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# Role of Judiciary in Strengthening Public Interest Litigation

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## ABSTRACT

*Public interest litigation has historically been an innovative judicial procedure for enhancing the social and economic rights of disadvantaged and marginalized groups in India. In recent years, however, a number of criticisms of public interest litigation have emerged; including concerns related to separation of powers, judicial capacity, and inequality but has proved to be a legal weapon in the hands of higher courts for protection of environment & our judiciary has certainly utilized this weapon of PIL in best possible manner. The paper analyses the significance of PIL and role of judiciary in strengthening it. The paper also evaluates different contours of judicial activism referring to various landmark judgments.*

**Keywords:** *Public interest litigation, judicial activism, judicial review, judicial process, leading cases of environmental protection.*

## I. INTRODUCTION

The Indian constitution recognizes the supreme court of India and high court of the concerned state as “constitutional court”, having power to curtail all those legislative act, executive acts and policies which are against the spirit of the great constitution. In the democracy, one may not have faith in the wisdom of the politician but one always holds faith in the wisdom of the learned judges and legal system. The history of sixty four years of the Indian judiciary and thousands of its pronouncements has proved beyond reasonable doubt that it is only and only judiciary who has proved its institutional integrity and efficiency.

Now judiciary plays the vital role in the protection of environment. One of the main developments in the Indian Judiciary is the Public Interest Litigation (PIL). It is the new jurisprudence and is called "Jurisprudence of Masses". It is started in the year 1970. Writ petitions in the form of PILs have been accepted by the High Court's under Article 32 which includes constitutional remedies and Article 226 of the Indian Constitution.

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The Supreme Court in the case of *S.P. Gupta Vs. Union of India*<sup>3</sup> by a 7-judge bench spoke very lucidly and it may be quoted: It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing the judicial redress to the person wronged or injured, so that the legal wrong or injury caused to that person does not go underdressed and justice is done to him." The tone and tenor of these words perfectly make it clear that the one whose legal rights or legal interests are breached may not necessarily the person directly invoking the assistance of the court.

The court now permits Public Interest Litigation or Social Interest Litigation at the instance of 'public spirited citizens' for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps.<sup>4</sup>

In a leading case, a PIL brought against Ganga water pollution so as to prevent any further pollution of Ganga water. The Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.<sup>5</sup>

The oleum gas leak case<sup>6</sup> through Public Interest Litigation directed the Company manufacturing hazardous & lethal chemical and gases posing danger to life and health of workmen & to take all necessary safety measures before re-opening the plant.

## II. OBJECTIVE OF PIL

The important object of Public Interest Litigation is to safeguard the public interest, human rights and protect constitutional and legal rights of disadvantaged, labour, prisoners and weaker section of the society. The dominant object is to ensure observance to the provisions of the constitution and the other laws. It is essentially a co-operative or collaborative effort on the part of petitioner, the state, public authority and the court to secure observance of the

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<sup>3</sup> SP Gupta v. Union of India, 1981 Supp SCC 87

<sup>4</sup> Peoples Union for Democratic Rights v. Union of India, 1982 AIR 1473, 1983 SCR (1) 456

<sup>5</sup> M.C Mehta V. Union of India, 1988 AIR 1115, 1988 SCR (2) 530

<sup>6</sup> M.C. Mehta V. Union Of India & Ors, 1987 AIR 1086, 1987 SCR (1) 819

constitutional or legal rights, benefits and privileges conferred upon the weaker sections of the society. Public Interest Litigation is relating to Human Rights, The members of the public by filing a PIL are entitled to and seek enforcement of public duty and observance of the constitutional law or legal provisions. Such a litigation can be initiated only for redressal of a public injury, enforcement of a public duty or vindicating interest of public nature and it is necessary that the petition is not filed for personal gain or private motive or for other extraneous consideration and is filed bona fide in public interest. Intervention of the courts may be sought by way of PIL in cases where the statutory provisions have arbitrarily and irrationally overlooked the interests of a significantly affected group that would otherwise suffer in silence.

### **III. NATURE AND SCOPE OF PUBLIC INTEREST**

A PIL can be filed against a State or Central Government, Municipal Authorities, but not any private party. However, a 'Private party' can be included in the PIL as 'Respondent', after making concerned state authority, a party.

