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ABUSE OF THE DOCTRINE OF PIL

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ABSTRACT

The Indian Legal System is one of the most unique systems in the world. One thing which makes it stand out is the “Doctrine of PIL.” PIL has played a pivotal role in Civil Justice System. Through PIL, a number of objectives have been achieved which could hardly be achieved by the conventional litigation. PIL offers a ladder to justice to disadvantaged section of society. In the recent years, PIL has turned out to be a “double edged sword” because of its misuse. Abuse of PIL has become more rampant which is dangerous for the judicial system. The article focuses on the use and abuse of PIL and also the steps taken by the Hon’ble Supreme Court of india to curb the misuse of the doctrine.

Keywords - Abuse, Misuse, Public Interest Litigation, Doctrine

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INTRODUCTION

Around forty-one years ago, a lawyer confidently climbed the 17 steps of the Supreme Court of India and walked into a cold, thick-walled Courtroom without a thought for the frowns trained at her from the high priests in Indian Judiciary and her male colleagues. Senior **Advocate Pushpa Kapila Hingorani** had a mission on that day in December that the Supreme Court never heard of, which eventually kicked off a revolution called the Public Interest Litigation (PIL) across the country.

The two pages she carried to the Courtroom, contained the plight of undertrial prisoners languishing in jails in Bihar- men, women, children, lepers and mental patients cast away into jails and forgotten by the state. She wanted the court to immediately intervene and give orders to release them on bail. This historic case, later known to everyone belonging to the legal fraternity as **Hussainara Khatoon Vs Home Secretary, Bihar**¹, drew its name from one of the prison inmates became the First PIL in India. The impact of the case was such that the Supreme Court Bench led by **Justice P.N Bhagwati** went on to release over 40,000 undertrial prisoners from various jails.

Following this landmark judgment, PIL becomes a unique phenomenon in the Indian Constitutional Jurisprudence which has no parallel in this world and has acquired great significance in “modern legal” concerns.

However, as it rightly quoted by **Vivekanand** “*The fire that warms us can also consume us, It is not the fault of the fire.*” Over the years, PILs have been filed which have attempted to appropriate PIL for corporate gains, political advantages or private interest. It is an unrealistic, undemocratic and dangerous tendency that is impeded by our judicial attitude for vested interest.

ORIGIN AND HISTORY OF PIL

The term “Public Interest Litigation” had its roots in the United States in the late '60s. This phrase was first used by American academicians, **Abram Chayes** to describe the spirited

¹ 1979 SCR (3) 532, Hussainara Khatoon Vs Home Secretary, Bihar

individuals who were in pursuit of bringing change in the society, through court orders. In the 1960s, public interest law became an important factor in the Legal Aid Movement in America.

PIL is nothing but litigation filed before the court of law, to serve the welfare of the public at large. It should be noted that public Interest Litigation in India is different from that of the United States. In India, the PIL has been a part of the constitutional litigation and not civil litigation. The PIL in India is aimed at delivering justice to all constituents of society.

Public Interest Litigation in India soon emerged after the emergency (1975-77). India had been governed by feudal structured government and social values for centuries. Thus, when the constitution came into force it gave a place to the new philosophy of Human Rights and obligation of the State; to provide a social and economic structure promising human welfare, happiness and development. Not surprisingly, the Parliament or the Executive was unable to respond to people's demands. The citizens, with hope, turned to the Judiciary for the demands which became the inception of PIL. Tracing the evolution of PIL in India, **Justice Pandian in Janta Dal's case²** observed that:

“The seeds of the concept of PIL were initially shown in India by **Justice Krishna Iyer** in 1976 while disposing of an industrial dispute who observed that:

“Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments to whom the law will be an added terror if technical misdescription and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a party. ””

Later, Justice P.N Bhagwati in his article observed, *“The Judiciary has to play a vital role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. During the last three to five years, Judicial Activism has opened up new dimensions for the judicial process and has given new hope to justice starved millions of Indian.”*

In **the State of Uttaranchal Vs Balwant Singh Chanfal³** the Supreme Court has referred to three phases of the origin and development of PIL in India.

² A.I.R. 1993 SC 892, Janta Dal vs. H.S Choudhary.

³ AIR 2010 SC 2550 PARA 45, State of Uttaranchal Vs Balwant Singh Chanfal,

- A. Phase I deals with the cases of the Supreme Court directions and orders passed to protect the Fundamental Rights under article 21 in respect of the marginalized section of the society who cannot approach the Supreme Court due to extreme poverty, ignorance, etc.
- B. Phase II deals with the cases related to preservation and protection of the environment, flora and fauna, mountains, wildlife, environment, forest etc.
- C. Phase III deals with various directions issued by the Courts relating to maintaining the probity, transparency and integrity in governing.

