



Social

CONCEPT OF CHECK AND BALANCE IN INDIAN CONSTITUTION MISUSE OF PIL

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Abstract

Public Interest Litigation is the highly effective weapon in the armory of law for reaching social justice to the common man. It plays a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation. It was designed to serve the purpose of protecting rights of the public at large through vigilant action by public spirited persons and swift justice. PIL could also contribute to good governance by keeping the government accountable. But the profound need of this tool has been plagued with misuses by persons who have been filing PILs just for the publicity and those with vested political interests. It is an undemocratic, unrealistic and dangerous tendency which is to be impeded by our judicial attitude. Steps and reasonable care should be taken to make sure that PIL essentially remains public interest litigation and should not be empowered to get corrupted into becoming a political interest litigation or publicity interest litigation. The misuse of PIL will stop when the courts are vigilant and the challenge is for the state to prolong a balance in allowing legitimate PIL cases and discouraging waggish ones.

Keywords: Misuse of PIL; Indian Constitution; Public Interest Litigation.

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1. Introduction

Public interest litigation, itself says that this is litigation for any public interest. It is a legal action initiated in a court of law for the enforcement of public interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights and liabilities were affected. It was a revolutionary concept initiated with the appreciable objective. According to the jurisprudence of Article 32 of the constitution of India, “the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is

guaranteed”. PIL can be broadly defined as the litigation in the interest of that nebulous entity: the public in general. The Supreme Court of India said that, it was aimed at “fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard”. Now a question arises that “what is in public interest?” “Any act for the benefit of public is public interest and those acts are such as pollution, terrorism, road safety etc. any matter in which general public is involved or in which we can clearly see the public concern.

Public interest litigation is not defined in any statute or any act. It has been interpreted by judge to consider the intent of public at large. This is just like a writ petition which is file in high court or Supreme Court under article 226 for high court and article 32 for Supreme Court. When public interest in affecting at large then this can be filed but affection on only one person is not a ground for filing this petition. There are some various areas where public interest litigation can be filed.

- Violation of basic human rights
- Conduct of government policy.
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights.

“An individual, in promoting his own interest, may injure the public interest; a nation, in promoting the general welfare, may check the interest of a part of its members”

Friedrich List

2. Origin

The concept of Public Interest litigation originated in the United States of America in late Nineteenth century in Gideon v Wain Wright, 372 NS335(1963). In 1976 American Professor Abram Chayes popularized the term Public Law Litigation. He described the practice of lawyers or public spirited individuals who seek to bring about social change through court ordered decrees that reform legal rules, enforce existing laws and articulate public norms.

In India Public Interest Litigation has been a part of the constitutional scheme. Indian constitution establishes India into “Sovereign Socialist Secular Democratic Republic” therefore the founding fathers wanted to achieve a social revolution through the constitution, so they have adopted several tools to achieve the goal of bringing social revolution. In India the first case of PIL was filed in 1976 named Majdur kaamgar sabha v Abdul bhai Faizulla bhai.

3. Reason for Growth of PIL

A number of factors both political and Legal led to the development of PIL. The most fundamental among them is the judicial review. The concept of judicial review under the constitution is well crystallized under Article 13. However Article 13 talks about judicial review over these legislations or these legislative acts made by the state. But it doesn't talk about judicial review over constitutional amendments. However the Supreme Court in Keshwananda Bharti brought the concept of basic structure and subsequently the judicial review was elevated to basic structure. Hence the courts power to review not only the laws that are passed by the

parliaments but the amendments also could come under its preview and that led to the growth of Public Interest Litigation and the Keshwananda Bharti not only bringing the basic structure forefront but also it created an era to protect the constitutional values.

4. Judicial Activism

India being a common law country follows adversarial system. In adversarial legal system always requires a person to come to the court only when his or her personal right is affected. In other words you could approach to the court only when your rights are infringed. Such a strict rule leads into intimidate the litigant particularly in a developing country. So the problem with such intimidation is that this will restrict the vulnerable groups in accessing the justice. In such a situation there is need to relax the traditional rule of Locus Standi to provide access to Justice. So in Public Interest Litigation Supreme Court has relaxed this rule of Locus Standi and aid that any person who can approach the court of law on behalf of those who are aggrieved persons. So now this fundamental question come to our mind is why the Supreme Court should dilute the rule of Locus Standi? The reasons are

- Poverty
- Ignorance
- Lack of knowledge
- Exploitation
- High cost of litigation
- Redressal of public injuries

Some of the Significant Judgments in this Regard are:

Vishakha & Ors v. State of Rajasthan, which laid down important guidelines for sexual harassment at the workplace. These guidelines were instrumental in the formulation of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

D.K Basu v. State of West Bengal wrote a letter to the then Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to bury the matter. Because of this, custodial crime goes unpunished and therefore flourishes. Some newspaper reports published in the Telegraph, Statesman and Indian Express newspapers were also attached to support the contention. The Supreme Court treated the letter as a writ petition. And guidelines for the fair treatment of arrested persons and prisoners were laid down. These cases have been monumental in the positive growth of PIL in India.