The term 'Public Interest' is not capable of precise definition and has not a rigid meaning and is elastic and takes its colors from the statute in which it occurs, the concept varying with the time and state for society and its needs. However, Public Interest can be said to mean those interest, which concern the public at large. A subject, in which the public or a section of the public is interested, becomes one of public interest. Public Interest is concerned with the welfare and rights of the community or a class thereof.

#### **The matters of public interest generally include:**

- Bonded labour matters,
- Matters of neglected children
- Exploitation of casual labourers and non-payment of wages to them (except in individual cases)
- Matters of harassment or torture of persons belonging to Scheduled Castes, Scheduled Tribes and Economically Backward Classes, either by co-villagers or by police,
- Matters relating to environmental pollution disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forests and wild life,
- Petitions from riot victims,
- Other matters of public importance

The question of infringements of public interest can also arise in cases relating to constitutional validity of legislation, excess of power by a public body or a quasi- public undertaking, breach

of statutory provisions enacted for the benefit and protection of the public, public nuisance, prevention of criminal offences, enforcement of mandatory public duties, and such other categories as recognized by law or judicial decisions.

In most developing countries, the legal regime of environmental laws is weak and the laws are difficult to enforce and sometimes ambiguous. PIL has helped bridge this gap. The government may not be willing to prosecute those who violate environmental laws and at times the government is a violator of environmental laws. In some jurisdictions an injunction can be brought to compel or stop the government from degrading the environment.

#### IV. JUDICIAL ACTIVISM AND PIL

As discussed that by liberal interpretation of Item "appropriate proceeding" the concept of "Public Interest Litigation" has been molded and consequently rule of standing stands liberalized. The impact of such liberal rule of locus standi in form of Public interest Litigation can be seen in sphere of constitutional law. This new type of tool has been used to various issues of governance, sustaining rule of law and the environment. Several unremunerated rights and principles have been incorporated in the constitution and they are now treated as part of the constitution. This impact may be enunciated under the following heads:

- i. **Right of prisoners:** Through Public interest litigation. Right to speedy trial<sup>7</sup>, Right to free legal aid;<sup>8</sup> Right to have interview with a legal advisor and family members,<sup>9</sup> Right to lock-up female prisoners only in female lock up guarded by female constables;<sup>10</sup> Right of female prisoners to be interrogated in the presence of female police officer,<sup>11</sup> Right against handcuffing,<sup>12</sup> have been conferred upon prisoners.
- ii. **Right of workers:** Through PIL several rights of workers namely, Right of locus standi of the workers,<sup>13</sup> Right to stand of the Rickshaw Pullers Association,<sup>14</sup> Right to minimum wages,<sup>15</sup> Right of workers to appear and to be heard in the winding-up of their company,<sup>16</sup> Right of workers against inhuman and intolerable condition,<sup>17</sup> Right

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<sup>7</sup> Hussainara Khatoon v. Home Secretary Bihar, (1980) 1 SCC 81

<sup>8</sup> Khatri v. State of Bihar, (Bhagalpur Blinding' case) AIR 1981 SC 928; Anil Yadav v. State of Bihar, AIR 1982 SC 1008

<sup>9</sup> Francis Collis v. Union Territory of India, AIR 1981 SC 746

<sup>10</sup> Sheela Barse v. State of Maharashtra, AIR 1983 SC 378 (Letter treated as writ petition)

<sup>11</sup> Ibid

<sup>12</sup> Khedat Mazdoor Chetna Sangth vs State Of M.P, 1995 AIR 31, 1994 SCC (6) 260

<sup>13</sup> Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344

<sup>14</sup> Azad Rickshaw Pullers Union v. State of Punjab, AIR 1981 SC 14

<sup>15</sup> Supra note at 2

<sup>16</sup> National Textile Workers Union v. P.R. Ramakrishnan, AIR 1983 SC 75

<sup>17</sup> Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 80

to health arid medical care of workman during and after their service<sup>18</sup> have been recognized.

