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Public Interest Litigation on Custodial Crimes and Protection of Basic Human Rights

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ABSTRACT

Public Interest Litigation on custodial crimes or torture in recent times has increased rapidly in India. Due to the rising cases of custodial crimes despite of the fact that our constitution gives everyone equal rights still there is violation of prisoner's basic Human rights. Research has shown that each day 5 custodial death occurs in India and there is urgent need to make stricter law and harsh punishment against those found guilty this was one the argument raised in one of the PIL filed against custodial torture in Supreme court after custodial death of father and son in Tamil Nadu's Thoothukudi district. The aim of my research project is to determine How PIL can help in enforcing a human right of individual whose right is violated and can it help in making law or giving stricter Guidelines.

Based on a review of literature on PIL on Custodial Torture and importance of UNCAT (United Nation Convention Against Torture) and reading some article on PIL on custodial crimes and its importance moreover referring to some of SC Judgements on PIL in recent times.

Analysis of material used for research demonstrated that PIL has emerged as a great tool to solution to problems and to address it to SC and moreover how rise in custodial crimes can be minimized.

The result indicated that PIL has emerged as tool to make Human Rights reach those who have denied rights. It democratizes the access of justice to all. On this basis it is recommended that PIL should be used to help develop law by giving judges the opportunity to interpret legislation. Further research is needed to identify the factors that could strengthen and widen the scope of PIL in India.

Keywords: *Custodial Torture, UNCAT (United Nation Convention Against Torture), Human Rights, Stricter law.*

Public Interest Litigation is not our indigenous concept but it has been adopted from the American constitutional law. In American law the concept of PIL has emerged as a tool to

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protect the basic laws of poor and underprivileged people especially against racial discrimination, citizens basic rights as consumer and moreover to protect anti-environment activities². Public Interest Litigation can be interpreted as any litigation filed by either a person aggrieved or any other person on his behalf in court for preservation of Public Interest. Any issue which involves public interest can be addressed by filing a petition under public interest litigation in court. In Indian constitution the concept PIL has been interpreted by judiciary and there is no strict definition of PIL under any statute of Indian constitution. The basic intent of PIL was to protect the public interest at large and it is a classic example of judicial activism. One of the most important ingredients for filing a PIL that the court must look is whether the litigation filed in court actually involves public interest or it is only filed to satisfy personal interest or personal grudge against the other party in this case it is the discretion of the court to dismiss it the reason behind a petition is not involves public at large. In some cases, courts can by themselves take the matter involving public interest at large and start the trial by *suo motu*. In recent times we have seen that Supreme Court has entertained certain important issues by taking cognizance to PIL filed by giving certain guidelines and laid stricter rules for example the issues like bonded labour has been addressed by the court and laid guidelines most important case in India related to PIL on bonded labour is *Bandhua Multi Morcha vs Union of India*³. Moreover there are lot more such issues in which by PIL filed in courts have taken cognizance to such matters and laid guidelines for it. The concept Public Interest Litigation is a modern version of traditional rule of *Locus Standi* which states that only person aggrieved or whose legal right is violated or affected can reach the court for remedies but evolution of PIL has completely changed the scenario and it lays the rule that under PIL any person either person aggrieved or any other person on his behalf can file a litigation in court which involves public interest.

In India the concept of PIL was first used by Justice Krishna Iyer in 1976 while hearing a case of *Mumbai Kamagar Sabha Vs Abdul Bhai Faizulla Bhai & Ors*⁴ but the first landmark case relating to PIL in which court recognized litigation filed under PIL for prisoners right to justice and laid certain guidelines in relation to it in *Hussainara Khatoon Vs State of Bihar*⁵ that highlighted worst treatment towards prisoners and under trial. In this case the court ordered the release of 40,000 prisoners from jail and highlighted their speedy justice of trial as basic right. The concept of PIL reached to a height by the famous ruling in the case of *SP Gupta Vs*

