

PUBLIC INTEREST LITIGATION – TWO SIDES SWORD

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HISTORY AND ORIGIN

The concept of Public Interest Litigation was originally evolved in the United States of America in early 1980s and then gradually attracting public spirited persons and goes on fire.

In the India, for the very first time concept of PIL has been invoked by the Supreme Court of India, in S.P. Gupta Vs Union of India by Justice P.N. Bhagwati. He was the visionary person Justice Bhagwati, that he has recognised concept of PIL in the year 1981, whereby the world was about to start and understanding the concept of PIL. In 1981 Justice P. N. Bhagwati in S. P. Gupta v. Union of India, 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."

SUPREME COURT ON PIL

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in Mumbai Kamadar Sabha vs. Abdul Thai (AIR 1976 SC 1455; 1976 (3) SCC 832) and was initiated in Akhil Bharitya Social Sangh, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for liberalization of the rule of Locus Standi in Fertilizer Corporation Kamdar vs. Union of India (AIR 1981 SC 149; 1981 (2) SCR 52) and the ideal of 'Public Interest Litigation' was blossomed in S.F. Gupta and others vs. Union of India, (AIR 1982 SC 149).

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. 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 right 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.

CONSTITUTION OF INDIA - WRIT JURISDICTION

Writ Jurisdiction under Articles 32 and Articles 226 of the Constitution of India, 1950: The importance of Article 32 is referred to as the doctrine of "Constitutional Remedy" for enforcement of Fundamental Rights. Dr. B.R. Ambedkar described Article 32 as the heart and soul of the Constitution. The court justified such extension of standing in order to enforce rule of law and provide justice to disadvantaged sections of society. Furthermore, the Supreme Court observed that the term "appropriate proceedings" in art.32 of the Constitution does not refer to the form but to the purpose of proceeding; so long as the purpose of the proceeding is to enforce a Fundamental Right, any form will do. This interpretation allowed the Court to develop epistolary jurisdiction by which even letters or telegrams were accepted as writ petitions. A Public Interest Litigation can be filed before the Supreme Court under Article 32 of the Constitution or before the High Court of a State under Article 226 of the Constitution under their respective Writ Jurisdictions. Article 21—"no person shall be deprived of his life or personal liberty except according to the procedure established by law"—proved to be the most fertile provision in the evolution of new Fundamental Rights.

The concept of Judicial review itself has been incorporated under the term Public Interest Litigation and thereby maketh the law of the land elastic in nature and underneath of the Article 32 and 226, judiciary been envisaged the real protector of the Constitution of India and thereby protecting people at large and making realm of the concept of Welfare of people, more achievable more real.

GUIDELINES OF FILING PIL

Supreme Court has provided with the area of litigation whereby, the PIL can be filed, not falling under stricto sensu manner as provided below:

1. Bonded Labour matters.
2. Neglected Children.
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
4. Petitions from jails complaining of harassment, for (pre-mature release) and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right.
5. Petitions against police for refusing to register a case, harassment by police and death in police custody.
6. Petitions against atrocities on women, in particular harassment of bride, bride burning, rape, murder, kidnapping etc.
7. Petitions complaining of harassment or torture of villagers by co- villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes.
8. Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.
9. Petitions from riot -victims.
10. Family Pension.

The Supreme Court, while coming down heavily on frivolous public interest litigation petitions for personal or extraneous reasons, has laid down guidelines to be followed by courts in entertaining PIL. The filing of indiscriminate petitions "creates unnecessary strain on the judicial system and consequently leads to inordinate delay in disposal of genuine and *bona fide* cases," said a Bench of Supreme Court of India. Tracing the origin and development of PIL in various countries, Justice Bhandari, writing the judgment, said: "The courts' contribution in helping the poorer sections by giving a new definition to life and liberty and in protecting ecology, environment and forests is extremely significant." However, the Bench said, "unfortunately, of late, such an important jurisdiction, which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives."

The Supreme Court in State of Uttranchal Vs Balwant Singh Chauhal stated Civil Appeal No 1132 -1134 of 2002 in its Judgment dated 18.01.2010 ordered the following:

In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

1. The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
2. Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.
3. The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.
4. The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
5. The court should be fully satisfied that substantial public interest is involved before entertaining the petition.
6. The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
7. The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
8. The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

REFERENCE

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