 95 (1979-80).

<sup>7</sup> Ibid.

## **HISTORICAL BACKGROUND IN INDIA:**

Pre – independence and early post-independence years witnessed a plethora of cases where the public found it difficult to approach the court of law being economically or social backward and hence was introduced the concept of PIL in the early 1970s. Thus the whole judicial system needed a boom to tackle this problem and ultimately Public Interest Litigation came into existence as a solution to the problem. The seed of the concept of public interest litigation were initially sown in India by J. Krishna Iyer in 1976 in *Mumbai Kamagar Sabha vs. Abdul Thai*<sup>8</sup> and was initiated in *Akhil Bharatiya Soshal Karmchari Sangh (Railway vs. Union of India)*<sup>9</sup>, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32.<sup>10</sup>

There has always been a controversy regarding the notion of locus standi with respect to the filing of PILs. It was contented that since the petitioner of PIL was not a direct party to the dispute therefore they did not have any right to file a petition as per the procedure established by law. However, the Supreme Court in the case *S.P Gupta v Union of India*<sup>11</sup> defined the term PIL with respect to the Indian context. The apex court affirmed that if there has been legal injury and the injured parties does not file a petition with respect to the legal injury caused, then any common man may file a petition on their behalf and the court would not insist for a regular writ petition and those petition would be treated as PIL under article 32 and the rule of procedure would be relaxed with respect to the objective of delivering fair and natural justice and encourage the spirit of common man seeking justice.

“*Mumbai Kamagar Sabha, Bombay vs M/S Abdulbhai Faizullabhai & Ors* on 10 March, 1976”<sup>12</sup> is one of the first cases that dealt with the notion of PIL in great detail. In this case, the workers were deprived of their payments and bonuses by the employer company and hence the Union filed an appeal on behalf of the workers. However, the petition was not filed by the workers but by the Union which represented them. The primary contention of the case was that whether the union which represented the workers had the locus standi in the court, for it was the workers whose rights were infringed and not that of the union. However, it was held in matters that concern public interest; the scope of locus standi should be construed in a wider and liberal manner to deliver justice in a fair way. Thus this case paved way for several PILs that were filed during the later years which proved as the stepping stones to revamp the sociological structure of India.

## **CONCEPT OF LOCUS STANDI**

*Bihar Legal Support Society v. Chief Justice of India*<sup>13</sup> when the Court said:

“That the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice.”

To reach out, the Supreme Court, therefore, liberated itself from the traditional thought, ways and made innovative use of judicial power by developing a variety of techniques to make access to justice a reality. The Supreme Court realized that it was necessary to depart from the traditional rule of locus standi and to broaden access to justice by providing that where a legal wrong or a legal injury is caused to a person or to a class of persons, who by reason of their poverty or disability or socially or economically disadvantaged position, cannot approach the court for relief, any member of the public or social action group or interest group or a concerned citizen, acting bona fide can maintain an application in the High Court or the Supreme Court, seeking judicial redress for the legal wrong or injury caused to such person or class of persons. This was in a way an extension of the principle under which habeas corpus petition is allowed to be filed by anyone for release of a person held under illegal detention since the person detained is, on account of

<sup>8</sup> AIR 1976 SC 1455

<sup>9</sup> AIR 1981 SC 298

<sup>10</sup> Harshavardhan Rajpurohit, “*PIL and its misuse*”, available at: <http://racolblegal.com/pil-and-its-misuse/>

<sup>11</sup> AIR 1982 SC 149

<sup>12</sup> AIR 1976 SC 1455

<sup>13</sup> (1986) 4 SCC 767

his detention, not free to have access to justice. Thus, through judicial creativity, representative standing was expanded to the disadvantaged groups of persons who were not “free” to approach the courts due to economic and social factors rather than physical restraint. It was liberalization of the rule of locus standi, which gave birth to public interest litigation or PIL for short.<sup>14</sup>

In *S.P Gupta v. Union of India* Explaining the liberalisation of the concept of locus standi, it was said: <sup>15</sup>

“It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person goes redressed and justice is done to him.”

Thus, PIL was seen as a relief for those who could only dream of getting Justice. One of the cases that deal with PIL is the *Bandhua Mukti Morcha* case<sup>16</sup>. The case fundamentally deals with the working conditions of the laborers and the bonded labor as workers were forced to do the same. The petition was filed by an organization which was entertained by the Supreme Court and a committee was formed by the court to look into the matter. It was found out that the workers were being forced as bonded labor. The court explained the philosophy underlying PIL as follows: Where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court of judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the court for relief under Article 32 and a certiorari also under Article 226, so that the fundamental rights may be meaningful not only for the rich 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.