² <https://www.drishtiiias.com/to-the-points/Paper2/public-interest-litigation>

³ 1984 AIR 802, 1984 SCR (2) 67

⁴ 1976 AIR 1455, 1976 SCR (3) 591

⁵ 1979 AIR 1369, 1979 SCR (3) 532

President of India & Others⁶ given by justice Bhagawati in which he pointed out that our courts must come out of scope of old concept of Locus Standi and must accept the broader vision and held that any person or member of any group who are citizens of India can file a litigation of PIL and can approach the High court under Art 226 or can go to Supreme Court under Art 32 for or behave of any person who due to lack of resources can't afford to approach the court but there is involvement of Public Interest. After this judgement the concept of Public Interest Litigation became a shield for every citizen of India for any wrong act of executive action which result in involvement of public interest. The SC in its another judgement gave a one of the important rule for PIL is that not only court should entertain petition which involve just public interest but court in case of Indian bank Asso Vs Develka Consultancy in which SC has given a wider definition of term Public Interest and also stated that it can also include private interest if it involves hampering of justice. The one of the landmark case relating to PIL on environment problem was filled by Mc Mehta a very famous name in India for protection of environment and a social activist filed many PIL in courts for protection and conservation of ecological system one of the important ruling given by SC in petition filled by Mc Mehta for protection of river Ganga from toxic waste by plant in Bhopal. The case Mc Mehta Vs UOI in which court stated that petitioner has full right to fill a litigation against the protection of river Ganga despite of the fact that he is not owner of it but the pollution in Ganga effects many lives of people who resides near it or who uses it. The courts in its judgement adopted a broader scope of Art 21 and Art 32 of our constitution.

The term Public Interest Litigation not only helps in giving remedy to aggrieved parties but also in some cases court laid down some guidelines or direction which later becomes bases of new law for example in case of sexual harassment of women at their workplace the court laid certain rules or guidelines for safety of women and later it became bases of introducing amendment's in IPC for crimes relating to women and guidelines laid by Supreme Court famously known as vishakha guidelines for every state to follow.

The concept of PIL has also been used a tool against any wrong happening to any individual or any ordinary citizen to protect his fundamental right and to preserve the public faith in courts for any public injury the courts laid down the remedy. Our constitution has given equal rights to every single person in our country. So, the it's the duty of the court to protect basic rights of prisoners in recent times we have seen many cases of custodial Crimes on prisoners or

⁶ AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

undertrial. It was in 1981 that the first PIL was filled in court for violation of rights of prisoners and inhuman treatment done by police officer to the prisoners. The case of Anil Yadav Vs State of Bihar⁷ which throws a light on torture and in human treatment by Bihar police officers on prisoners in which the police officers brutally by 33 prisoners who were suspects were made blind permanently by pouring acid in their eyes when this case reached SC in form of PIL the court in very strict note told the Bihar government to pay adequate compensation to the aggrieved prisoners and they should be brought to Delhi for medical. Moreover, court clearly ordered the state to investigate and give harsh punishment to those police officers who found guilty. The phenomena of litigation have also helped in laying basic guidelines for improvement in behavior toward prisoners by giving guidelines like the prisoner must not be handcuffed forcefully while he is being taken to jail.

The notion of filling PIL has evolved through time and has now become a tool to safeguard against any public wrong so it has been emerged as a Boon for citizens of India⁸. It has become an easy and affordable means for an ordinary person to reach court for remedies to safeguard public interest. Moreover, the introduction of PIL has broadened the scope of earlier existing traditional rule of locus standi under which only person aggrieved can file a petition for remedies. But under this new concept of PIL any person either aggressive party or any other person on his behalf is entitled to seek remedies which hampers public interest. So, it has emerged as a great safeguard to every person which can be accessed by paying nominal court fees. On other hand there is expensive litigation which are not in approach of every citizen. The main aim of this provision is to make access for justice for all and no person can't be denied justice only on lack of resources to reach court so our eminent judiciary introduced this concept and used it to protect the spirit of justice⁹. This has led to rise in more public involvement in highlighting solving some important problems like environment issues, consumer problems and most important in field of human rights. Resulted in improving relation between public and judiciary.