PIL AND LOCUS STANDI

One of the most important methods by which the Courts saved themselves from spurious or vicarious litigation was, by ascertaining that the person who approached the Court had the locus standi to do so. Such persons must show that he or she is adversely affected by the impugned action and his or her right has been violated. According to the traditional rule, locus standi is that judicial redress available only to a person who has suffered a legal injury because of violation of his legal right or legally protected interest by the impugned action of the State or public authority.

The Supreme Court under Article 32(2) is free to devise any procedure for the enforcement of fundamental right and it has the power to issue any process necessary in a given case. Given this constitutional provision, the Supreme Court may even give remedial assistance, which may include compensation in "appropriate cases".

The locus standi allowed in Public Interest Litigation against the violations of human rights on behalf of the victims is very liberal. The writ jurisdiction is supposed to be exercised only for stopping or preventing mischief and not for the relief for the damage which is already done.

After analyzing various propositions, it can be deduced that the law relating to locus standi, in India, is based on the following:

- I. Individual standing;

- II. Statutory standing, i.e., where statutes confer standing on an association as persons who have no personal standing in the matter, for example, trade unions etc,
- III. Public interest litigation, i.e., when a person initiates proceedings to enforce not his rights but public or general interest of society or a section of it and
- IV. The representative of a class action may be initiated by any member of the class so affected.

LANDMARK CASES

1. Prem Shankar Shukla Vs. Delhi Administration⁴

In the following case, a prisoner sent a telegram to the judge of the Court, complaining about the forced handcuff on him and demanded protection against humiliation. The Court considered the PIL petition and gave necessary directions to the concerned authorities.

2. Dr. Upendra Baxi Vs. State of Uttar Pradesh and others⁵

In this case, two law professors wrote a letter to the Court stating about the inhuman conditions prevailing in Agra Protective Home for Women. The Court considered it as PIL and gave direction for the improvements required.

3. Vishakha Vs. State of Rajasthan⁶.

This is one of the most important cases in the history of PIL's. In this case, a woman, who was a social activist, was brutally raped during her employment. So, an NGO filed a PIL in the Supreme Court of India on her behalf, intending to protect Women's rights at the workplace. The court taking the cognizance of the situation accepted the petition and laid down the guidelines to be followed to safeguard women's interest in the workplace. The Court further laid guidelines for the protection, prevention, prohibition

⁴(AIR 1980 SC 1535), Prem Shankar Shukla Vs. Delhi Administration

⁵ (1983 (2) SCC 308), Dr. Upendra Baxi Vs. State of Uttar Pradesh.

⁶ ((1997) 6 SCC 241), Vishakha Vs. State of Rajasthan

and redressal, for a woman at the workplace. The Act was enacted in 2013 based on these guidelines also known as Vishakha Guidelines.

4. M.C Mehta Vs. Union of India and others⁷

In this case, a PIL was filed to prevent and protect The Taj Mahal- a world wonder and a monument of international repute. The petition was accepted on the grounds that the petition was for the protection of the environment from exploitation. The Court held the argument that the Sulphur dioxide emitted by the Mathura Refinery and other industries when combined with oxygen forms Sulphuric acid called “Acid rain” had a corroding effect on the white gleaming marble. The result was such that the Court ordered the ban of 299 industries from using Coal and asked them to shift over to CNG.

5. M.C Mehta Vs. State of Tamil Nadu⁸

In this case, the PIL was filed on the Constitutional grounds that the employment of children in Sivakasi was hazardous to the health and also unconstitutional. The court on the PIL held that children will not be allowed to work in hazardous industries but can be allowed to work in the packing processes, provided that the manufacturing and packing areas are separate.

At present, the court can treat a letter as a writ petition. But, it is not every letter which may be treated as a writ petition by the court. The court would be justified in treating a letter as a PIL only under the following circumstances:

- I. It is only where the letter is addressed by an aggrieved person,
- II. A public-spirited individual or
- III. A social action group for enforcement of the constitutional or the legal rights of a person or group who because of poverty, disability or in a disadvantaged position who finds it difficult to approach the Court.

⁷ (AIR 1997 SC 734), M.C Mehta Vs. Union of India and Ors.

⁸ (1996) 6 SCC 756, M.C Mehta Vs. State of Tamil Nadu.

