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Public Interest Litigation in ‘Environmental Matters’

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ABSTRACT

The traditional law of litigation is founded upon the principle of locus standi, limiting access to judicial remedies to individuals who are directly affected by a cause of action. This restrictive approach, however, underwent a transformative shift in India during the 1980s with the advent of Public Interest Litigation (PIL). Conceived as a judicial innovation to address socio-political realities, PILs empower individuals or groups to approach the courts on behalf of those who are unable to assert their own rights. Over time, the scope of PILs has been broadened to protect the interests of larger sections of society, particularly in matters concerning environmental protection. Recognizing the right to a clean environment as intrinsic to the right to life under Article 21 of the Constitution, Indian courts have relaxed procedural formalities in environmental PILs, thereby advancing access to justice. This article critically examines the evolution of environmental PILs in India, focusing on both procedural and substantive dimensions, through the lens of constitutional mandates, judicial interpretations, and statutory frameworks, including the Code of Civil Procedure, 1908.

I. INTRODUCTION

The law of litigation is based on the principle of ‘Locus Standi’ which loosely translates to ‘capacity to stand’. Any person who does not possess such a ‘standing’ cannot present himself as a petitioner in a Court of Law. Only a person who has been directly affected, is aggravated, and is acting upon a Cause of Action is likely to possess such a standing and appear before a Court of Law for the restoration of his violated rights. Any person who lacks such standing is termed a ‘3rd person’ and is not eligible to be present in a Court of Law for the enforcement of another person’s rights. Neither the decision has any binding upon such person, nor does he have a say in Court.

This, however, is strictly limited to Civil litigation. In 1980s, the Supreme Court of India found a new term, ‘Public Interest Litigation’. At the time of conception, a Public Interest Litigation (henceforth referred to as PIL) was defined as the initiation of legal proceedings in a Court, by a person who may or may not be directly affected, in the stead of another person

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or group of persons, who are unable to ‘Stand for themselves.’ Such an approach was adopted keeping in mind the socio-political construct of the Nation.

Since that remarkable moment, the scope and ambit of a Public Interest Litigation has been significantly widened so as to protect a larger sect of the society and ensure their convenience throughout the process of obtaining legal remedies for the abrogated rights owed towards them. The Courts noted that the burden of assurance of enforcing rights lies upon the judicial bodies in India and thus incorporated the *Hohfeldian Notion of Rights* in the Indian legal system.

This is extremely notable in PILs of an Environmental nature where the Supreme Court has time and again relaxed procedural norms to facilitate the litigation. The rationale for such rulings is based on the special place held by the Environment in the Constitutional structure. The right to clean environment is recognized as a Fundamental Right within the contours of Article 21, and protection of Environment finds place in Directive Principles of State Policy (Part IV) under Article 48A, inserted by the 42nd Amendment Act, and in Fundamental Duties (Part IVA) under Article 51(g), which is an original provision.

Thus, this article seeks to analyze the substantial as well as the procedural aspects of a Public Interest Litigation filed in an environmental matter, in the light of Constitutional provisions, judicial pronouncements, and any other relevant sources of law *inter alia* Code of Civil Procedure, 1908.

II. GENESIS OF PUBLIC INTEREST LITIGATION AND DEVELOPMENT

The first instance of what we have come to know as a ‘Public Interest Litigation’ is undoubtedly the landmark case of *Brown v. Education Board of Topeka*² wherein the Federal Supreme Court of United States of America, whilst upholding the Equal Protection clause of the US Federal Constitution, laid down that segregation of Public Schools on the grounds of race is Unconstitutional, and thus cannot be permitted to continue, even if the segregated public schools are equal in quality.

This case was originated when an African American by the name of Oliver Brown wished to get his daughter admitted in a school, but was denied admission to the school nearest to their home, and his daughter was forced to ride public transport to another racially segregated school which was significantly further away from their residence. The Browns approached the local lower courts, and upon dismissal of the case, approached the US District Court of

² 347 U.S. 483 (1954).