It is term that states that only the party whose legal right has been infringed can file a writ petition in a court of law. However, under PIL through various judicial pronouncements it has been reiterated that a third party may at anytime file a writ petition concerning public interest. PIL has been encouraged for the promotion of the spirit of the protection of the constitutional rights of the people.

### **LANDMARK CASES AND THEIR IMPACT:**

The Supreme Court accepted the locus standi of an advocate to maintain the writ petition and in a series of cases *Hussainara Khatoon (I) to Hussainara Khatoon (VI) v. State of Bihar*<sup>17</sup> issued many meaningful directions and inter alia held that speedy trial was an integral and an essential part of right to “life and liberty” contained in Article 21 of the Constitution.

Close on the heels of *Hussainara Khatoon* two law professors in 1980 filed a writ petition in the Supreme Court, highlighting the inhuman conditions prevailing in protective homes, long pendency of trials, trafficking in women, importation of children for homosexual purpose, non-payment of wages to bonded laborers and inhuman condition of prisoners in jails. It was asserted that all these inhuman conditions were a gross violation of Article 21 of the Constitution of India.<sup>18</sup> The Supreme Court accepted their locus to agitate on behalf of the “sufferers” and passed orders giving certain guidelines in each of these matters. PIL took a leap forward.

In *Sheela Barse v. State of Maharashtra*<sup>19</sup> the Supreme Court entertained a writ petition based on a letter addressed by Ms Sheela Barse, a journalist complaining of custodial violence to women prisoners while confined in the police lock-up in the city of Bombay. The Court directed the Director of College of Social Work, Nirmala Niketan, Bombay to visit Bombay Central Jail and interview women prisoners and ascertain whether they had been subjected to any torture or ill-treatment and to submit a report. Based on the findings of the report, the Supreme Court issued a number of directions which included the direction to lock up female prisoners only in

<sup>14</sup>M.C Bhandari Memorial Lecture: “*Public Interest Litigation as Aid to Protection of Human Rights by the Chief Justice of India*”. Lecture delivered at Jodhpur, 25-8-2001, (2001) 7 SCC J-1

<sup>15</sup>AIR 1982 SC 149

<sup>16</sup>AIR 1984 S.C. 802

<sup>17</sup>(1980) 1 SCC 81, 91, 93, 98, 108 & 115

<sup>18</sup>*Upendra Baxi v. State of Uttar Pradesh* (1983) 2 SCC 308

<sup>19</sup>(1983) 2 SCC 96

female lock-ups guarded by female constables and to interrogate female accused only in the presence of the female police officials. A further forward step was now taken to protect and preserve human rights of female prisoners.

In *Sunil Batra v. Delhi Administration*<sup>20</sup> a prisoner lodged in the jail wrote a letter to a Judge of the Supreme Court complaining of a brutal assault by a Head Warder on another prisoner, Premchand. That letter was treated as a writ petition, forsaking the prescribed form because what was at stake was the right to “life and liberty” ensured by Article 21 of the Constitution. A three-Judge Bench heard the matter and while issuing various directions, it was opined that “technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found”. The Supreme Court rose to the occasion and public interest litigation acquired a new dimension and legitimacy.

Public interest litigation was further consolidated in *Municipal Council, Ratlam v. Vardichan*<sup>21</sup> when a Division Bench of the Court recognized the standing of the citizens to seek directions against the Municipality for removal of stench and stink caused by open drains under Section 133 of the Code of Criminal Procedure. The concept of “access to justice” was elaborately considered and discussed. It was emphasized that if the “centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men” so that procedures which are conducive to the pursuit and protection of human rights are discovered and advanced.

In *M.C Mehta v. Union of India*<sup>22</sup> the petitioner prayed for directions for giving wide publicity to the messages and directions issued by the court from time to time to protect the environment and ecology on environmental protection, through the government-controlled television, radio and other modes of mass media, and also to make environment, as a compulsory subject in schools and colleges. The Supreme Court accepted the prayers on principle and issued directions to that effect.