ABUSE /MISUSE OF PIL

“A WEAPON OF DEFENCE USED AS OFFENCE”

The efforts of **Justice Krishna Iyer and Justice P.N Bhagwati** were instrumental in the revolution of the '80s in transforming the apex court of India to the Supreme Court for all Indians. PIL has been an invaluable arm for justice. It has translated the rhetoric of Fundamental Rights into reality for many. **But the evolution of PIL has uncovered its flaws and hazards:**

1. The irresponsible PIL activists have started playing a major role in the arena of litigation which has led to genuine cases being shadowed. In one of the cases, the Court dismissed an alleged PIL against the sale of a plot of land through public auction holding that the matter was not of public interest at all. Of late, many PIL activists in the country have found PIL to be a handy tool of harassment without an investment of heavy Court fees as required in the private civil litigation. The abuse of PIL has become more rampant than its use and genuine causes. Every matter of public interest cannot be the basis of PIL. For example, an increase in onion prices, trains running late etc. Over the years, PIL has been deteriorated into private interest litigation, political interest litigation and especially publicity interest litigation.
2. The flexibility of mechanism which is a uniqueness of PIL has resulted in another set of problems. A PIL originally filed in Jammu and Kashmir pertained to the unjustified cutting of Khair trees has now been stretched by the Court throughout India. The individual states are unable to respond as they are not the respondents in the original petition, and have to follow the order.
3. The reputation of PIL has been gravely affected by the suspicion and criticism that the judiciary is exceeding the limits of jurisdiction. It is also noted that people are agitating through PIL's to secure private interests and publicity in the garb of public interest. The judiciary has itself recognized this mischief time and again.
4. A further concern is that when the judiciary steps into policymaking, it will have to discover new remedies for ensuring compliance with its orders. A judicial system cannot suffer, an image that displays a lack of credibility and that its order can be flouted easily.

5. In the political circles also, the controversy over judicial activism, especially in the sphere of PIL has been robust. The attempt through PILs by the Judiciary has raised eyebrows even in the political arena. A private members bill, tabled in 1996 named “PIL regulations bill”, pointed the misuse of PIL. The bill pointed out the gross misuse of PIL. It stated that the PIL cases were given priority over other cases and other regular cases had been pending in the Court for years. The bill demanded that if a PIL was found to be frivolous or hollow, the petitioner should be imprisoned and should also be liable to pay the damages. Although the bill collapsed, the concept of PIL had started attracting criticism.

Misuse of this strategy, hijacking of this versatile process by enemies of poor and even gambling with the Courts mood are now on the cards. These strategies justify a critical study of PIL as a magic drug or a free curial option.

CASES WHERE PIL WAS USED AS A TOOL FOR EXPLOITATION:

1. Janata Dal Vs. H.S. Chowdhary and Ors.⁹

In this case, it can be seen how public interest litigation has been abused for political advantage. In 1986, the Government of India had placed orders to purchase "BOFORS" guns as a defense strategy. On 17th April 1987, the then most popular newspaper published a report that the bureaucrats had consented to bribes for securing the deal. On the contrary, the Bofors company denied all the allegations made by the media. In 1989, the Janta Dal Government came to power. On the shreds of evidence and information available then, the CBI filed a criminal case against three named and 11 unnamed accused under I.P.C and Prevention of Corruption Act, 1947. For acquiring further substantial information from the Swiss authorities, the CBI moved an application before the special judge to issue an order of rogatory. At this juncture, H.S Chowdhary made an application in Public Interest under Article 51-A before the special judge requesting not to sanction the letter of rogatory unless the allegations and charges made on the accused are essentially proven. The Special Judge dismissed the petition on the ground that the petitioner has no Locus Standi. Against this order, H.S Chowdhary filed a criminal revision before the Delhi High Court under section 397/482 of Criminal Procedure Code and prayed for

⁹ A.I.R. 1993 SC 892, Janta Dal vs. H.S Choudhary

the dismissal of the First Information Report(FIR). On this issue, a single judge of the High Court held that the petitioner has no locus standi to file a petition and hence his petition was not maintainable.

2. TN Godavarman Thirumulpad Vs. Union of India¹⁰

Following the decision in Janata Dal's case, the learned judges observed that howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person whose bona fides and credentials are in doubt. In this case, it was held that the applicant, who was a man of scarce means, had spent huge amounts in litigation and was nothing but a name lender. A fine of rupees one lakh was imposed on him.

3. Chhetriya Pradushan Mukti Samiti Vs State of Uttar Pradesh¹¹

In this case, the petitioner had alleged that the smoke along with dust was emitted from the Jhunjhunwala Mills, Oil Mills and refinery plant. This resulted in a serious threat to the environment. On the other hand, the respondent submitted that the petitioner was an anti-social element and there was old enmity between them. Further, the petitioner also contended that the petitioner's intention was of malice nature and his only aim was to blackmail people and extract money from them. And he is habitual of such activities. After considering the facts, the circumstances and the nature of the allegations being made in the case, the long history of enmity between the parties and ugly rivalry, the hon'ble judges of the case held that there was no violation of fundamental rights. According to the judges, no conduct is attributable herein leading to the pollution of air or the ecological balances. The Court dismissed the writ petition after considering all the facts.