Kansas. Their appeal was once again dismissed based on a 100-year-old principle delivered in *Plessey v. Ferguson*.³ Finally, 12 African American families from Topeka approached the US Federal Supreme Court as a class action suit and the Federal Supreme Court of The United States of America gave its ruling to overturn the precedent set in *Plessey's case*⁴ and laid down that segregation on the basis of race is “Inherently violative of the 14th Amendment clause of Equal Protection.”

In Indian legal regime, the first PIL is believed to be the case of *Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar Etc. Etc.*,⁵ wherein the Supreme Court accepted the petition of a vigilant and responsible lawyer, who filed the case on behalf of a prisoner. In this landmark judgment, the Apex Court laid down multiple legal principles which still are of immense value, *inter alia*, holding that ‘Free and Fair Trial’ is a Fundamental Right within the contours of Article 21.⁶

III. THE THREE-STEP DEVELOPMENT OF PUBLIC INTEREST LITIGATION IN INDIA

In the Indian legal system, three judicial pronouncements summarize the development of law relating to Public Interest Litigation. A progression onto these three steps denotes the change in the point of view, and gradual dilution of the requirement of ‘*locus standi*.’

A. Sufficient Interest Litigation in the Fertilizer Corporation Kamgar Case

In the case of *Fertilizer Corporation Kamgar v. Union of India*,⁷ the Supreme Court of India noted that a petitioner can approach the Apex Court, if he has sufficient interest in the case. However, the judgment watered down the phrase ‘Sufficient interest’ and laid down that an individual who is a vigilant and responsible citizen of India, in his deep-vested interest for the well-being of general public, possesses “Sufficient interest” to proceed with a PIL.

B. Social Interest Litigation in the Second Judges’ case

In the case of *SP Gupta v. Union of India*,⁸ famously known as the “Second Judges’ Case”, the Supreme Court of India accepted petitions from a wide array of people, including aggrieved judges, social workers, and even activist lawyer Lily Thomas. This PIL was instigated on the grounds of arbitrary transfers of judges, and the Apex Court, while accepting these petitions laid down the norm that “a sufficient interest” is not required for approaching

³ 163 U.S. 537 (1896).

⁴ *Ibid.*

⁵ AIR 1979 SC 1369.

⁶ *Ibid.*

⁷ AIR 1981 SC 344.

⁸ AIR 1982 SC 149.

the Courts. What is required, is a social interest, which aims at an issue faced by a group of persons, or the general public as a whole, and affects the Indian citizenry whether directly or indirectly.

C. Public Interest Litigation in Bandhua Mukti Morcha case

In the case of *Bandhua Mukti Morcha v. Union of India*,⁹ the Supreme Court of India finally abated the requirement of *locus standi* and noted that “merely a violation of Fundamental Rights” is enough for a petition to be accepted as a valid PIL. It was in this manner, that the Apex Court has, in a way, almost done away with the requirement of *locus standi* in a Public Interest Litigation. The jurisprudence for this can be found in the letter of the law as written in the bare text of the Constitution of India. Whereas Fundamental Rights are “Conferred”,¹⁰ the Fundamental Right to Judicial Remedies under Article 32 is a “Guarantee”.¹¹ It is the only Fundamental Right that is guaranteed by the Constitution, as it is not possible for the Constitution to assure the General Public that no Fundamental Right would ever be violated, however, the Constituent Assembly envisaged that each and every such violation would be heedfully looked out for by the Apex Court, upon which the Constituent Assembly bestowed the *duty* to protect the Fundamental Rights.¹²

IV. FURTHER ADVANCEMENTS IN ENVIRONMENTAL CASES: INCLUSION OF PRIVATE ENTITIES IN THE AMBIT OF PIL

Since PIL flows from Article 32,¹³ and the Supreme Court of India can only be approached in case of violation of a Fundamental Right,¹⁴ the legal remedies available to petitioners are only against entities which are attributed as “State”.¹⁵ It is the scheme of Part III that Article 12 describes the “Actor”, and Article 13¹⁶ describes the “Act”; and Articles 14 onwards commences the *Substance of Part III*.¹⁷ Thus, only the prescribed actor can, by means of the recognized act, result in the violation of substance. Hence, an arbitrary action of the executive is a violation of Fundamental Rights,¹⁸ but the Courts are immune from the mandate of

⁹ (1984) 2 SCR 67.