Decisions on such matters as the right to protection against solitary confinement as in *Sunil Batra*<sup>23</sup> case, the right not to be held in fetters as in *Charles Sobraj v. Superintendent., Central Jail*<sup>24</sup>, the right against handcuffing as in *T.V Vatheeswaran v. State of T.N*<sup>25</sup>, the right against custodial violence as in *Nilabati Behera v. State of Orissa*<sup>26</sup>, the rights of the arrestee as in *D.K Basu v. State of W.B*<sup>27</sup>, the right of the female employees not to be sexually harassed at the place of work as in the case of *Vishaka v. State of Rajasthan*<sup>28</sup> and *Apparel Export Promotion Council v. A.K Chopra*<sup>29</sup> were rendered in public interest litigation, by expanding the ambit and scope of Article 21 so as to include within its fold the right to live with human dignity because the “dignity of man supersedes all other considerations”.

Again, with a view to minimize, if not altogether, prevent the violation of Fundamental Rights, award of compensation consequential upon the deprivation of fundamental right to life and liberty of a citizen, as a “palliative” for the unlawful acts of the instrumentalities of the State as in *Rudul Shah v. State of Bihar*<sup>30</sup> and the line of cases following it like *Sebastian M. Hongray v. Union of India*<sup>31</sup> and *Bhim Singh v. State of J&K*<sup>32</sup> culminated in *Nilabati Behra v. State of Orissa*<sup>33</sup> where this Court crystallized judicial right to compensation and held:

“The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen.

<sup>20</sup> (1978) 4 SCC 494

<sup>21</sup> (1980) 4 SCC 162

<sup>22</sup> (1992) 1 SCC 358

<sup>23</sup> (1978) 4 SCC 494

<sup>24</sup> (1978) 4 SCC 104

<sup>25</sup> (1983) 2 SCC 68

<sup>26</sup> (1993) 2 SCC 746

<sup>27</sup> (1997) 1 SCC 416

<sup>28</sup> (1997) 6 SCC 241

<sup>29</sup> (1999) 1 SCC 759

<sup>30</sup> (1999) 1 SCC 759

<sup>31</sup> (1984) 3 SCC 82

<sup>32</sup> (1985) 4 SCC 677

<sup>33</sup> (1993) 2 SCC 746

The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting ‘compensation’ in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of Fundamental Rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the Fundamental Rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the Fundamental Rights of the citizen.”

This view was reiterated in D.K Basu case<sup>34</sup> where the Court went to the extent of saying that since compensation was being directed by the courts to be paid by the State held vicariously liable for the illegal acts of its officials, the reservation to clause 9(5) of ICCPR made by the Government of India at the time of its ratification had lost its relevance. In fact, the sentencing policy of the Judiciary in torture-related cases, against erring officials in India, has become very strict. For an established breach of Fundamental Rights, compensation can now be awarded in the exercise of public law jurisdiction by the Supreme Court and High Courts, in addition to private law remedy for tortious action and punishment to the wrongdoer under criminal law. An enforceable right to compensation in cases of “torture” including “mental torture” inflicted by the State or its agencies is now a part of the public law regime in India.

In India, the right to health of the citizens is not an enumerated Fundamental Right in Part III of the Constitution. There is a reference to this right only in the Directive Principles of the State Policy, which are not justiciable per se. Similarly, the right to medical treatment, in case of emergency is not a Fundamental Right and not even a legal right. Through cases filed as public interest litigation, the Supreme Court has succeeded in making people aware of these rights and also reminding the State of its obligation to protect and enforce the same.

In *Parmanand Katara v. Union of India*<sup>35</sup> a Division Bench of the Supreme Court admitted an application filed under Article 32 by a practicing advocate along with a new item entitled: “Law Helps the Injured to Die” published in *The Hindustan Times*, New Delhi, as public interest litigation. The petitioner, through this public interest litigation, had highlighted the difficulties faced by the injured persons in getting medical treatment urgently required to save their lives, in view of the refusal by many doctors and hospitals on the ground that such cases are medico-legal cases. In that case, the petitioner narrated the unfortunate incident of a person dying due to the non-availability of immediate medical treatment. The Court extensively dealt with the professional ethics of the medical profession and issued a number of directions to ensure that an injured person is instantaneously given medical aid, notwithstanding the formalities to be followed under the procedural criminal law. The Court declared that the right to medical treatment is a Fundamental Right of the people under Article 21 of the Constitution. The Court issued directions to the Union of India, Medical Council of India, and Indian Medical Association etc., to give wide publicity to the Court's directions in this regard.

