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# Adoption of Public Interest Litigation in Diverse Section

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## ABSTRACT

*Public interest litigation (PIL) is a term used in Indian law to describe legal action done to protect the public interest. It is a sort of lawsuit in which the court or any other private person, rather than the injured party, files a case in a court of law. A person who has been the victim of a violation of his or her rights is not necessary to appear in court in person. When a victim lacks the financial means to file a case, or when his right to go to court has been hindered or encroached upon, such situations can develop. On the behalf of this study, it's concluded that Public interest litigation (PIL) has a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation. PIL, for example, provides underprivileged parts of society with a path to justice, provides a channel for enforcing diffused or collective rights, and helps civil society to not only raise awareness about human rights but also participate in government decision-making. The Indian PIL experience, on the other hand, demonstrates the importance of ensuring that PIL does not become a front for pursuing commercial interests, settling political scores, or gaining easy attention.*

## I. INTRODUCTION

Public interest litigation (PIL) is perhaps the most well-known and imitated aspect of the Indian legal system.<sup>2</sup> PIL was conceived by the Supreme Court of India in the late 1970s as a mechanism to rectify fundamental rights breaches for individuals who could not approach the courts themselves due to poverty or other types of disempowerment. To overcome this hurdle, the Supreme Court relaxed standing requirements and held that a petitioner need not be personally injured or aggrieved to bring the violation of a fundamental right to court. Rather, any public-spirited individual could sue on behalf of those who could not.<sup>3</sup>

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<sup>2</sup> See generally *PUBLIC INTEREST LITIGATION IN SOUTH ASIA: RIGHTS IN SEARCH OF REMEDIES* (Sara Hossain, Shahdeen Malik, & Busra Musa eds., 1997); Parvez Hassan & Azim Azfar, *Securing Environmental Rights through Public Interest Litigation in South Asia*, 22(3) VA. ENVTL. L.J. 215 (2004); Arun Thiruvengadam, *In Pursuit of "The Common Illumination of our House": Trans-Judicial Influence and the Origins of PIL Jurisprudence in South Asia*, 2 INDIAN J. CONST. L. 67 (2008).

<sup>3</sup> S. P. Gupta v. Union of India, A.I.R. 1982 S.C. 149

Parts III and IV e of the Constitution laboriously describe several articles covering fundamental rights and State Policy Directive Principles, which are inextricably related to the achievement of a just and humane society. This would assure the protection and promotion of Indian citizens' right to a free, equitable, and dignified life. Articles 32 and 226 are significant because they give the judiciary the power to issue writs to protect people's rights. Directive Principles of State Policy must be implemented, although they are not technically enforceable in a court of law.

## **II. PROTECTION OF HUMAN RIGHTS VIA PUBLIC INTEREST LITIGATION**

"Human Rights" are defined as "the minimum rights that every individual must have against the State or other public authority by virtue of being a member of the human family,' regardless of any other reason." These rights, on the other hand, are codified in constitutional law, which governs and recognises the rights and obligations of the people as well as the ruler and the ruled. As a result, every contemporary state has a complete charter of judicially enforceable rights dubbed "Fundamental Rights."

Though it has existed in various forms since time immemorial, concern for human rights only became widespread in the twentieth century, notably following World War II. It is not a fixed point, but rather a component of a continuous dialectic process through which advancement in the area can and has been made.

Public Interest Litigation (PIL) has been crucial in efficiently redressing some of the problems faced by marginalised groups in Indian society, such as child labour, bonded labour, women, and the environment.

In India, justice has always been expensive and time-consuming. Access to justice is restricted to a select few. Complex legal procedures, high litigation costs, widespread illiteracy and ignorance are all elements that contribute to the denial of justice to the impoverished. The Public Interest Litigation (PIL) has made the legal process relatively straightforward and transparent for the general public. It significantly enlarged the concept of locus standi, allowing someone who isn't personally impacted by a breach of rights to file a petition on behalf of the individual or group of people who are economically or physically unable to come before it has helped.