5. Abuse of PIL

However, the development of PIL has also uncovered its pitfalls and drawbacks. It seems that the misuse of PIL in India started in the 1990s, has reached to such a stage where it has started undermining the various purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the brighter side of PIL project. One major rationale why the court supported PIL was its usefulness in serving the public interest. This misuse comes in various forms. The first is what Justice Pasayat in the case of Ashok Kumar Pandey v. State of W.B. described as “busybodies, meddlesome interlopers, wayfarers or officious interveners who

approach the court with extraneous motivation or for glare of publicity". Such litigation is described as "publicity interest litigation" and the courts have been fraught with such litigation. Almost every issue is presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). The petition of such persons should be thrown out at the threshold and in appropriate cases exemplary costs should be imposed. As a result, the apex court itself has been compelled to lay down certain guidelines to govern the management and disposal of PILs. The lowering of the locus standi requirement has permitted privately motivated interests to pose as public interests. It is critical that courts do not allow "public" in PIL to be substituted by "private" or "publicity" by doing more vigilant gate keeping.

In a judgment on public interest litigation rendered by Justice Pasayat, he has laid down the following tests:

"The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved.

Court has to strike balance between two conflicting interests:

- 1) Nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others;
- 2) 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."

In *S.P. Gupta v union of India* P.N. Bhagwati in the instant case lays down certain specific case where PIL cannot be entertained namely.

- 1) In the person is engaged in socio- economic crime then there is no PIL.
- 2) If offence is against the woman, no PIL should be filed on behalf of the t criminal.

Cautioning the High Court on the misuse of the PIL, the Bench said "PIL is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking". The Bench made it clear that a PIL should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. It observed that it should not be allowed to become "publicity interest litigation or private interest litigation or politics interest litigation or, the latest trend, praise income litigation.

6. Conclusion

Thus in this project we see that how the right and powers that are vested on the society for the benefit of it is being misused and abused. It's high time that the court who was implementer in vesting these powers, realize that an immediate solution or remedy to this abuse should be formed. As Justice Bhagwati did not specify guidelines for the admission of PILs, the Court should come up with stringent norms and guidelines to restrict the abuse of PILs.

As per our research we thought it to necessary, to suggest few norms and rules to minimize and to counter the abuse of PIL. The suggestions are as follows:

- **The imposition of heavy fine:** On finding out that the respective PIL is frivolous and it's filed with malicious intentions (eg: in order to gain fame, to sort out political issues, to solve personal grudges and enmity). Such cases should be rejected by the Court and a heavy fine should be imposed on the petitioner. A standard should be set for the filling of such cases, which on violation will result to such punishment.
- **Imprisonment:** If the abuse of PIL is on a larger magnitude which in turn affects the public or the society at large, causes the respondent to incur heavy financial losses, affects the integrity of the country, causes defamation at a large scale and other serious loses should be imprisoned. The duration of imprisonment should be left to the discretion of the Court.
- **Forming a body to check the cases before admitting them as PILs:** A proper body or committee should be formed to keep a check on the cases that are filed in the name of a PIL. The basic function of this body would be to check the details of the filed cases and to see that there is no malicious intention behind them. If this committee is formed then both the powers of fine imposition and imprisonment would be vested on the committee.
- **Cancellation of the concerned organizations license:** On continuous attempts on filling frivolous PILs the court should not only impose a heavy fine on the organization but should also cancel its license. On doing so every other organization would think twice before filing a PIL with malicious intentions.
- **Public Awareness:** There should be active participation by the Government in spreading public awareness regarding Public Interest Litigation, its use and abuse. The guidelines and rules that the Court would form for filing a case as PIL should be made aware to all the sections of the society, giving greater emphasis to the poorer and weaker section of society.

The misuse of public interest litigation will stop only if the courts are vigilant. In every matter, the first question that the courts must ask themselves is whether the petitioners are bona fide, whether the concern of the petitioner is real or whether there is something more than meets the eye. I am not suggesting that all public interest litigations should be viewed with suspicion; far from it. Justice P B Savant (who retired as a judge of the Supreme Court) once said that a judge should develop a strong sense of smell. If something stinks, then he must be extra careful. It is the right judicial instinct and the skill of the judiciary which will stop the misuse of public interest litigations and restore it to its pristine and useful character.

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