¹⁰ Constituent Assembly Debates, Vol. 6, 09-12-1948, The Hon’ble Dr. B. R. Ambedkar.

¹¹ Constituent Assembly Debates, Vol. 9, 09-12-1948, Mr. Vice President.; See also: *Daryao v. State of U.P.*, AIR 1961 SC 1457.

¹² *State of Mysore v. V. K. Kangan*, AIR 1975 SC 2190.

¹³ *Rasbihari v. State of Orissa*, (1969) 3 SCR 374.

¹⁴ See: India Const. Art 32(1), which in verbatim states that the Right to approach the Supreme Court to be exercised for enforcement of rights conferred by *this part*; i.e., Part III of the Constitution of India titled ‘Fundamental Rights.’

¹⁵ India Const., Art 12.

¹⁶ India Const., Art 13.

¹⁷ India Const., Part III, Arts 14-35.

¹⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

Fundamental Rights acting in their judicial capacity.¹⁹

However, the Supreme Court, in its recent judicial pronouncements, has held Private Corporations liable for violating Article 21²⁰ for Environmental Pollution. The same position has been held in a plethora of other cases.²¹ This signifies a step further, moving beyond the stringent positivist notions and upholding morality as an inherent quality of law.²²

V. RADICAL PROCEDURE FOR FILING A PIL

Another case without whose mention a discussion on PIL can never be completed is of *Gideon v. Wainwright*²³ wherein the US Federal Supreme Court treated “a handwritten scrawl”²⁴ as a valid petition and supplied relief to the petitioner Clarence Earl Gideon.

Legend has it, Justice P.N. Bhagwati was inspired by this instance,²⁵ and similarly accepted a letter as a valid Public Interest Litigation in the case of *Bandhua Mukti Morcha v. Union of India*,²⁶ and famously said,

“In a writ petition for enforcement of the fundamental right of the poor and deprived sections of the community, a letter addressed by him can legitimately be regarded as an “appropriate” proceeding.”

Justice Bhagwati termed this as *Epistolary Jurisdiction*, and defined it as the “power of the Court to treat even an unstamped letter as a valid and appropriate petition for initiation of proceedings.” Despite multiple objections being raised as to this methodology, and criticisms offered on the grounds that this would result in a flood of cases inflowing into the Constitutional Courts, Justice Bhagwati was adamant into framing the *Epistolary Jurisdiction* as a part and participle of the Indian law of the land.

However, it is imperative to note that such is case only in certain special matters, which are either of grave urgency, or wherein the petitioner is not in a position to approach the Court.²⁷ This position, that a PIL can be filed by merely a letter addressed to the Court, is in no way intended to evolve into the *modus operandi* of filing a PIL.²⁸

¹⁹ Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1.

²⁰ M.C. Mehta v. Kamal Nath, AIR 2000 SC 1997.

²¹ M.C. Mehta v. Union of India (Kanpur Tanneries), AIR 1988 SC 1115; M.C. Mehta v. Union of India and Ors. (Shriram Gas Leak Case), AIR 1987 SC 1086.

²² Fuller, L. *The Morality of Law: Revised Edition*, Yale University Press.

²³ 372 U.S. 335 (1963).

²⁴ Swindler, *Court and Constitution in the 20th Century: The New Legality*, 1932-1968, pp. 301-302.

²⁵ Seervai, HM. *Constitutional Law of India*, Vol. 1, p. 383.

²⁶ *Bandhua Mukti Morcha*, *Supra* Note 8.

²⁷ *Rural Litigation & Entitlement Kendra, Dehradun vs. State of Uttar Pradesh*, AIR 1989 SC 594.

²⁸ *Bandhua Mukti Morcha*, *Supra* Note 8.

VI. LAW OF PROCEDURE IN A PUBLIC INTEREST LITIGATION

A. Code of Civil Procedure and Public Interest Litigation

Rules of procedure are not strictly applicable in a Public Interest Litigation.²⁹ The Procedural Codes, albeit reflect imperative principles which must be given due respect, but all inconsistencies must be looked out for, and a PIL must not stand to be dismissed merely on the grounds of such inconsistency. Rather, the Constitutional Courts must strive to ameliorate and expedite the process of initiating a PIL.³⁰ Certain provisions of the Code of Civil Procedure are seemingly inapplicable, *inter alia* Order 1 Rule 8.³¹ Such provisions must not hurdle the initiation of a PIL, and must be liable to be overlooked.³² In *Ramchand v. Anandlal*,³³ Order 2 Rule 1³⁴ was deemed to have been superseded by rules framed by the High Court so as to sustain a PIL.

