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# The Paradox of Public Interest Litigation as the Ultimate Cannon of Law: An Overview

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ANNA BIJU<sup>1</sup> AND LAKSHMI S PANICKER<sup>2</sup>

## ABSTRACT

*Public Interest Litigation (PIL) plays an important role in the civil justice system as it can achieve goals that could hardly be achieved through traditional private litigation.*

*For example, PIL offers a ladder to justice for disadvantaged sections of society, provides an avenue for enforcement of diffuse or collective rights, and enables civil society to not only spread awareness about human rights but also involve them in government decision-making.*

*This article will show that PIL can achieve these important goals with reference to the Indian experience. However, the Indian PIL experience shows us that it is critical to ensure that PIL does not become a facade to serve private interests, settle political scores or gain easy publicity.*

*Therefore, the challenge for states is to strike a balance between allowing legitimate public interest cases and discouraging frivolous ones.*

## I. INTRODUCTION

In a developing society such as ours, where about half of the population lives below the poverty line, and where most of the population is illiterate, and many live in misery, the concepts of social justice and public interest litigations are becoming increasingly important. Initially, public interest litigation was seen as a strategy for socially philanthropic citizens and activists to advocate for favorable legal concerns on behalf of victimized and oppressed groups. Today, it has become a powerful weapon of judicial action to participate in social, political, and economic issues in society.

Public interest litigation (PIL) has not been specified in any law or statute. It has been interpreted by the judiciary to take into account the intention of the public in general. It is the power bestowed on the public by the courts of law through legal activism.

Public Interest Litigation means a legal action initiated in a court of law for the enforcement of a public interest or general interest in which the public or a class of the community has a

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<sup>1</sup> Author is a Student at His Highness Maharajas Govt. Law College, Ernakulam, Kerala, India.

<sup>2</sup> Author is a Student at His Highness Maharajas Govt. Law College, Ernakulam, Kerala, India.

pecuniary interest or some other interest by which their legal rights or liabilities are affected.<sup>3</sup> Any concerned individual may launch a public interest lawsuit. The idea first appeared in the legal jurisprudence of America. Article 32 of the Indian Constitution gives the Supreme Court of India the power to consider public interest litigation.

## **II. POSITIVE FACETS OF PIL: THE SILVER LINING**

Till the 1960s and 1970s, the idea of litigation in India was nevertheless in its elementary form and viewed as a solitary pursuit of defending private interests. Thus, the initiation and continuation of the litigation was the prerogative of the injured or aggrieved party. Even this was severely limited by the resources available to these individuals. There has been very little attempt to address issues affecting classes of consumers or the public in general. However, this entire scenario changed in the 1980s when the Supreme Court of India introduced the concept of Public Interest Litigation.

Any issue which affects the interests of the general public can be resolved by filing a PIL in a court of law. The concept of public interest litigation was originally introduced in India in 1976 by Justice Krishna Iyer in *Mumbai Kamgar Sabha v. Abdulbhai*.<sup>4</sup> However, in this case, Justice Iyer did not explicitly use the term “public interest litigation”. It was first used in the famous case, *Fertilizer Corporation Kamgar Union v. Union of India*,<sup>5</sup> by Justice Iyer.

In 1979, the first PIL petition was filed by Kapila Hingorani in the Supreme Court of India, which came up for a hearing under Justice P N Bhagwati. The petition, known as *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*,<sup>6</sup> aided in the release of nearly 40,000 under-trial prisoners from jails in Patna, Bihar.

In 1981, the case of *Anil Yadav v. State of Bihar*<sup>7</sup> exposed police brutality. Newspaper reports revealed that 33 criminals in Bihar were blinded by the police by pouring acid in their eyes. In an interim order, the Supreme Court directed the state government to bring those blind men to Delhi for treatment. It was also ordered that the guilty policemen be prosecuted immediately. The court read the right to free legal aid as a fundamental right of every accused person. Anil Yadav noted the growth of social activism and investigative discourse.