### **(A) Broadening the scope of fundamental rights**

It has broadened the scope or meaning of the fundamental right to equality, life and personal liberty. In this process, the right to a speedy trial, free legal aid, dignity, means and livelihood,

education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, bondage and servitude, exploitation and so on emerge as human rights. These new re-conceptualised rights provide legal resources to activate the courts for their enforcement through PIL.

### **(B) Establishment of National Rights Commission (NHRC)**

In inquiring into complaints filed under the Act, the Commission was set up and was granted powers of a Civil Court in trying a suit as per the directions of the Code of Civil Procedure, 1908, in specific matters as prescribed to them, including but not limited to:

- Summoning and examining witness under oath
- Production of documents
- Receiving affidavits as proofs
- Issuing orders for examining witnesses and documents

### **(C) Expansion of Concept of Locus Standi**

It effectively expanded the concept of locus standi, whereby the person who may not be directly affected by the violation of rights can still file a petition on behalf of the affected person or group of persons.

#### **a. Class Action**

Section 245 of the Companies Act of 2013 in India established the idea of class actions. Section 245 adds the notion of "specialised class actions" by a company's shareholders and depositors to the Indian legal system, and it is anticipated to have a significant impact on the use of class actions as an effective remedy in India.

In addition, through judicial involvement in the form of Public Interest Litigations and Social Interest Litigations, the concept of class actions has grown.

The Indian legislature was especially cognizant of previous cases of corporate fraud in India, particularly the "Satyam scandal," while enacting section 245. Satyam Computer Services Ltd (Satyam) overstated its revenues by hundreds of millions of dollars, based on fraudulent invoices for customer projects that did not exist. Satyam had issued American Depository Receipts (ADRs) in the United States in addition to being listed on the Indian Stock Exchange. When the Satyam fraud was discovered, class actions were brought in US courts on behalf of purchasers of Satyam's ADRs.

The class actions against Satyam and its directors and auditors were ultimately settled, with

US\$125 million paid out to the purchasers of the ADRs. However, shareholders in India, where the concept of securities class actions was not developed, did not have recourse to such a remedy and failed to receive compensation, unlike the ADR holders in the US. It was partly to meet this anomaly (highlighted during the Satyam scam) that the Indian legislature decided to introduce section 245.

Section 245 was notified by the Ministry of Corporate Affairs (MCA) on 1 June 2016 and is likely to usher in a new era for collective actions in India.

### **b. Representative action**

Representative action is a legal action in which one or a few members of a class sue on behalf of themselves and other members of the same class; a lawsuit brought by the stockholders of a corporation, on its behalf, for the enforcement of a corporate right.

In India, public interest litigation takes on a whole new meaning when it comes to representative claims (PIL). Indian courts have carved out a unique and expansive jurisdiction in which anyone can advocate for a public cause without having to disclose any locus standi or special grievance.

In the exercise of their writ jurisdiction, these petitions are before the high courts or the Supreme Court of India. Indian courts have been exceedingly lenient when it comes to PILs (to the extent of being accused of crossing their legitimate constitutional bounds and transgressing into the realm of the legislative and the executive). PIL actions, on the other hand, are quite popular, frequently used, and are here to stay. They include almost every aspect of public life, including the right to a healthy environment, food, clean water, education, and medical treatment.

The defining features of a PIL action are that the court disregards *locus standi* and procedural compliance. It will even accept a simple letter from a public-spirited individual and convert it into a writ petition suo moto. The petitioner must, however, appear to be working in good faith and not for personal advantage or profit. A PIL judgement binds everyone, regardless of whether they were given notice of the proceedings or not, and whether or not they were given an opportunity to be heard. The parties' natures are amorphous, and the petitioner is not a dominus litis. PIL is considered non-adversarial because the judge takes the initiative and is not bound by the pleadings or evidence presented. The theories of res judicata and estoppel are inapplicable in this case.

Representative actions or actions brought in the public interest via Public Interest Litigation (PIL) have grown in popularity and are widely used in writ jurisdiction (to the Supreme Court

for the enforcement of fundamental rights under Article 32 of the Constitution, or to the High Courts for the enforcement of fundamental rights or any other legal right under Article 226 of the Constitution of India).

