

A STUDY ON THE ADVANTAGES AND DISADVANTAGES OF PUBLIC INTEREST LITIGATION

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ABSTRACT:

The Indian legal system is unique when compared to various other legal structure in the world. One thing that contributes to the uniqueness is Public Interest Litigation, which is also known as PIL. PIL is a type of petition filed before the court of justice for the purpose of social welfare. The concept of PIL is made so that necessary improvements can be made in the administrative structure designed by the appropriate authority. PIL plays an important role is changing the society as per the requirements and therefore it is essential for every individual to have a gist about this type of petition, its benefits, demerits, usage and how can it be filed before the court as every individual being a citizen of India, has the fundamental duty to contribute their best for the welfare of the society. Thus, this study highlights the origin of the concept of PIL, its usage, merits, demerits, etc. Further, the study also attracts various landmark cases which actually resulted in a greater impact in developing of the society. This study concludes by taking into consideration, the benefits and defects of PIL following the personal opinion of the author with regard to it.

Keywords: Public Interest Litigation, Society, Welfare, Merits, Demerits

INTRODUCTION:

Public Interest Litigation, as it has developed in the recent years, marks a significant departure of the traditional judicial proceedings. It was not a suddenly emerging concept. It was an idea, which was in the making for a long time, before it came into existence, resulting in vigorous growth in India. The Supreme Court takes over the main control of PIL. The court is considered as an institution which not only provide relief to the citizens, but also as a governing body which formulated the policy for PILs which the State has to follow. The purpose of Public Interest Litigation is to make the basic fundamental rights meaningful to the deprived and vulnerable group of community and to assure them the social, economic and political justice, which is enshrined in the preamble of the constitution. It has been remarked in the case of "*Bandhu Mukti Morcha vs. Union of India*"¹, that the number of people who are aware of the legal rights is very large than those who are aware of it. Therefore, the phenomenon of Public Interest Litigation plays a major role in serving the general public of India, as it helps them to safeguard their fundamental rights as provides them justice. The concept and procedure has been kept simpler as the purpose which it serves is of great importance and much required. The idea of Public Interest Litigation has been widely appreciated, and has also been successful to the maximum in order to serve its purpose. As the scope of PIL widened, the misuse of PIL has taken an entry in the frame. The simple procedure so framed, has started to corrupt now and then. There are number of cases which have been recorded as a misuse of PIL. Therefore, the Supreme Court, in a landmark case has laid down various guidelines, which are to be followed by the courts before entertaining a PIL.

REVIEW OF LITERATURE:

1. "Public Interest Litigation in India: Pros and Cons"² (2015) – This paper explains about the concept of Public Interest Litigation in India. It covers the meaning of PIL, its origin and development and the constitutional frameworks of PIL. The main part of this paper, which serves the purpose of this paper, is that of the merits and demerits of Public Interest Litigation. The efficacy of this paper is derived when it

¹ (1984) 3 SCC 161

² Sadual, Dr. Manoj Kumar, "Public Interest Litigation in India: Pros and Cons", published in "International Journal of Humanities & Social Science", Volume-IV, Issue-I, July 2015, Page No. 30-39.

explains the development of PIL in India, in three phases. It also takes the cognizance of various case laws for better understanding.

