



JUDICIAL ACTIVISM (PIL) - BOON OR BANE

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ABSTRACT

The purpose of this article is to draw attention to both the positive and negative aspects of public interest litigation. It focuses on the intricacies and nuances of Public Interest Litigation and also attempts to trace the origins of this practise in order to build a deeper grasp of the principle that underpins the practise. The researcher has given careful consideration to the relationship between judicial activism and public interest litigation.

According to the Supreme Court of India's guidelines, the scope of a public interest litigation (PIL) is also discussed in the article. A number of case studies, which have been divided into three phases, are used to further underline the potential and significance of public-private partnerships.

The study goes on to discuss the unintended implications of Public Interest Litigation, which have the potential to exacerbate the current state of our legal system. The paper also emphasises the significance of the already existing burden caused by the backlog of outstanding cases as a source of concern, which only grows in importance as more workload is generated by PILs.

Keywords: *Origin, judicial activism, case studies, phases, backlog*

1. INTRODUCTION

Public Interest Litigation opens the doors of access to legal remedies for those who desire to safeguard the rights and interests of themselves, others, or the general public from being violated by others or the government. Rather than being just a prerogative of the injured party, it transforms the practise of litigation into a remedy-seeking process that can be extremely beneficial in situations of public concern. Lawyers in the public interest (PIL) are a notion that entrusts the practise of law to extremely public-spirited persons who are operating in the best interests of society. Using court-ordered decrees, it enables litigators to effect the desired reforms in the legal system. Prof. Upendra Baxi substitutes the term "Public Interest Litigation" with the term "Social Action Litigation" because of the effectiveness and ability to trigger beneficial social changes that

social action litigation can bring about. As a result of the notion of Public Interest Litigation, the role of the individual in initiating legal procedures has been redefined. It accomplishes this by broadening the range of individuals who are eligible to take a locus stand, i.e., the right to appear in a court of justice or before a legislative body, on a particular issue. In light of the high expenses and lengthy nature of the litigation process, a Public Interest Litigation (PIL) appears to be an ideal tool for combating circumstantial bias, which makes justice inaccessible to the poor class.

It promotes the protection of fundamental rights of persons by making it easier for those who have been wronged or others working in the public good to seek redress in the jurisdiction of High Courts or the Hon'ble Supreme Court of the United States. On countless times, it has stood up for the rights and interests of the general population and done so successfully. The researchers will go on to discuss some significant public interest litigation (PILs) that have had a significant impact in the future in this study report.

Being a powerful and prominent initiative has undoubtedly demonstrated its usefulness throughout the years, however, as with any other practise, PIL has its disadvantages as well as its advantages. What exactly are these disadvantages? What impact do they have on the current situation? What strategies can be used to overcome the difficulties they face? The researchers will make an attempt to provide additional answers to these queries.

1.1 ORIGIN AND EVOLUTION OF PUBLIC INTEREST LITIGATION

Prof. Abram Chayes of the Harvard Law School is credited with coining the term "public law litigation." "Cause lawyering" or "social activism" are other terms used in the field of litigation to describe this practise. When it comes to the United States, the emergence of this practise may be traced back to the landmark case *Brown v. Board of Education*, in which the Supreme Court ruled that it was unlawful to separate pupils on the basis of race in a public school.

PILs arose as a result of the expansion of judicial activism in India following the end of the emergency. The Supreme Court of India began to join in the citizens' struggle for the enforcement of social and economic rights, as well as the protection of their political and civil liberties, in the late 1970s, i.e. immediately after the emergency period was lifted.

By allowing for greater flexibility in the norms of locus standi, it was intended to increase judicial activism by strengthening the rights of impoverished and underprivileged people and so encouraging more judicial activism. The goal of this project was to improve the conditions of citizens' rights following the political emergency (1975-1977), during which many citizens were deprived of their constitutional rights.

During the post-emergency trend of judicial activism, Justice P.N. Bhagwati and Justice Krishna Iyer played an essential role in the formation of this phenomenon. The first public interest litigation (PIL) in India was the case of Hussainara Khatoon v. State of Bihar, which dealt with the situation of thousands of prisoners awaiting trial.

In the case of S.P. Gupta v. President of India, popularly known as the judges' transfer case, Justice P.N. Bhagwati provided an explanation of the Public Interest Litigation (PIL) rule. Over the decades that have followed, public interest litigation has emerged as a regular and significant practise in the Indian court system.

1.2 PIL GUIDELINES BY THE SUPREME COURT OF INDIA

Petitions that fall under one of the following categories will only be considered for Public Interest Litigation:-

1. Bonded labour matters.
2. Family Pension.
3. Neglected Children.
4. Petitions from riot-victims.
5. Exploitation of workers and non-payment of their minimum wages and issues related with violation of Labour Laws (except in matter of individual cases).
6. Petitions containing the issues related with harassment or torture of villagers by police from persons belonging to SC and ST or economically backward classes or by co-villagers.