Certainly, there is abuse of this concept and has become provision for exploitation and gains unfavorable benefit and killing the basis of justice moreover for harassment of other party. Just like gun which can be used as both for protection and also for causing harm to other similar is with PIL which can be used as tool to cause more harm to another. By just wrongfully shaping the private interest in public interest and seeking remedies only to cause damage to another

⁷ 1982 AIR 1008, 1982 SCR (3) 533

⁸ <http://www.legalserviceindia.com/article/I273-Public-Interest-Litigation.html>

⁹ <https://blog.ipleaders.in/public-interest-litigation/>

party. The one of the important factors is of low cost of fees in filling the PIL under which some persons try to settle their personal interest. This has led to the problem of more rejections of public interest litigations as courts has adopted very strict approach in view that whether the litigation is admissible by court for appropriate remedies due to rising trend of filing false litigations to only satisfy personal interest. So, to solve this problem of abuse of litigation the SC has laid some rules and guidelines to control this abuse of this provision for their personal interest and harming others. The court should be vigilant in hearing matters of PIL and first step is to see whether the party approaching court has genuine interest involving public interest or there is personal benefit or personal bias involved. Moreover, there are some cases which has come into light in recent past as the PIL is used by some political parties to target or to hampers the actions or work of admiration of state for using it as political gain. So, the court should be vigilant in hearing the matters of PIL filed by any person relating to any political party or party itself. One of another feature of filing litigation is that it is not compulsory for party to be physically present to file a PIL in courts in some case the courts can admit a mere letter written by party to court can be admissible as petition filled and court can proceed future in the matter if it is satisfied¹⁰. There are rules laid down by court by which in certain situations the court can admit a letter as petition filed in court: 1. If the letter is written by party aggrieved or affected person who's write is violated and in public interest the justice must be served 2. Or any other person, any ordinary citizen of India on his behave has written a letter to court due to non-availability of resources by aggrieved party to approach court of justice 3. Or any social welfare group or institutions for seeking justice of effected party which due to poverty or lack of facilities not capable to reach court for seeking justice for preservation of public interest. But these guidelines which the SC has laid to prevent the abuse of this provision faces many protest and agitations by some illiterate person's that these actions are risk to our basic right of approaching court for any harm and seeking appropriate remedies.

Public Interest Litigation has played a very important role in India so it has become very significant to address matters in which their involvement of public interest. It has also started a more active involvement of public in judiciary and focusing their attention on certain important problems like environmental issue, arbitrary action of state to harm public interest moreover it can be done at very nominal court fees. Also, in protection of basic human rights violation by another party and providing appropriate remedies for harm occurred. The basic idea behind introduction of concept of PIL by our eminent judiciary was to make sure that justice should be made to all irrespective of whether he lacks resources or not. The litigation

¹⁰ <http://www.legalserviceindia.com/article/1273-Public-Interest-Litigation.html>

filed by people under this provision has helped a judiciary to keep proper check and control on state institutions so that the power given to them must not be misused. So, this provision has become a significant tool or weapon of judicial review and it has led to judicial activism. Recently in past few months during lockdown due to corona virus we have seen many public interest litigations filed in supreme court first among them was in starting days of lockdown in India when our Govt of India launched a new PM Care Fund for helping people effected due to corona virus and people who have lost their jobs during lockdown this action of govt is challenged to struck down new PM Care Fund because there is already existing emergency fund and the money received in PM Cares Fund must be transferred it to Consolidated Fund of India. Similar in other public interest litigation to ask government for appropriated steps taken to return back those migrant people struck in many gulf countries due to lockdown due to corona to their homeland country i.e. India. One of the important petitions filed for protection and safeguard the basic human rights of sanitization worker i.e. right to life and seeking remedies from concerned state government and municipal corporation who are at greater risk for covid-19 and dealing as frontline worker.

The public interest litigation on custodial crimes are also growing in recent few years as the cases of custodial torture and custodial crimes are rising so there is need to make judiciary aware about these incidents and seeking guidelines to stop this practice and do justice to aggrieved party. The problem of custodial crimes by way of brutal torture which led to death is a black spot on our police system and example of abuse of powers by police. This can be for various reasons either to make undertrial to confess the crime or to using brutal methods to interrogate person. But this can lead to more harm to innocent person and cause breach of basic rights of Art 14 and Art 21 given to all by our constitution. Recently Supreme court hearing pubic interest litigation on custodial death of father and son by police torture in Tamil Nadu's Thoothukudi district has said in very strict note that who will police the police?¹¹ And moreover, said that we live in civilized society and there is no proper guidelines or institute to check the abuse of power given to police. And in past time we have seen rise in such inhuman torture to prisoners which have thrown light on such serious problem to our country. As per the reports and records clearly indicates and shows that each day 5 custodial death occurs. Police plays an important role in maintain of law and order in state and is very significant organ of state which works for welfare of people and to protect them from any crime. But when these police exercise its arbitrary powers which ultimately causes more harm than benefit. During recently ongoing situation of Covid-19 daily there is incidents of inhuman treatment by police