Another controversial issue that had arisen was whether Writ Proceedings under Section 226 constituted 'Civil Proceedings' under Section 141, CPC.³⁵ The High Courts were divided on the issue³⁶ and it was settled once and for all by the Supreme Court in the case of *SAL Narayan Rao v. Ishwarlal Bhagwandas*,³⁷ and it was laid down that all Writ Proceedings will constitute Civil Proceedings and an appeal will lie under Article 133.³⁸ This, however, was not a happily ever after as the parliament chose to amend Section 141 to add an *Explanation Clause* putting Writ Proceedings outside the scope of Section 141.³⁹ Hon'ble HM Seervai writes, that this amendment is grossly arbitrary and unreasonable, making it liable to be struck down.⁴⁰

B. 'In Limine' Dismissal of Public Interest Litigations

Order XLI Rule 22⁴¹ permits Courts to dismiss civil proceedings *in limine*, meaning on preliminary objections. However, this has been held as against the very jurisprudence of a Public Interest Litigation or a Writ Petition, and the Supreme Court in the case of *Veerappa*

²⁹ Manindra Nath v. Barnagore Municipality, (1956) A. Cal. 291.

³⁰ Dwarka Nath v. I.T.O, (1965) 3 SCR 536.

³¹ CODE CIV. PROC., 1908. Or. 1, R. 8.

³² Mohamed Ibrahim v. Dy. Commercial T.O., (1956) 2 MLJ 23.

³³ AIR 1962 Guj 21.

³⁴ CODE CIV. PROC., 1908. Or. 2, R. 1.

³⁵ Adinarayana v. State of Andhra Pradesh, AIR 1958 AP 16.

³⁶ R. Sethupati v. The State, AIR 1957 Madras 570.

³⁷ (1966) 1 SCR 190.

³⁸ INDIA CONST., Art. 133.

³⁹ Ins. By Constitutional Amendment Act 104 of 1976, s. 47 (w.e.f. 1-2-1977).

⁴⁰ Seervai, HM. *Constitutional Law of India*, Vol.2, p.1820.

⁴¹ CODE CIV. PROC., 1908. Or. 41, R. 22.

*Rachappa Saboji v. B.P. Dalal*⁴² laid down in clear terms that such dismissals are entirely impermissible.

C. Rules of Procedure framed by the Supreme Court and Respective High Courts

Henceforth, the High Courts and the Supreme Court decided to adopt an alternative mean to regulate the procedural aspects of filing and initiating Public Interest Litigations, by exercising their Constitutional powers to make rules for the Court's functioning.⁴³ The Supreme Court Guidelines for Public Interest Litigation, and the Punjab and Haryana High Court Maintainability of PILs are an example of such exercise of legislative powers by the Courts.

The matters of procedural law pertaining to limitation and witnesses is indeed an imperative consideration for the Legislative bodies of the State. However, the Apex Court has rightly deemed it irrelevant for the said legislative bodies to interject in matters of filing and approaching the Courts, and it must be the Courts themselves which ought to have the final word in the said matter. Furthermore, that this act of the Courts is well within the ambit of a State-action as inhibited by Article 12 of the Constitution, and the rules and guidelines framed by the Courts stand to be challenged on *substantial* as well as *procedural grounds*, including that of Part III.⁴⁴

⁴² (1975) 3 SCC 373.

⁴³ India Const. Art 225, and Art 145 confer powers of legislating rules for the respective Court's procedure upon the High Courts, and the Supreme Court of India respectively. The Courts have, since the rise in growing inconsistencies between the Code of Civil Procedure in PILs, relied upon the aforementioned provisions to draft extensive rules and guidelines for the filing of PILs.

⁴⁴ Premchand Garg v. Excise Commissioner UP, AIR 1963 SC 996.