In 2015, the government launched an action against **Nestle India Ltd**, marking yet another significant breakthrough in the field of collective action. The National Consumer Disputes Redress Commission heard a case against instant noodles sold in India under the brand name "Maggi" (National Commission). The complaint, which was brought on behalf of all consumers and sought damages of INR640 crores (INR6.4 billion) for alleged unfair trade practises, deceptive labelling, and misleading ads, was by its very nature a collective action. The complaint was made under section 12(1)(d) of the Consumer Protection Act 1986, which allows the central or state government to file complaints to the National Commission in its own role or as a representative of the interests of consumers in general. This case has paved the way for future consumer-led collective actions and is a watershed moment.

In case, *Guruvayur devaswom Managing Committee v. C.K Ranjan*<sup>4</sup>

The Supreme Court has evolved several principles with respect to PIL that is as follows:

- Under Article 32 and 226 of the Constitution, the Supreme Court and the High Court can hear any plea in respect of any disadvantaged section of society who is unable to appear to court due to his disadvantaged status. A societally concerned individual might also go to court to fight for their rights.
- The Supreme Court and the High Court can hear any plea in respect of any disadvantaged section of society who is unable to appear in court due to his disadvantaged status under Article 32 and 226 of the Constitution. A societally concerned individual may also take their case to court to defend their rights.
- Whenever there is a violation of human rights of a large number, it is the duty of the court to cite principles mentioned in Articles 14 and 21, and wherever possible, the International Convention on Human Rights for ensuring no violation happens again.
- The long-standing rule of *locus standi* can take the back seat, the court can relax the rule and start to look into complaints by people on behalf of poor, illiterate and marginalised people who cannot stand on their own foot for the right cause.
- Once the court is satisfied whether *prima facie* or otherwise, then the court should not allow other parties to raise questions on the maintainability of the suit and the decision

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<sup>4</sup> Guruvayoor Devaswom Managing Committee v. C.K. Rajan [2003] 7 SCC 546

of a court to take the matter into its hand.

- There is no complete denial of the fact there is no applicability of procedural laws, but courts decided to be flexible in these rules.
- The court won't entertain any petition that purely deals with two private parties and is filed for publicity.
- If any person has moved towards the court in his personal interest and for his personal grievances, the court can take a holistic outlook while treating the matter and grant remedies that are beneficial for the public good.
- The court has the power to appoint a commission if it deems that it is necessary to investigate more on the matter or require professional suggestions from that committee.
- It is the duty of the courts not to step out of their limits and act in an unjust manner. However, if the court feels that it is necessary for doing complete justice, the court can act in any manner if they deem it necessary.
- In normal course the High Court should avoid entertaining writ petitions in the form of PIL, questioning the constitutional validity of a law or any other statute.

### **III. PUBLIC INTEREST LITIGATION CHALLENGING ENVIRONMENT ISSUES**

Article 21 of the constitution provides the right to life which includes the right to a clean and healthy environment. Consequently, the right to life guaranteed by Article 32 includes the right to enjoy pollution-free water and air in order to fully enjoy life. A healthy ecosystem is essential for everyone's well-being, not just for humans but also for other animals on the globe. As a result, a breach of the right to a healthy environment has the potential to be a violation of the fundamental right to life.

The Indian Constitution's Articles 21, 48A, and 51(g) protect the right to a healthy environment. The Constitution's Articles 32 and 226 have been invoked numerous times to highlight the subject of environmental preservation. PIL has been proven to be a useful tool. Even 95 per cent of environmental protection action takes occur in a court of law, thanks to public interest litigation (PIL). MC Mehta has filed a number of public interest litigations (PILs) at the Supreme Court dealing with various aspects of environmental protection.

In the case of environmental degradation, a PIL can be brought in the following circumstances:

- Causing Environmental Pollution in any form which is likely to cause harm to the public.

- Causing violation of the basic Human rights of the poor by disregarding them. For e.g., if a farming land has been taken away from a farmer and not being paid proper compensation for the same.
- Default in duty by the municipal corporations or the panchayats like not taking proper care of the water and sanitation facilities in the locality.
- If there is a conflict between religious rights and the environmental issue arises due to the same. For e.g. use of loudspeakers in temples or mosques creates noise pollution.