¹¹ <https://www.barandbench.com/apprentice-lawyer/the-enshrinement-of-custodial-violence-in-india>

officials to prisoners. For eg in Patiala jail there is continues rise in cases of prisoners effected with corona virus due to unhygienic conditions in jail and moreover when the prisoners demand for proper diet for better recover from corona virus they are not given any weightage and there is no proper care and treatment given to them. This is clearly breach of their fundamental right to Art 21 which says right to live and include right to give proper medical care to all. The SC in its decision given in Nilabati behra Vs State of Orissa¹² has pointed out that it's the duty of state to check the arbitrary actions of police force and to help person effected by police inhuman treatment. Another form of custodial crimes by police includes custodial rape which is a crucial and heinous form of crime against women. so, our judiciary must lay certain guidelines in hearing PIL filed by people can has laid some rules for prevention of any form of custodial crimes. But in my opinion such guidelines which court lays must form a basis of amendments in required provision of law or to make new law.

The blanket provision against such types of crime is Art 20 & Art 21 given by our constitution for protection and preservation of justice for all. The public interest litigation filled by in court has resulted in judiciary to keep checks that state organ police force must adhere to the basic human rights provision enshrined in our constitution. The law related to all crimes in India i.e. IPC has some provision which also applies to any kind of harm or injury to undertrial or prisoner in police custody. It provides us with sec 330, 331, sec 348 and sec 376(2) of the Indian penal code. Which talks about voluntary causing hurt or injury for confession and causing gracious hurt for taking confession for person arrested moreover most important offence of custodial rape. These sections also tell us about punishment or penalty for police officer found guilty. Our constitution makers have enacted laws with very broad future vision knowing the circumstances which can be face in future. So, one of such examples is of sec 24 to 26 of Indian Evidence Act which talks about any kind of confession obtained by police in custody is inadmissible in court. There is continuous affords being made towards making strict law with harsh punishment to police officer found guilty for custodial crimes. The law commission in its 113th report submitted talks about need for amendments in current evidence act and recommend addition of sec 114B(1) which talks about punishment for police officer found guilty. The basic idea of this provision is to protect the idea of justice which is being misused by some police officers in light of their uniform and powers authority given to them. It is future argued the India has not ratified the UNCAT (United nation convention against Torture) which talks about laying guidelines which each country ratified it must follow against

¹² 1993 AIR 1960, 1993 SCR (2) 581

crimes related to police torture. Another interesting view which court have opted while hearing petitions related to custodial crimes is that the burden of proof has now been shifted on police officer in whose custody the any type of crime committed. In 2010 in UPA govt the efforts were made to make ta law on custodial crimes in this regard the bill was also passed by Lok Sabha called The Prevention of Torture Bill but got struck down by Rajya Sabha. So, till then the affords are being made to reintroduce such type of bill and pass it to make law. Some people have also approached the court to compel government to pass such bill and make law on it. But the judiciary has refused to interfere in legislation function and called it purely a parliament decision to make law. Recently in 2018 PIL was filed by former union law mister in UPA govt Ashwini Kumar in supreme court for giving direction to center government to make law on custodial torture due to rise in cases of misuse of powers by police officer and causing torture and committing custodial crimes. And the petition also demanded that if our courts have considering right to die with dignity it is also include right to live with dignity for those who have been victims of excessive arbitrary power of police force. It is to us to amend the loopholes in our law and fill it with amendment provision by there could be deterrence to every person whether ordinary person or any governmental officer before committing any wrong. So that we no more need cases like Nirbhaya and vishaka or Mathura and Kathua rape cases to occurs to open our eyes and then we open our eyes before its too late. Last year the case of encounter in Hyderabad rape accused and recently last month encounter of Vikas dubey is sheer murder of our justice system in India¹³. The SC also said after these cases of police encounter of rape accused in Hyderabad is clearly shows how police has exercised its power to murder the justice system of our country.

The public interest litigation can be filed under Art 32 in SC and under Art 226 in High Court or under sec 133 of crpc in the magistrate court¹⁴. And moreover, most important criteria to see whether this petition is filed in SC or high court completely depends on facts and circumstances of each case. So, if the case involves Fundamental right breach the party can approach directly to SC but where the matter is not so big and involves only breach of right in public interest then the person can approach high court and if matter in case is too basic and small, he/she can approach any magistrate court.