2. "Public Interest Litigation (PIL) A Boon or Bane?"³ (2004) – This paper deals with the concept of Public Interest Litigation along with its benefits and disadvantages. The paper highlights the history of PIL and how this concept came into existence in India. Further it identifies the benefits of Public Interest Litigation and also its demerits. The paper also covers a part where it states that the PIL is being misused and highlights the steps necessary to avoid further misuse as pronounced by the Supreme Court.
3. "Public Interest Litigation"⁴ (2017) – This paper covers a whole the concept of Public Interest Litigation. It begins with the meaning of PIL under Black's Law Dictionary and moves further explaining about the history and origin of PIL, its objectives, nature, constitutional support, issues dealt under PIL, when can it be file and by whom and against whom. It also explains the ways of filing the PIL and the ingredients of it. The paper moreover highlights the merits of PIL, but fails to throw light on the misuse of PIL in recent time. The paper also includes various landmark judgements dealing with PIL in India.
4. "Judicial Activism and Public Interest Litigation in India"⁵ (2013) – The essence of this paper is the relation between Judicial Activism and Public Interest Litigation. It explains about the concept of Judicial Activism along with its origin in India and later, relates it with the concept of PIL. It divides the development of PIL in three phases and furthermore, it explains the problem regarding exercise of judicial activism by PIL and its solution therefor. The paper takes into consideration the various landmark cases for better interpretation.
5. "Public Interest Litigation: Access to Justice"⁶ (2012) – This paper explains about the concept of Public Interest Litigation, and how it came into India. It cites various judicial decisions relating to PIL. It also highlights, the factors, which are

³ Shri. V. S. Vadivel, "Public Interest Litigation (PIL) A Boon or Bane?", Legal Service India, 2004, <http://www.legalserviceindia.com/articles/pil.htm>

⁴ "Public Interest Litigation" The Lex Warriar: Online Law Journal, September 2017, <http://www.lex-warrier.in/2017/09/public-interest-litigation/>

⁵ Ghosh, Pritam Kumar, "Judicial Activism and Public Interest Litigation in India", Galgotias Journal of Legal Studies, 2013, GJLS Vol.1, No.1

⁶ Bohra, Dr. Saroj, "Public Interest Litigation: Access to Justice", Manupatra, July 2012, <http://www.manupatra.com/roundup/379/Articles/Public%20Interest%20Litigation.pdf>

responsible for the growth of PIL in India. The paper concludes that it is an institutional initiative taken towards the welfare of the needy class of the society.

6. "Public Interest Litigation: A Critical Review"⁷ (2009) – This paper revolves around the concept of PIL in India. It begins with the evolution of PIL in India and goes further to the judicial moulding of standing, procedure, and relief for PIL cases, and the development of PIL in recent times. It also focuses on the positive contribution as well as the dark side of PIL in India. It also includes some important cases dealing with PIL. Finally it concludes that though PIL serves the public at large, it should be deliberately use.

PUBLIC INTEREST LITIGATION AND ITS DEFINITION:

The term "Public Interest" in the phrase Public Interest Litigation means the interest of the public at large, whereas the term "litigation" in the phrase means a legal action. Therefore, the general meaning of the term PIL can be extracted from its legal sense alone. It is nothing but a legal action taken, covering the issue of the public at large, for the welfare of the society. The definition of "Public Interest" can be extracted from Black's Law Dictionary. It defines Public Interest as "Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government"⁸. Therefore, PIL is nothing but litigation filed before the court of law to serve the welfare to the public at large.

ORIGIN AND HISTORY OF PIL IN INDIA:

The concept of PIL came into India in the nineteenth century. It is an improved version of U.S.A's Public Interest Litigation. The purpose of blending this concept with the Indian legal framework was to safeguard the interest of the lower section of the community, who were poor, and were not able to safeguard their fundamental rights. The parents of this concept in India are Justice P.N. Bhagwati and Justice V.R. Krishna Iyer. They were the ones who recognised in providing justice to the poor people by relaxing the rule of locus standi in

⁷ Deva, Surya, "Public Interest Litigation: A Critical Review" Civil Justice Quarterly, June 2009, Vol. 28, pp. 19-40.

⁸ Black, Henry Campbell, "Black's Law Dictionary", 6th edition, p.1229

1980's. As a result of it, any citizen or a group can approach the apex court to seek remedy, in which there is an interest of the Public at large. The very first case, which appeared before the Hon'ble Supreme Court of India after the relaxation of the rule of locus standi, was the case of "*Hussainara Khatoon vs. Union of India*".⁹ In this case, an advocate file a PIL based on the news item published in the Indian Express. The PIL was in relation to the thousands of under trail prisoners, who were suffering in the Bihar Jail. This PIL resulted in the release of 40,000 under trial prisoners and the right to speedy remedy emerged as a fundamental rights.