- iii. **Right to pollution free-environment:** Through public interest In *Vellore Citizens Welfare Forum v. Union of India*,<sup>19</sup> a Division Bench of 3-judges speaking through Justice Kuldip Singh, dealt with a Public interest Litigation pertaining to the pollution - The Court held that internationally established precautionary principle and 'polluter pays principle' in relation to fastening the liability on those causing pollution, are part of the environmental law of the 1 country. The Supreme Court directed the maintenance of standards by the Pollution Control Boards (PCB) and further directed the High Court of Madras, to constitute a special bench in the form of "Green Bench" to deal exclusively with the environmental matters. The Court awarded Rs. 50, 0007- to M.C. Mehta, the petitioner, towards his legal fees and out of pocket expenses incurred by him and payable by the T.N. Government.

In *M.C. Mehta v. Union of Indian*<sup>20</sup> Division Bench of two-judges, through Kuldip Singh, J took note of the pollution caused by the foundries, chemical and hazardous industries, and the refinery at Mathura, Uttar Pradesh, to the famous Tajmahal. The court found that the emissions generated by coke/coal using industries in Taj trapezium were the main polluters. In a show of extreme judicial activism, the court assumed the role of a policy maker and issued directions to 292 industries located in Agra to changeover within a fixed time schedule, to natural gas, as industrial fuel or stops functioning with coal/coke and get relocated. The Bench directed the industries, not plying for 'gas' or relocation to stop functioning with coal/coke from 30-1-1997.

In *Tarun Bharat Sangh v. Union of India*<sup>21</sup> the court issued directions to plop, mining activity in the vicinity of Sariska Tiger Park in Alwar District ^of State of Rajasthan, as it was found that the same has caused environmental pollution, adverse not only to the human beings in that area 'but also to the wild life.

In *Indian Council for Enviro-Legai Action v. Union of India*<sup>22</sup> B.P. Jeevan Reddy held that the principle of 'strict liability' and the 'polluter pays' principle are applicable to hazardous and inherently dangerous activity carried out by industrial units. The instant case arose, in respect of the polluting industries in Bichhri, in Udaipur District of Rajasthan.

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<sup>18</sup>Workers Of M/S Rohtas Industries vs M/S Rohtas Industries, AIR 1990 SC 481

<sup>19</sup> AIR 199G SC 2715

<sup>20</sup> AIR 1997 SC 731

<sup>21</sup> (1993) Supp. (1) SCC 4

<sup>22</sup> (1996) 2 SCC 212

In *S. Jagannath v. Union of India*,<sup>23</sup> the court directed the closure of all shrimp farming in the coastal regions, and directed the industries being closed down accordingly, to pay retrenchment compensation to the workers and also to pay 6 years wages as additional compensation. The impact of the judgment was so sudden and deadly that, it almost extinguished the shrimp-farming from the Indian Scene.

Thus, it can be seen that Judicial activism through, the Public Interest Litigation has played a very important role in protecting the environment and ensuring a pollution free environment. However viewed from the end product of those directions, it can be safely said that the Public Interest Litigation has been successfully invoked with the activism of the court, to ensure one of the most valuable human rights i.e. not violated.

In *M.C. Mehta v. Union of India*,<sup>24</sup> the court banned mining in Aravali hills range due to its degrading effect.

In this case,<sup>25</sup> the apex Court has held that Polluter cannot escape the responsibility to meet out the expenses of reversing the ecology. They are bound to meet the expenses of removing the sludge of the river and also for cleaning the dam. The principle of "polluters pay" and "precautionary principles" have to be read with the doctrine of "sustainable development".

- iv. **Right to get compensation:** The PIL has played a dynamic and constructive role in reorganization right to compensation for violation of fundamental right. A few leading decisions rendered by the Supreme Court in this area, are being discussed hereunder.

Justice K. Ramaswamy also reiterated the principle that the remedy of award of compensation is available under Article 32 and 226 of the Constitution. In a number of cases dealing with the environmental protection, the Supreme Court has directed the erring industries to pay compensation to the workers, by way of retrenchment compensation, additional compensation and shifting bonus etc.<sup>26</sup>

Thus the PIL has given an impetus to the compensatory jurisprudence in writ proceedings, thereby establishing the principle that, any person whose fundamental rights or other statutory rights are violated either by the state action or private persons, the victims can ask for monetary compensation under Article 32 and 226.