In the landmark case *Vellore Citizens Welfare Forum v. Union of India*,<sup>8</sup> the Supreme Court

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<sup>3</sup> Black's Law Dictionary – Sixth Edition

<sup>4</sup> (1976) 3 SCC 832; AIR 1976 SC 1205

<sup>5</sup> AIR 1981 SC 344

<sup>6</sup> 1979 AIR 1369; 1979 SCR (3) 532

<sup>7</sup> AIR 1982 SC 1008

<sup>8</sup> 1996 5 SCR 241

allowed a concerned public organization to stand up to protect the health of the residents of Vellore. In this case, tanneries located around the Palar river in Vellore were found discharging toxic chemicals into the river, endangering the health of the residents. The court asked the tanneries to close their business.

A genuine public interest litigation is one in which a selfless citizen, having no personal motive of any kind, except either their compassion for the weak and disabled or their deep concern for stopping serious public injury, approaches the court for either of the following purposes:<sup>9</sup>

- Enforcement of Fundamental Rights of those who genuinely do not have adequate means of access to the judicial system or statutory provisions,
- Incorporating the Directive Principles of State Policy for the amelioration of their condition, and
- Preventing or annulling executive acts and omissions violative of the Constitution or laws, resulting in substantial injury to the public interest.

One of the main benefits of PIL is that the courts have become more accessible to the illiterate and poor sections of the population of India. Public interest litigation, by making it possible to access the national forum of decision-making, has empowered the invisible and voiceless class of people to become visible and raise their voices.

A relaxation of the rule of *locus standi* gave rise to a representative action in which an individual or group sufficiently interested in a particular cause litigates on behalf of a large number of people who could not afford the cost of litigation. Acceptance of letters and even telegrams as PIL by the Court reduces the cost of such litigation and encourages individuals and groups in public interest to bring to the notice of the court any situation requiring the court's intervention.

The Court's monitoring of enforcement of directives at periodic intervals to ensure compliance enables vindication of rights in practice. The monitoring function is also often vested in vigilance bodies with the participation of social action groups.

### **III. EXPLOITATION AND ABUSE OF PILS: THE PARADOX**

Public interest litigation is undoubtedly one of the most powerful weapons in the law. However, the fact cannot be overlooked that it is nothing short of a double-edged sword. Introduced and evolved to address the issues of the economically weaker and marginalized classes of people,

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<sup>9</sup> D.K. Parihar v. Union of India, AIR 2005 Raj 171; also see, Ranjit Singh v. State of Orissa, AIR 2009 NOC 1047 (Ori)

public interest litigation has come a long way from redressing public injury, enforcing public duty, protecting social rights, and ensuring public interests.<sup>10</sup> It has become a recent trend to camouflage private interest litigation, publicity interest litigation, and paisa income litigation as public interest litigation.<sup>11</sup> Over the years, there has been an alarming spike in the number of frivolous petitions filed before the judiciary disguised as public interest litigations when, in reality, these are simply tools for carrying out a political or personal vendetta, or for publicity gains.

Public interest litigation in itself is a noble concept. However, in the hands of the wrong person, it loses its nobility and becomes poison, which pollutes the entire judicial system. Frivolous public interest petitions, as quoted by the courts, criminally waste the valuable time of the courts and deprive genuine litigants with legitimate grievances of their rights, which makes them lose faith in the administration of the judicial system.<sup>12</sup> Such frivolous petitions lead to delays in the administration of justice in genuine cases, which often result in severe miscarriages of justice, which in turn question the crux and spirit of the justice system.

In light of these issues, the judiciary has taken a daring stand to act ruthlessly and to dismiss, in the absence of any legal injury, public interest, or *bonafide*, any public interest litigation petition at the threshold itself, and in appropriate cases with exemplary costs.<sup>13</sup>

Highlighting this stand in a number of cases, the courts laid down that before admitting a public interest litigation, it has to be satisfied with

- i. the credentials of the applicant;
- ii. the *prima facie* correctness or nature of the information provided by him; and
- iii. the information not being vague and indefinite.

In recent years, many petitions in which the petitioners have sought judicial intervention in meaningless and non-existential issues or where the petitioner lacks adequate information have thus been dismissed by various courts. One such petition was *Afsana v. State of UP & Ors.*, PIL NO. 255 of 2021, which was dismissed with exemplary costs by the Allahabad High Court on the ground that it was a petition for purely personal gains.