¹⁰Writ petition (civil) 202 of 1995, Godavarman Thirumulpad Vs. Union of India

¹¹ JT 1990(3) SC 685, Chhetriya Pradushan Mukti Samiti Vs State of Uttar Pradesh.

4. The B.H. Loya Case.¹²

B.H Loya was a special C.B.I judge who passed away untimely. A batch of petitioners went to the Supreme Court filing petitions for seeking an independent investigation into the alleged mysterious death of special C.B.I judge B.H. Loya. The Supreme Court passed strong strictures on Public Interest Litigation. Coming down heavily on the petitioners, the three-member bench quoted, "Such petitions have potential to endanger the judicial system and the misuse of PIL is harming the judicial system." Dismissing the petitions, the Supreme Court bench comprising of Chief Justice Dipak Mishra, Justice A.M Khanwilkar and Justice D.Y. Chandrachud observed that it was apparent that the people behind these petitions had their hidden agendas to follow.

5. Ashok Kumar Pandey Vs. The State Of West Bengal ¹³

In the following case, the petitioner under article 32 of the Constitution of India, 1950 had filed a Public Interest Litigation purportedly. The prayer in the writ petition was that the death-sentence imposed on Dhananjay Chatterjee by the Sessions Court, Alipur, West Bengal, affirmed by the Calcutta High Court needs to be converted into a life sentence because there has been no execution of death from a long time.

The Court dismissed the petition. In this case, Justice Pasayat was compelled to describe it as, "busybodies, meddlesome interlopers, wayfarers or officious interveners who approach the Court with extraneous motivation or for glare for publicity." In a judgment on public interest litigation rendered by Justice Pasayat, he has laid down the following tests. "The court has to be satisfied with:

- (a) The credentials of the applicant;
- (b) The prima facie correctness or nature of the information given by him and
- (c) The information being not vague and indefinite. The information should show the gravity and seriousness involved.

¹² Justice B.H Loya case,2014

¹³ November 2003, no. 199 of 2003, Ashok Kumar Pandey Vs. The State Of West Bengal

The Hon'ble Court has to strike a balance between two conflicting interests:

- (i) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and
- (ii) Avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal

GUIDELINES TO PREVENT MISUSE OF PIL:

To monitor the abuse of PIL, the Supreme Court has framed certain guidelines to govern and manage the disposition of PIL's :

- a. The PIL should be genuine and bonafide.
- b. Each High Court should formulate rules for encouraging genuine PILs and discourage PILs from having malicious objects.
- c. The court should, at the very beginning verify the credentials of the PIL before entertaining it.
- d. The court should be satisfied with the credentials of the PIL before accepting the PIL.
- e. The court should also ensure that the PIL placed before it involves a public interest or not.
- f. The courts should give priority to those PIL having larger public interest, gravity and urgency over other PILs.
- g. The court should also ensure that the PIL redresses a genuine public injury and no personal benefits.
- h. The court should further ensure that the PIL carrying ulterior motives should be disposed of with costs.

CONCLUSION

The Indian Judiciary has done a commendable job in arousing awareness about the legal remedies available to all. The concept of Public Interest Litigation has fastened the process of

law. Though this doctrine has been of utmost importance, the misuse cannot be denied and is pretty obvious as the procedure is simple and cheap. But the Supreme Court, taking cognizance, has reduced the misuse of this doctrine by framing suitable guidelines, which are to be strictly followed by the courts. Thus, the doctrine of PIL has been preserved from being misused, and its efficacy is again retained. If there exists co-operation from public-spirited lawyers, judges and honest social action group justice is bound to prevail.

REFERENCES

1. Indian Express Archives 2010, Krishnadas Rajgopal.
2. <https://www.lawteacher.net/free-law-essays/litigation-law/public-interestlitigation.php>
3. Indian Code of Civil Procedure, 1908.
4. Indian law institute, Delhi journal.
5. Janta Dal Vs H.S Choudhary(1992) 4 SCC 305.
6. P.N Bhagwati, "Social Action Litigation: The Indian Experience" (1987).
7. Institute of Secretariat Training and management, Department of Personnel and Training (istm.gov.in).
8. The Constitution of India, Part III, incorporating values of Fundamental Rights.
9. International Journal of Pure and Applied Mathematics Volume 120 No. 5 2018, 4469-4479
10. 1979 SCR (3) 532
11. Justice B.H Loya case,2014 India Today web Desk, 19th April 2018.
12. November 2003, no. 199 of 2003, Ashok Kumar Pandey Vs. The State Of West Bengal
- 13." SC rules against misuse of PIL in India", Times of India, December 12.1998