With the passage of time, PIL jurisdiction has been expanding so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licenses, protecting the environment and the like. The cases referred are only illustrative in nature. There are numerous other cases where PIL has been used to protect and preserve human rights of the underprivileged citizens. I have refrained from giving their list for paucity of time. It would be pertinent to note that the recent judgment on the unconstitutionality of Triple Talaq<sup>36</sup> was the result of a PIL. These PILs among others have diverted the attention of the Nation and that of the Supreme Court towards social matters that needed immediate attention and landmark judgments were thus created for the benefit of the masses.

### **ABUSES OF PIL**

Unfortunately, this particular tool that is based on the strong principle of social justice and freedom of speech is being employed to meet personal vengeance and grievance. Political vengeance is sought through the mechanism of PILs. This is also employed as means

<sup>34</sup> (1997) 1 SCC 416

<sup>35</sup> (1989) 4 SCC 286

<sup>36</sup> [2017] 9 SCC 1 [SC]

of political vendetta where the opposite party particularly files a PIL for his own political vengeance in guise of public interest. The apex court through various case laws have repeatedly cautioned the misuse of PILs and indicated and asserted that they must be solely employed for the purpose of Public Utility and benefit and not for any other means. In the case of *Janta Dal v H.S Chowdhury*<sup>37</sup>, it was blatantly evident that the PIL was filed in order to take a political revenge rather than for the interest of the people at large. In this case, the Government in 1986 made some agreements for the purchase of guns from a agency in Switzerland. However, it was reported in the press that the agreement was tainted with corruption as the officers had taken bribes. In the meantime, the Government changed and the Janta Dal came into the power. The CBI for the purpose of investigation into the aforesaid mentioned case, filed an application to the Special Judge for the issue of Rogatory Letter to the Agency at Switzerland to collect information regarding the alleged bribery case. Mr. H.S Chaudhury filed a petition under PIL stating that the Rogatory letter should only be passed when the allegations made have been proved. It was held that he had no Locus Standi and thus his petition was dismissed.<sup>38</sup> It clearly shows that H.S Chaudhury filed the case under PIL by virtue of disown political interest rather than that of the Public. In a series of judgments, Justice Prasayat has reiterated these principles. This principle was accepted and taken further in *Rajiv Ranjan Singh v. Union of India*<sup>39</sup>, in which Justice Lakshman held that public interest litigations were not meant to advance political gain and settle political scores under the guise of public interest litigation. In following the decision in *Janata Dal's* case, and Justice Pasayat and Justice Kapadia's decision in *Dattaraj Nathiji Thauvare v. State of Maharashtra*<sup>40</sup> the learned judges observed that howsoever 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 scarce means, had spent huge amounts in litigation and was obviously nothing but a name lender; costs of rupees one lakh were imposed on him. Similarly, the apex court in the case of *Chaitanya Kumar v. State of Karnataka*<sup>41</sup> delved into the balancing factors that need to be considered while deciding the genuineness of PIL. The court inter alia held that it was an imperative to strike a chord between the advancement of interest in favour of public and to curb public mischief.

Another concern is the rise of frivolous litigation being filed in the name of Public Interest Litigation. In *T.N. Godavarman Thirumaulpad v. Union of India*<sup>42</sup> it held that no matter how genuine a cause of action it appears, it is the duty of the court to examine the bona fide intention of the litigants. It is a very common practice where people having plenty of money do file a case advocating public rights and justice where in reality, they are simply doing it to gain fame and success. Such Public Interest litigations are further filed in relation to projects of public Importance by unsuccessful bidders and thus such cases much be declined and not admitted. In *Vijay Kumar v. Union of India*<sup>43</sup>, it was held by the apex court that in absence of circumstances warranting doing otherwise Supreme Court would not consider validity of a Government notification. Similarly, in *Jhumman Singh v. CBI*<sup>44</sup> the court held that "When such a blatant abuse of process of courts and judicial system comes to the notice of this court, it has the power, indeed the duty, to rectify it whether the power to do so is traced to Articles 32, 136 or 142 of the Constitution." In the Case of *Ashok Kumar v State of West Bengal*<sup>45</sup> The apex court have established guidelines that are to be followed while deciding the locus standi of the petitioner and the granting of the application of the PIL.