Public Interest Litigation has also been the sword, or rather the pen, of M.C. Mehta's heroic and indefatigable pursuit of the environmental battle, sometimes known as 'green litigation'. He made significant progressive advances in environmental preservation by being a conscious citizen of the country who submitted petitions in the public interest rather than being a policy-maker elected by the people which have resulted in orders deciding absolute liability for the leak of Oleum gas from a factory in New Delhi,<sup>5</sup> bringing in directions to the authorities to have pollution in and around the Ganges river checked,<sup>6</sup> having hazardous industries relocated from the domestic boundaries of Delhi,<sup>7</sup> bringing in directions to state agencies to check the pollution in the propinquity of the Taj Mahal<sup>8</sup> and also having government-run buses shifted to the use of environment-friendly fuel like Compressed Natural Gas (CNG).<sup>9</sup>

One of the most essential aspects of the environmental PIL is that the Court monitors its own orders. This entails the appointment of magistrates or other judicial authorities to undertake on-site compliance checks on a regular basis. The results of the monitoring of order compliance are reported to the Supreme Court or a designated high court. Third parties comply with court orders for a variety of reasons, including fear of formal fines. PIL's administrative expenses should not always be higher than the costs of achieving the same aims through the regulatory system.

After 14 years of the Stockholm Conference, which established a number of key principles for its better execution, the Environment Protection Act was passed in 1986. By incorporating various international environmental doctrines as part of Indian environmental jurisprudence, the Indian judiciary, particularly the higher judiciary consisting of the Supreme Court of India,

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<sup>5</sup> M.C. Mehta v. Union of India, (1987) 1 SCC 395 (India).

<sup>6</sup> M.C. Mehta v. Union of India (1988) 1 SCC 471 (India).

<sup>7</sup> M.C. Mehta v. Union of India, (1996) 4 SCC 750 (India).

<sup>8</sup> M.C. Mehta v. Union of India, (1996) 4 SCC 351 (India); Emily R. Atwood, Preserving The Taj Mahal: India's Struggle to Salvage cultural icons in the Wake of Industrialisation, 11 PENN STATE ENVIRONMENTAL LAW REVIEW (2002).

<sup>9</sup> M.C. Mehta v. Union of India, (1998) 8 SCC 648 (India)



the High Courts of the States, and now the National Green Tribunal, has facilitated access to justice for all classes of society, whether rich or poor, educated or illiterate, an individual or a corporation.

The National Green Tribunal, which was created in 2010, has offered an effective and timely resolution of matters relating to environmental preservation and forest conservation. The National Tribunal Act of 2010 gives the Tribunal authority over all eight civil disputes involving water, forest, air, environment, and biological diversity in which there is a major question about the environment. The Supreme Court hears appeals from the National Green Tribunal's orders.

The Indian Judiciary has upheld the doctrine of Public Trust. The orders and directions of the Supreme Court and the High Courts at the State level cover a wide range of areas be it air, water, solid waste or hazardous waste. The field covered is very vast such as – vehicular pollution, pollution by industries, depletion of forests, illegal felling of trees, conservation of wildlife, dumping of hazardous waste, solid waste management, plastic degradation, pollution of rivers, illegal mining etc. The list is unending.

The Supreme Court has not only played a key role in the enforcement of environmental laws, but it has also interpreted Article 21 of the Constitution to include a basic right to a healthy and pollution-free environment.

In the case **M.C. Mehta vs. Union of India**<sup>10</sup> The Supreme Court ruled that automotive emissions in Delhi infringe the right to life under Art. 21 and ordered all commercial vehicles operating in Delhi to switch to CNG fuel mode to protect people's health.