Another landmark case which contributed to the development of PIL at its initial stage was that of "*S.P Gupta vs. Union of India*".¹⁰ In this case, it was held that any member of the public or social group can file a PIL before the High Court or Supreme Court, if there is any violation of constitutional or legal rights.

Therefore, the concept of PIL was widely accepted in the Indian legal framework as after the above two cases, there were umpteen numbers of cases, which have been recorded in the court for the welfare of the public at large. But, while the scope of PIL kept widening, people started to misuse this concept and addressed their personal issues and this lead to an immediate need of setting up of guidelines before entertaining any PIL.

WHEN CAN PIL BE FILED?

The concept of PIL was introduced as instrument in order to safeguard the rights of public at large. Therefore, whenever, a violation of fundamental rights or any other legal rights are being violated of the public at large, the PIL can be filed before the High Court or the Supreme Court. In other words, when there is a public injury or harm caused by any public or state authority or when it is a question of basic human rights of the weaker section of the society, the PIL can be filed.

WHO MAY FILE A PIL?

A Public Interest Litigation can be filed by anyone as the rule of 'Locus Standi' has been relaxed by the Supreme Court in various numbers of cases. By the term 'Locus Standi', it is stated that only the aggrieved person can file up a case before the court and this rule is kept silent in PIL as it questions the welfare of the public at large.

⁹ AIR 1979 SC 1369

¹⁰ AIR 1982 SC 149

HOW TO FILE A PIL:

With regard to filing of a PIL, there is no statutory procedure of filing a PIL, but it has to be filed in a similar way as that of writs. A PIL can be even in the form of letters or telegrams to the Chief Justice directly or through the PIL lawyer. A PIL to be filed should be filed under Article 226 of Indian Constitution, if it is being filed before High Court and under Article 32, if it is filed before the Hon'ble Supreme Court.

MERITS OF PIL:

The concept of PIL carries a lot of merits, but at the same time, India has faced various demerits in it and in order to find a solution to those demerits, appropriate steps have been taken. The main benefit of Public Interest Litigation is that it helps to serve the people at large. It does not benefit the individual but instead it benefits the public and mainly the weaker section of the society, who cannot afford to move to the court in order to protect the Fundamental Right. Another benefit of PIL is that, it does not restrict any person to file a PIL. With regard to PIL is concerned, the Supreme Court has relaxed the rule of locus standi by which, any person can file a PIL irrespective of whether the person is an aggrieved person or not. The very next merits, which lies in this concept is that, a PIL can be filed directly to the High Court under Article 226 and to the Supreme Court under Article 32 and thus it lead speedy remedy rather than wasting time going through all the court as per the hierarchy. Another benefit that can be identified on behalf of this concept is that the cost of filing a PIL is nominal in nature and therefore, even the poor people can file a PIL in case there is a violation of human rights or fundamental rights at large. One important benefit that lies with this concept is that, there are no limits or boundaries for the issue to be dealt with. A PIL can be for any purpose for example, environmental protection or for the welfare of the labours, provided the issue put forth should not be for personal gain instead it should be for the group of people at large.

DEMERITS OF PIL:

PIL has brought a lot of changes in the legal system of India. It has been considered as a successful phenomenon for a couple of decades. But, at present, this concept has started to downfall as it is founded that people are misusing this concept. The main reason for misuse of PIL is the easy working system of it. There are number of demerits of PIL. The very first demerit is that many frivolous cases has been filed in the name of PIL as it is an easy access

to higher courts without investment of heavy court fees. Another demerit is that, PILs have kept the courts busy with number of PIL cases resulting in lack of attention over other litigations. Another point, is that, it has been found out that many people has filed a PIL for their personal gain as it is a cheaper way to seek justice. In the case of "*Ashok Kumar Pandey v. State of West Bengal*"¹¹, the court held that if it is found out that the petition filed in the name of PIL, is to foster personal disputes, then the court should dismiss the case. Though PIL has served its best to safeguard the interest of the public, it is now being misused and if not steps taken, then the mere purpose of implementing this doctrine, would be unproductive.