The PIL on one side has helped people to give easy access to justice but on the other hand it has faced many criticisms and drawbacks. The most important criticism is that public interest litigation may lead to rise in more abuse of this provision and using it for satisfying personal

¹³ <https://www.barandbench.com/apprentice-lawyer/the-enshrinement-of-custodial-violence-in-india>

¹⁴ <https://www.lawteacher.net/free-law-essays/litigation-law/public-interest-litigation.php>

interest and harming others and this may lead to more over burdening of courts with such petitions. Another problem is the concept may cause relief to aggrieved party but may lead to rise highlighting the inefficiency and incapability in administration. When the court issues guidelines and give appropriate remedies in hearing public interest litigation filed against any state organ and in result when court issues directions to state this may led to interference in each other's matter and can defeat the purpose of separation of power doctrine. And lead to using excessive powers beyond its domain given to judiciary. Some people are of this view that we should restore back to our traditional rule of locus standi in which give deterrence to people who without any interest or cause filed PIL just for political interest or for satisfying private interest for harming another party. The principle of PIL in one way has helped many people in getting justice easily with nominal value of fees. But on the other hand, this has led to more rise in fraudulent cases just to satisfy their own enmity and making judiciary excessive overburden with cases. As the power to either dismiss or hear a petition rest in hands of judge and registrar of court has only power to check whether the petition is filed in prescribed format and judge has waste his time in seeing whether this petition is reasonable or just to satisfy his personal interest. Many people only files these petitions not for genuine cause for helping public to save their interest but only to get popularity in society. So, this is also argument given by people who criticize this concept.

Despite of the criticism being faced by public interest litigation this concept has also helped in solving many large and important issues like environment issue. One of the famous case filed under PIL was of *Mc Mehta* case in which the famous lawyer, social worker and environmentalist filed a public interest litigation against dumping of industrial waste water in holy river ganga. The court taking cognizance on this matter had given directions to concerned state and municipal department check and stop such environment damage. Similarly, the cases of custodial crimes against undertrials and prisoners in police custody the court acted and issues some guidelines relating to it. One of such examples is of case *Sheela Barse Vs State of Maharashtra 1987*¹⁵ which was landmark judgement against custodial crime against women so court ordered that there should be separate cells or prisons for women to save them from inhuman treatments and crimes against them. So, there are many instances or cases where PIL filed has helped in solving general people's problem and saving their interests. The case of *Pramanand Katara Vs UOI 1989*¹⁶ in which Supreme court in its ruling stated that it is the duty of each doctor to first give required medical care to injured person which is necessary to save

¹⁵ JT 1988 (3) 15

¹⁶ 1989 AIR 2039, 1989 SCR (3) 997

his life without wasting time in any sort of procedural formalities. Whereas in some situations or cases the judiciary must be very vigilant in exercising its powers to give remedy so as to avoid overlapping of its powers with legislation or interfering in states function. Like in case in 2008 common cause society Vs union of India in which a public interest litigation was filed in Supreme court for directing the state to enact road safety Act for prevention of rising road accidents in India and saving peoples live. The petition argued that this is matter of public interest and court must direct to make law on it. But rejecting the petitioners claim the court clearly stated that making any law is purely a legislative function and judiciary cannot interfere in it and court went further and said our constitution provides us doctrine of separation of power which need to be preserved. So, the public interest litigation filed was rejected.

In the end the conclusion can be drawn that despite of its demerits the public interest litigation has played an important and crucial role in solving people's problem and reaching such issues to eyes of court for redressal and getting appropriate remedies. This has also led to more public participation in judiciary and is classic example of judicial activism. And moreover, also helped those people who are victims of misuse of their rights and are not having resources to approach court to get relief now any other individual on their behalf or court itself on letter written to court can admit a public interest litigation for giving them remedies. And this has opened a gate from older concept of locus standi in which only person aggrieved or whose right is affected can approach court for seeking remedies. So, in the end we see that the scope of public interest litigation has been increasing from time to time and his has also proved itself as tool for giving justice to all even those who are not capable to approach the court. There is need for more research in this field so that the misuse and disadvantages of PIL can be curtailed and its scope must be widened