In the case of **Him Privesh Environment Protection Society Vs. State of Himachal Pradesh** through Secretary Industries and Ors., in the year 2010 petitions were filed before the High Court of Himachal Pradesh, challenging the setting up of a Cement Plant by an Industrial House in District Solan, H.P. alleging that the cement plant had been set up in total violation of the environmental laws, especially the EIA Notifications. The plant had demolished a good part of the forest area and taken lands from nearby villages without a proper public hearing. Conscious of the fact that passing of a closure or demolition order in respect of the cement plant would cause immense hardship and adversely impact the livelihood of thousands of innocent citizens, the High Court had invoked the principle of “polluter pays” and imposed damages on the Cement Plant owner to the tune of Rs.100 crores, i.e., 25% of the total cost of the project. The aforesaid decision was challenged by the Cement Plant owner before the Supreme Court but

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<sup>10</sup> M C Mehta v Union of India, AIR 2002 SC 16969

the appeal was dismissed in the year 2013.

In the case of **Research Foundation for Science Technology and Natural Resources Policy v. UOI**, ((2007) 8 SCC 583), in the year 2005, the petitioner had filed a PIL in the Supreme Court invoking the fundamental rights of a citizen as enshrined in Article 21 of the Constitution of India and asking for intervention when a French ship 'Clemenceau' had posed a threat to the maritime environment at the Alang Shipbreaking Yard situated in the State of Gujarat. The Supreme Court responded by issuing a direction denying access to the ship to make port at the Alang Shipbreaking Yard for dismantling. Showing deep concern over the operation of ship breaking, the Court had asked for recommendations from a Committee of technical experts constituted by it. Directions were also issued to the Government of India to enact legislation on this aspect, and as an interim measure, the court had laid down a set of guidelines to be followed in order to mitigate the harm caused to the environment by this activity that included decontamination of the ship prior to its breaking and classification of the 7 waste generated by the ship breaking process into hazardous and nonhazardous categories.

#### **IV. PUBLIC INTEREST LITIGATION IN THE ENCOURAGEMENT OF GOOD GOVERNANCE**

The Constitution has all of the ingredients for good governance: fundamental rights, directive principles of state policy, and checks and balances. However, because the word "good governance" was not widely used at the time, it was not included. However, the Supreme Court has inferred a number of rights as fundamental rights that are not officially recognised in the Constitution. The freedom of the press, the right to information, the right to privacy, the right to a speedy trial, and the right to a clean environment is among them.

Every forward-thinking society strives for good governance. In reality, it is the yardstick by which any government is judged, and in a democracy, citizens elect their representatives based on the assurance of good governance. A transparent public system of governance offers a democratic and responsible state, but for efficient administration, a balance must be struck between the "thrust of disclosure requirements" and the "parry of administrative privileges." The global development, modifications, and ways that have an excellent footprint on the governance structure must also be taken into mind when developing such theories.

This notion of good governance can be pushed by public interest litigants seeking to correct any administrative malpractice in the courts. In an era where government departments and public authorities wield enormous power and influence over citizens' concerns and rights, public interest litigation as a socially motivated check on administrative excesses can no longer

be overlooked, especially when public protest falls on deaf ears. The citizens are also seeking judicial intervention through Public Interest Litigation (PIL) for prompt action on certain issues affecting the common life.

The judiciary has played a critical role in the development and evolution of society in general, as well as in ensuring good governance by those in positions of power. Transparency, responsibility, accountability, involvement, and responsiveness to the demands of the people are fundamental aspects of effective governance, according to the United Nations Commission on Human Rights.

Establishing commissions like Central Vigilance Commission and national commissions for Women, Schedules Tribes, Schedules Castes, Minorities and Backward Classes, National Labour Commission, National Commissions for Human Rights and Minorities, and Comptroller and Auditor General of India are some such efforts or steps to administer social, legal constitutional and systemic commitments in bureaucracy that aims to remove the tendencies of administrative bias, corruption, alienation and make administration poor-sensitive, gender-sensitive, and more sensitive to the demands and grievances of the public. It helped to prevent undesirable acts or behaviour and to promote the efficiency and integrity of public servants. The Governments have also initiated a number of other measures to see the actual operations of accountability in administration.

The duration of the PIL in the Indian context reveals a great deal about the judiciary's transformation from an interpretative to a supervisory jurisdiction forum, where it began correcting actions, legislation, and policies of public authorities, government, and other bodies working for the public good.