GUIDELINES TO PREVENT MISUSE OF PIL:

The number of cases in which the misuse of PIL has be identified has reached its peak and so the Supreme Court has bothered to interfere with this issue and has framed guidelines which are to be followed by all the subordinate courts before entertaining a PIL petition. The guidelines are the outcome of the case "*State of Uttaranchal vs. Balwant Singh Chauhal*".¹² The guidelines stated in this case are as follows:

1. The PIL should be genuine and bonafide.
2. Each High Court should formulate rules for encouraging genuine PILs and discourage PILs having malicious object.
3. The court should, at the very beginning verify the credentials of the PIL before entertaining it.
4. The court should be satisfied with the credentials of the PIL before accepting the PIL.
5. The court should also ensure that the PIL placed before it involves a public interest or not.
6. The courts should give priority to those PIL having larger public interest, gravity and urgency over other PILs.
7. The court should also ensure that the PIL redresses a genuine public injury and no personal benefits.
8. The court should further ensure that the PIL carrying ulterior motives should be disposed of with costs.

¹¹ Writ Petition (crl.) 199 of 2003

¹² Civil Appeal No. 1132-1134 of 2002

LANDMARK CASES RELATING TO PIL:

1. *Prem Shankar Shukla vs. Delhi Administration*¹³

In this case, a prisoner sent a telegram to the judge of the court, complaining about the forced handcuff on him and demanded a protection against humiliation. The court considered the PIL petition and gave necessary directions considering the relaxed rule of locus standi.

2. *Dr. Upendra Baxi (I) vs. State of Uttar Pradesh & Another*¹⁴

In this case, two law professors wrote a letter to the court stating about the inhuman condition prevailing in the Agra Protective Home for Women. The court considered the letter as a PIL and asked to improve the condition of the protective home.

3. *Vishaka vs. State of Rajasthan*¹⁵

In this case, a woman, who was a social activist, was brutally raped while she was in the course of her employment and on behalf of her; a NGO filed a PIL in the Supreme Court in order to protect the right of women at the workplace. The court accepted the petition and laid down the guidelines to be followed to safeguard the interest of women at the workplace and later Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted based on the guidelines served.

4. *M.C. Mehta vs. Union of India & Others*¹⁶

In this case, a PIL was filed in order to prevent and protect the Taj Mahal from the harmful gases from the industry near Taj Mahal. The court accepted this petition as it was for the protecting the environment from exploitation and the court ordered the ban on 299 industries from using coal and asked them to shift over Compressed Natural Gas (CNG).

5. *M. C. Mehta vs. State of Tamil Nadu*¹⁷

In this case, a PIL was filed contending that the employment of children in the factories of Sivakasi was hazardous and unconstitutional. The court on entertaining the petition held that children should not be allowed to work in an industry which is hazardous but can be allowed to work in the process of packaging due to poverty provided the packaging area is separated from the manufacturing unit.

¹³ AIR 1980 SC 1535

¹⁴ 1983 (2) SCC 308

¹⁵ (1997) 6 SCC 241

¹⁶ AIR 1997 SC 734

¹⁷ (1996) 6 SCC 756

CONCLUSION:

Public Interest Litigation has, no doubt, served to the maximum for the welfare of the society. For such a long time, the PIL has contributed a lot in moulding the law, in accordance with the changes and development in the society. Without this doctrine of Public Interest Litigation, it would have been a very difficult way to enact and amend laws as per the changing circumstances of the society. Therefore, this concept has fastened the process of amend laws in accordance with the changing needs of the society. Though, this doctrine has been of utmost importance, the misuse of it, is much obvious as it has a simple and cheaper procedure, but the Supreme Court has reduced the misuse of this doctrine by framing suitable guidelines, which are to be strictly followed by the courts before entertaining a petition of PIL. Thus, the doctrine of PIL has been preserved from being misused, and its efficacy is again retained.

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