"The Court has to be satisfied about

- a) The credentials of the applicant
- b) The prima facie correctness or nature of the information given by him.
- c) The information being not vague and indefinite; the information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interest;
- i) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of the others;

<sup>37</sup> AIR 1993 SC 892

<sup>38</sup> Harshavardhan Rajpurohit, "PIL and its Misuse", <http://racolblegal.com/pil-and-its-misuse/>

<sup>39</sup> *W.P. CrI No.197-198/2004*, 2008 (2) JCR 171 Jhr

<sup>40</sup> AIR 2005 SC 540

<sup>41</sup> AIR 1986 SC 825

<sup>42</sup> AIR 2006 SC 1774

<sup>43</sup> 2008(7) SCR 673

<sup>44</sup> (1995) 3 SCC 420

<sup>45</sup> (2004)3 SCC 349

ii) Avoidance of public mischief and to avoid mischievous petition seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. Although, Supreme Court issued guidelines on entertaining letter petitions as PILs, and not reluctant in imposing penalty on vexatious litigants, abuses on PIL Jurisdiction is on a rise. . Now a time has come to make a sound rule on regulating abuses on PIL”

Thus the court must assess the merit of each and every PIL with respect to the bona fide locus standi of the person filing the petition and also the merit of the PIL in the sense that it actually should be in the interest of the public and not filed for some frivolous purpose.<sup>46</sup>

The Supreme Court reiterated the similar views in the case of Dr. B. Singh<sup>47</sup> and of Sanjeev Bhatnagar.<sup>48</sup>

“Thus it is evident that with the growing scope and effectiveness of Public Interest Litigation, the scope of its misuse and misapplication has also grown proportionately. In a democratic set up like ours, law is the protector of rights and if there is misuse of law, it can be deterred only through process of law. In the same context, the Supreme Court has taken remedial steps. Since the concept of Public Interest Litigation was invented by the Supreme Court and it was not brought into existence through the enactment of a law, it was the Supreme Court who noted the misuse of this public law remedy. The observations of the Supreme Court on the lines quoted hereinbefore, was a conscious effort to prevent the misuse of this powerful weapon which was meant solely for public interest under specific circumstances. The Apex Court repeatedly cautioned against the mala fide use of this concept for private and ulterior motives.”

In the case of Subhash Kumar<sup>49</sup>, the apex court held that “recourse to proceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body or person to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioner from this Court. Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants”

In the case of Karmerjeet Singh v. Union of India<sup>50</sup>, Supreme Court expressed its concern over third party litigation and observed that “It must be remembered that the repercussions of permitting such a third party to challenge the findings of the Court can be serious, e.g. in the instant case itself the co-accused who have been acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction. It is, therefore, hazardous to allow a third party to initiate proceedings under Article 32 challenging the order passed by the Designated Court and confirmed by this Court on the mere ground that the convicts had acted under such an obsession.”

Similarly, in Bhaskara Pillai v. State of Kerala<sup>51</sup> the Kerala High court reiterated that if the Public Interest Litigation is for personal gain then it should be the duty of the court to reject such applications. In Ramjas Foundation v. Union of India<sup>52</sup>, The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute

<sup>46</sup>Shiney P.S, “*Abuse of Public Interest Litigation*”, <http://www.legalserviceindia.com/article/l469-Public-Interest-Litigation.html>

<sup>47</sup>AIR 2004 SC 1923

<sup>48</sup>AIR 2005 SC 2841

<sup>49</sup>AIR 1991 SC 420

<sup>50</sup> (1992) 4 SCC 666

<sup>51</sup> (1992) 4 SCC 653

<sup>52</sup>AIR 1993 SC 852

the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.”

In *Dalip Singh v. State of U.P. & Ors*<sup>53</sup>, the Court held that “For many centuries, Indian society cherished two basic values of life i.e., ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

In *Holicow Pictures (P) Ltd. v. Prem Chandra Mishra & others*<sup>54</sup> the Court observed as under:

“It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.”

In *A.C. Dutt v. Rajiv Gandhi*<sup>55</sup> “an advocate describing himself as a public-spirited citizen filed public interest litigation before the High Court of Allahabad for a declaration, that the General Elections which took place in 1984 should be declared illegal and irregular and schemes of the Government in pursuance of the said election should also be declared illegal. Rejecting the petition, the Court held that the Bar of Court was not an appropriate forum for declaring general speeches on the conduct and program of the political parties illegal cannot be utilized for political purposes.”