People's participation is given increasing precedence in the scheme of governance. It is recognized that people's involvement in decision-making and decision implementation would act as:

- A check on indifferent and inefficient bureaucracy. In other words, people could act as a pressure on the administration to act and act in time.
- Instruments for a responsive and accountable administration.
- A medium of development administration and self-government.
- A mobiliser and user of local resources for local development.

P.N. Bhagwati, a Supreme Court judge In 1982, it was stated emphatically that PIL is an 'a strategic arm of the legal aid movement which is intended to bring justice within the reach of

the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation.” This definition captures the true essence of the Public Interest Litigation but the modern interpretation developed by the judiciary to the ‘Public Interest’ is leaning more towards the ‘Public Cause’. This, in turn, is creating a plethora of problems towards the implementation of a rights-based social structure as the judicial arm is working more towards correcting the decisions of the legislature rather than protecting the existential rights.<sup>11</sup>

The direct involvement of civil society in raising knowledge of human rights and providing a voice to underprivileged communities in the courts of law and in public policy-making are two other good effects that have resulted from the establishment of PIL.

It is duly highlighted in the evolution of PIL in the earlier chapter that unlike the United States regime, where the concept was rooted in the ‘participation of civic masses in the government decision making, the concept of PIL in India was mooted as one which talks about the repressive character of the state and takes stringent measures against Government-influenced lawlessness through the whip of the Judicial arm.<sup>12</sup>

This demonstrates that PIL has made a significant contribution to good and wise governance by legitimising government accountability. This demonstrates significant progress in advancing democratic ideals and strengthening the rule of law, both of which have aided in the achievement of many critical policy objectives.

The PIL makes judicial and legal protection more accessible to the poorest members of society by allowing third parties to file cases instead of the offended party. This helped to improve the situation, but there is still much more to be done.

**State v/s Union of India** -: Public Interest Litigation is a strategic arm of the legal aid movement which intended to bring justice. Rule of Law does not mean that the Protection of the law must be available only to a fortunate few or that the law should be allowed to be abused and misused by the vested interest. In a recent ruling of Supreme Court on GROWTH of SLUMS in Delhi through Public Interest Litigation initiated by lawyers, Mr. B.L. Wadhera & Mr. Almitra Patel Court held that large area of public land is covered by the people living in slum area. Departments despite being given a dig on the slum clearance, it has been found that

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<sup>11</sup> Varun Gauri, Public Interest Litigation In India: Overreaching Or Underachieving, POLICY RESEARCH WORKING PAPERS WPS 5109 (2009)

<sup>12</sup> T.R. Andhyarujina, Disturbing trends in judicial activism, THE HINDU, August 6, 2012, <http://www.thehindu.com/opinion/lead/Disturbing-trends-in-judicial-activism/article12680891.ece> (last visited Mar 5, 2018)

more and more slums are coming into existence. Instead of Slum Clearance, there is Slum Creation in Delhi. As slums tended to increase; the Court directed the departments to take appropriate action to check the growth of slums and to create an environment worth living in.

## **V. CONCLUSION**

Public Interest Litigation plays a vital part in the civil justice system because it provides a path to justice for those who are disadvantaged in society, some of whom may not even be well-informed regarding their legal right. Public Interest Litigation could also help with good governance by ensuring that the rules are followed government is answerable. Public Interest Litigation, also known as Social Action Litigation or Class Litigation, has moved away from the traditional system of litigation and established a legal system that entails bringing a legal action to enforce the public's interest. The main reason why PIL has flourished in India is that the Constitution of India through its Fundamental Rights under Part III and the Directive Principles of State Policy under Part IV provides a framework to regulate the relation between the state and the citizens and also between citizens. Public Interest Litigation has also increased the state's accountability in cases of constitutional and legal infractions that harm the underprivileged and weaker members of society. The conventional norm of locus standi has been relaxed, allowing anybody to approach the Court and represent individuals who are socioeconomically disadvantaged and unable to seek legal recourse. As a result, PIL has been a crucial weapon in bringing about social change, supporting Article 14's Rule of Law and creating a delicate balance between law and justice.

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