The facts of the case are that the petitioner filed a public interest litigation seeking direction to the State & the local administration for initiating proceedings in respect of the allotment of a

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<sup>10</sup> *Malik Bros v. Narendra Dadhich*, 1999 (6) SCC 552

<sup>11</sup> *Ashok Kumar Pandey v. State of W. B.* 2004 (3) SCC 349

<sup>12</sup> *Ashok Kumar Pandey v. State of W. B.* 2004 (3) SCC 349

<sup>13</sup> *Jugal Baruah v. Union of India*, AIR 2003 Gau 37

fair price shop in a village in District Jaunpur. It was prayed that the fair price shop in question, having not been allotted, has hampered the proper and smooth distribution of goods to the cardholders. However, in the course of the hearing, it was revealed that the petitioner's daughter-in-law had participated in the allotment of the said fair price shop, thus making it clear that the petition was not filed in the public interest, but for personal gains.<sup>14</sup>

The court reiterated in the said case that a writ petitioner who approaches the judiciary in the public interest should always come with clean hands and objectives and also confirmed the imposition of exemplary costs in frivolous petitions of this kind.

Recently, a public interest litigant in the Supreme Court narrowly escaped having to pay ₹18 lakh for filing a “luxury litigation.” A Vacation Bench initially asked the litigant to pay ₹18 lakh, that is, ₹1 lakh for every one of the 18 minutes the case took up. However, the court later cut the amount to ₹2 lakh at the request of the litigant’s counsel. This case came up shortly after the same Bench had passed a judgment in a challenge to the re-development work undertaken by the Odisha government around the Puri Jagannath temple, emphasizing how frivolous PIL petitions both encroach into valuable judicial time and stall development work undertaken by the government.

Justice Gavai, speaking for the Bench, observed that “the highly derogatory practice of filing frivolous petitions encroach on valuable judicial time which can otherwise be utilized for addressing genuine concerns.”<sup>15</sup>

These paradigms of exploitation of the provisions of public interest litigation by people for their selfish motives reveal how essential it is to regulate who could wield such powers. Given the fact that such exploitations abuse and undermine the entire justice system, necessary steps must be taken to ensure that the broad scope of *locus standi* is not exploited by flippant litigants, but is made use of only by genuine public interest litigants.

#### IV. CONCLUSION

On analysis, it can be concluded that public interest litigation is an indispensable element for the administration of justice in a large country like ours. It has enabled a major section of deprived citizens to access the legal system for decision-making and justice. A look into the

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<sup>14</sup> Inder Jain, *Courts deprecate practice of filing PIL for Publicity, Personal/Political/Monetary Gains- impose exemplary costs for abuse of the process of law*, Legal Service India E-Journal, <http://www.legalserviceindia.com/legal/article-4861-courts-deprecate-practice-of-filing-pil-for-publicity-personal-political-monetary-gains-impose-exemplary-costs-for-abuse-of-the-process-of-law.html>

<sup>15</sup> Krishnadas Rajagopal, *SC objects to frivolous PIL petitions, 'luxury litigation' eating up court time*, The Hindu, (June 03, 2022, 16:42 IST), <https://www.thehindu.com/news/national/sc-objects-to-frivolous-pil-petitions-luxury-litigation-eating-up-court-time/article65490812.ece>

popular public interest litigation petitions reveals how beneficial the moderation of the scope of *locus standi* has come to be and the drastic changes and progress it has brought about.

However, the loopholes it creates for people to misuse it are not beyond criticism. Widening the scope of *locus standi* for a person to file a petition in the court of law comes with a price, which is nothing but allowing its process to be abused by mere busybodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest.<sup>16</sup> As discussed above, such frivolous petitions, in addition to wasting the precious time of the courts, deprive genuine litigants of their right to timely justice.

Such derogatory practices put the dignity of the court and the very essence of the judicial process at stake, which in turn calls for powerful curbs and measures to balance the freedom of people to question the shortcomings of the system, and the necessity to comply with essential technicalities.

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<sup>16</sup> Janata Dal v. H. S. Choudhary, 1992 (4) SCC 305