Similarly, in *Sachinanda Pandey v. State of West Bengal*<sup>56</sup> it was held that “Today, public spirited litigants rush to courts to file cases in profusion under attractive name Public Interest Litigation. They must inspire confidence in courts and amongst the public. They must be above suspicions. Public Interest Litigation has now come to stay. one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves

<sup>53</sup> (2010) 2 SCC 114

<sup>54</sup> AIR 2008 SCW 343

<sup>55</sup> AIR 1987 SC 217

<sup>56</sup> (1987) 2 SCC 295



administrative and executive functions. This does not mean that traditional litigation should stay put. They have to be tackled by other effective methods, like decentralizing the judicial system and entrusting majority of traditional litigation to village courts and Lok Adalats without the usual populist stance and by a complete restructuring of the procedural law which is the villain in delaying disposal of cases. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the under-dog and the neglected. Extending help when help is required does not mean that the doors of the Supreme Court are always open to anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants, so that this salutary type of litigation does not lose its credibility.”

It can be surmised from the above judgments that the court before admitting an application of PIL has to satisfy itself of certain conditions in order to avoid frivolous litigation. It is only when the court is prima facie that the petition is a strong case of gross violation and infringement of fundamental rights of any individual or of a class that it must admit petitions relating to Public Interest Litigation.

### **CONCLUSION**

The earlier concept of PIL was to uplift the weaker sections of the society by letting their cause of action being heard through a third party. After, the judgment of *S.P Gupta v Union of India*<sup>57</sup>, the scope of PIL has increased and it not only includes the weaker section of the society at large but anyone who is aggrieved and demands justice to be served. However, the abuses of PIL have been on the rise as this platform is employed to gain publicity. However, it would further be pertinent to note that PIL has triggered judicial activism and there has been instances where the judiciary has transcended the boundary established the doctrine of separation of power. Article 145<sup>58</sup> allows it to make its own rules with respect to the proceedings of the court. Article 141<sup>59</sup> of the constitution states that law declared by the Supreme Court is binding on all courts. Article 13<sup>60</sup> confers power on the judiciary to test the constitutional validity of the statutes. Sometimes the executives perform the quasi-judicial functions also. The Executive Magistrate under CrPc adjudicates matters despite being an executive. The quasi-judicial authorities are also set up by enacting statutes which perform the quasi-judicial powers for better administration. Thus, there is no separation of power in a strict form. The function of the judiciary is to interpret laws and not make any laws. For instance, it can interpret a law and determine its constitutional validity but it encroach upon the law-making function of the legislature. However, due to increase judicial activism, it is making rules and guidelines under the umbrella of Article 142.<sup>61</sup> However, Article 142<sup>62</sup> uses the word “discover” which implies that the judiciary can interpret those laws which are already in existence. In *Vishaka v State of Rajasthan*,<sup>63</sup> Supreme Court formulated rules and guidelines. By virtue of making new rules and regulations, it is not only transcending the provisions of separation of power but also infringing on the independency of legislation. The power of the judiciary is to interpret and resolve dispute, but due to the practice of judicial activism, it is transcending the boundaries of other organs of the parliament. India is reeling under the problem of pendency of cases and if there remains no measure to ascertain the merits of PIL with respect to the seriousness of the cause of action, then the judicial system would further be entrapped by the epidemic called pendency. In order to preserve the spirit of PILs abuses of the machinery must be arrested at the very onset.

Former Attorney General Soli Sorabji opinions 3 basic rules for regulating abuse of PIL.

- (a) Reject dubious PIL at the threshold and in appropriate case with exemplary costs.
- (b) In cases where important project or socio-economic regulations are challenged after gross delay, such petitions should be thrown out 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.

<sup>57</sup> AIR 1982 SC 149

<sup>58</sup> The Constitution of India 1950, Article 145

<sup>59</sup> The Constitution of India, 1950; Article 141

<sup>60</sup> The Constitution of India, 1950; Article 13

<sup>61</sup> The Constitution of India, 1950; Article 142

<sup>62</sup> Ibid.

<sup>63</sup> AIR 1997.SC 3011

(c) PIL petitioners should be in strict terms such as providing indemnity or giving an adequate undertaking to the court to make good the damage, if PIL is ultimately dismissed.