Applicants may submit a petition under Section 125 of the Indian Penal Code or a suit in the appropriate court for petitions relating family concerns such as the maintenance of a wife, her parents, and their children.

Petitions received by the Public Interest Litigation Cell will be screened by the Cell first, and petitions falling under the scope of the categories listed above will be brought before a Judge. The Hon'ble Chief Justice of India would appoint the judge for petitions that fall under the purview of the Public Interest Litigation Act.

Following categories will not fall under the ambit of PIL:-

1. Landlord-Tenant matters.
2. Petitions for cases pending in High Courts and Subordinated Courts.
3. Admission to educational institution.
4. Service matter and those concerned with Pension and Gratuity.

“For filing a petition any public spirited citizen can access the court:

1. In the Supreme Court under Article 32 of the Constitution of India.
2. In the High Court under Article 226 of the Constitution of India.
3. In the Court of Magistrate under Section 133 of the Code of Criminal procedure.”

2. PIL – A REFORMER IN INDIAN LEGAL SYSTEM

PIL takes up the role of a crusader both within our own country and throughout the entire world. It can be viewed as a gift in the hands of activists and litigators who have a legitimate cause, and as a scourge in the hands of those who seek to abuse the power it provides. Efforts must be made immediately to promote the use of PIL for intended objectives while discouraging those who wish to either misappropriate it or exploit it as a vehicle for economic gain or public relations from doing so. The Public Interest Litigation (PIL) is a reformer for our Indian judicial system as well as for the Indian people. People are given power and authority, and their right to take legal action if they discover any flaws in their environment is enforced by this law.

3. RESEARCH METHODOLOGY

The research methodology part of the study is descriptive and elusive with the purpose of clarifying the major and essential topics which will illustrate facts and points clearly and visibly. For the assessment purpose some important PILS are included in this under which major cases and verdicts of the study are illustrated.

4. RESULTS AND DISCUSSIONS

4.1 SOME IMPORTANT PILS: CASES AND VERDICTS

Researches demarcated the cases of PIL in three different phases.

Phase – 1: Specifically, it considers cases in which the courts have issued guidelines, directions, and orders in order to preserve and protect the fundamental right to life for those groups of society who are unable to access the legal system due to poverty, illiteracy, or abstinence from alcohol and other drugs.

Cases of Phase – 1

1. In his judgment in S.P. Gupta v. President of India & Others, Justice P.N. Bhagwati the traditional rule was described as "ancient vintage" by Justice P.N. Bhagwati, who replaced it with a modern way of standing – "where a legal injury is suffered by a person or by a determinate class of persons as a result of a violation of a constitutional or legal right and

such person or determinate class of persons is unable to approach the court for aid and relief due to helplessness, poverty, disability and socially or economically backward position in such case any person from the public can file an application for an appropriate direction, writ or order, in the High Court under Article 226 and in the Supreme Court under Article 32."

2. It was submitted in the case of Anil Yadav and Others v. State of Bihar to challenge the harsh act of blinding pre-trial detainees in Bhagalpur, in the state of Bihar, which occurred in 2011. As reported, needles were inserted into the inmates' eyes and acid was injected into their eyes to cause blindness. These heinous acts of brutality and inhumanity were condemned by the courts and ordered to be stopped from happening again.
3. While the court was hearing cases involving child labour, M.C. Mehta v. State of Tamil Nadu & Others, the court discovered that children who are employed as child labour face a number of challenges, including poverty, a lack of opportunities for gainful employment, inadequacy of income, and a low standard of living, among others. In addition, the court found that it is possible to detect child labour in the organised sector, and it was determined that the greatest amount of attention is required for detection and problem solving in the unorganised sector
4. Custodial death, according to the court in the case of D.K. Basu v. State of West Bengal, "is one of the most humiliating events that may occur in our society." The rights enshrined in Article 21 and Article 22(1) of the Constitution of India must safeguard all citizens of this country. When the term "life or personal liberty" is used in Article 21, it refers to the right to live with human dignity as well as the right to be protected from torture, terror, and attack by the state or its representatives. "The court ordered that the rules be adhered to in their entirety."
5. In Vishaka and Others v. State of Rajasthan, the Supreme Court of India set guidelines and orders relating Articles 14, 19, and 21 of the Indian Constitution for the enforcement of working women's rights, as well as regulations for the protection of women's rights at work.

Phase – 2: Environmental, wildlife, forest, marine life, rivers, historical monuments, and ecology are some of the issues that are addressed by the court.

Cases of Phase – 2

1. People also have the right to enjoy pollution-free air and water, as the Supreme Court of India observed in Subhash Kumar v. State of Bihar, which stands out as an improvement to society and the environment under the scope of Article 21 of the Indian Constitution.