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<sup>23</sup> AIR 199GSC 811

<sup>24</sup> AIR 2004 SC 401G

<sup>25</sup> Tirupur Dyeing Factory Owners Association v. Noyynl River Ayacutdars Protection Association, AIR 2010 SCC 3654

<sup>26</sup> In. *M.C. Mehta v. Union of India*, AIR 1997 SC 734, *Indian Council of Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212

Where an innocent boy aged about 18 years was killed by the police firing while police was controlling unruly public mob, the Patna High Court awarded two lakhs as compensation under Article 21.<sup>27</sup> Likewise, where school going boy bitten by stray dogs, the boy held entitled to compensation of Rs. 1 Lakh on account of negligence on the part of Municipal Corporation to control menace of stray dogs.<sup>28</sup>

- v. **Right to health & medical treatment:** In *Paramanand Katara v. Union of India*,<sup>29</sup> the court while dealing with PIL Paramanand Katara case issue guidance.

In *D.K. Basu v. State of West Bengal*<sup>30</sup>, the court speaking through Justice Kuldeep Singh extensively dealt with the rights of the under trials and prisoners and issued exhaustive guidelines against torture, cruel and inhuman treatment during investigation and interrogation of the accused.

Through Public Interest Litigation, the judicial activism has now transformed the role of judiciary to give directions. These directions relate to right of prisoners, right of labourers, and protection of rights of consumer and pollution free environment, "protection of children & women, and protection of people from road accidents.

Thus, the court has now become an institution not only reaching out to provide relief to the citizens but even venturing into formulating policy which the state must follow. Furthermore, at the time of independence, the bulk of citizens was unaware of their legal rights and was not in position to assert them. Albeit, Public Interest Litigation has transformed the promise into reality, in another words it may also be said that the Supreme Court has come out to be a reformer whose role are affecting socio-economic scenario.

Impact of judicial activism in relating to equal pay for equal work,<sup>31</sup> the rights of children,<sup>32</sup> adequate means of livelihood,<sup>33</sup> and Right to food clothing and decent environment<sup>34</sup> have been elevated to part and parcel of fundamental rights.

## V. CONCLUSION

To sum up the above discussion on the role of judiciary in strengthening public interest

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<sup>27</sup> Arjun Mishra v. State of India; AIR 2010 (NOC) 869 (Pal.)

<sup>28</sup> Court on its own Motion vs State Of Himachal Pradesh, (2010)

<sup>29</sup> AIR 1989 SC 2039

<sup>30</sup> AIR 1997 SC 610

<sup>31</sup> Randhir Singh v. Union of India, (1982) 1 SCC 618; AIR 1082 SC 879

<sup>32</sup> M/S. Shantistar Builders v. Narayan Khimalal, AIR 1990 SC 630; Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469

<sup>33</sup> Olga Tellis & Ors vs Bombay Municipal Corporation, AIR 1986 SC 180

<sup>34</sup> Kishen Pattanayak And Anr. vs State Of Orissa, AIR 1989 SC 677



litigation, it can be said that PIL is to be applied judiciously and must be within its own limitations and power. But this creatively and the judicial activism has brought about the concept of social justice by filling out the gaps and lacunas in the traditional exercise of powers by the other organs of the government.

It can rightly be said that our judiciary has used the tool of PIL quite effectively for the cause of environmental protection. But the judiciary has shown wisdom in denying false petitions seeking to advance private interests through PIL as evident from the decision of the Supreme Court. Public interest may demand judicial intervention in cases where the existing rules and standards are not complied with due to indifference towards a particular group, unjustly denying them any legal entitlements or resulting in unfair and hostile treatment. Public Interest Litigation provides a platform for projecting social values for those who do not have a formal access or voice in the policy-making processes.

Public Interest Litigants, all over the country, have not taken very kindly to some of the courts views talking about preventing unnecessary PILs by imposition of high costs and compensation. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints.

Now Public Interest Litigation does require a complete rethink and restructuring as the overuse and abuse of PIL can only make it stale and ineffective. There is a need for some strong measures to promote and protect the actual purpose for which the PIL came into being, i.e., the enforcement of fundamental and other legal rights of the people who are poor, weak, ignorant of legal redressal system or otherwise in a disadvantageous position, due to their social or economic background.

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**VI. NOTES & REFERENCES**

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