Anything that deteriorates and endangers the quality of life in the repeal of laws can be managed through an application under Article 32 of the Constitution for the removal of pollution from air and water, as it has a negative impact on the quality of life in these areas.

2. In the case of *Re. Noise Pollution*, the court was deliberating on the issue of noise pollution. Since people are often uninformed of the dangers of noise pollution, according to the court, it is essential to educate them about its dangers.
3. In the case of *M.C. Mehta v. Kamal Nath*, the court ruled that Articles 48(A) and 51(A)(g) of the Constitution are now regarded under the scope of Article 21 of the Constitution going forward. If any of the fundamental environmental elements, namely air, water, and soil, are altered in a way that makes them unfit for human habitation and poses a threat to human existence, this falls under the purview of Article 21. Upon finding that the fundamental rights guaranteed by Articles 14 and 21 have been violated by disturbing or unbalancing the environment, the court awards compensation not only for the restoration of ecological balance, but also for the compensation of those who have suffered as a result of the disturbance.
4. In the case of *M.C. Mehta v. Union of India*, the court ruled that the use of coal/coke, which was used by 299 industries, was prohibited in order to protect and preserve the historical monument Taj Mahal from deterioration caused by sulphur dioxide emissions from industries in the vicinity of the Taj Mahal.
5. Specifically, the court held in *M.C. Mehta and Others v. Union of India* (Oil gas leakage case) that businesses engaged in a hazardous or inherently dangerous industry, or which endangers the health and safety of workers in the factory as well as residents of the surrounding area, owe an absolute duty to ensure the safety of those who enter their premises. The court further ruled that the enterprise must strive to maintain the highest levels of safety, and that if any injury occurs as a result of such conduct, the enterprise is totally accountable for that harm, with no defence possible under the doctrine of absolute responsibility.
6. "On the orders of the High Court of Delhi and the Supreme Court, all public transportation in the Metropolitan city of Delhi has been switched from diesel to compressed natural gas engines in order to reduce pollution levels."

4.2 THE DARK SIDE OF PUBLIC INTEREST LITIGATION

PIL has gained tremendous momentum and popularity over the course of the last few decades. It is simple to overlook the negative consequences and unintended consequences of this activity. The

varied characteristics of this public-spirited kind of lawyering give rise to a number of issues that must be addressed properly and expeditiously in order to avoid further harm.

It has been observed that the expansion of the locus standi, which is a fundamental aspect of PIL, has been the source of numerous fraudulent procedures. The Supreme Court has recently chastised the practise of launching public interest litigation (PIL) for the sake of publicity or for other nefarious reasons. A significant amount of judicial time and effort is expended on such matters, according to the statement, highlighting the fact that a significant amount of resources is spent on them.

With the increasing growth of public interest litigation (PIL), there is a danger that the judiciary would become overzealous in its attempts to interfere with the legislative and executive branches of government. The prospect of judicial activism devolving into judicial adventurism is a source of concern for the Indian legal system at the moment.

PILs, when not used properly, add to the already-heavy strain on the Indian judiciary, which has not yet been able to claw its way out of the massive backlog of outstanding cases that has accumulated over the last several decades. According to the Supreme Court, public interest litigation (PIL) petitions consume a significant amount of judicial time. The court system is strangled by a backlog of unfinished business as a result of this habit of postponement and the accumulation of unneeded burdens.

5. CONCLUSION

A great deal of potential exists in the profession of Public Interest Litigation. This potential can be used for both beneficial and destructive reasons, depending on how it is channelled. In the context of social litigation, PIL has shown to be a successful and convenient tool when carried out in the actual public interest. This is demonstrated by a number of the cases cited above, which serve as examples of the success and potential of such a legal strategy.

The determination of whether an issue falls under the purview of a PIL or not is extremely important. The PIL cell must treat it with the highest seriousness and care. With an existing massive backlog of ongoing cases in India, it is simply not feasible, both in terms of time and financial resources, to take on superfluous topics as PILs and thereby add to the already overwhelming burden. Public interest litigation (PILs) brought as public stunts or with mala fide intents must be identified and dealt with as soon as practicable. The PIL cell should be well-equipped and effective in determining the merits of a case from the very beginning of the investigation. This will save our justice system a significant amount of time and other resources. It

is equally critical that, in the name of protecting individual rights, judicial activism does not exceed its bounds in interfering with the functioning of the legislature and the government. The judiciary's intervention should be limited to being regarded only as a last resort in order to ensure the smooth and effective functioning of government. Overall, public interest litigation is an excellent weapon for enforcing the rights of those who have been deprived or oppressed and are seeking redress in the courts. When practising it, it should be done with due care and consideration for the resources it consumes.

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