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## PUBLIC INTEREST LITIGATION: NEED FOR REFINEMENT OF PROCEDURE

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### INTRODUCTION

Public Interest Litigation (PIL) means an action brought in a court of law, which affects the rights and interests of a class or group of people.<sup>1</sup> The term, PIL, traces its origin from the United States where it is popularly known as 'Public Law Litigation'.<sup>2</sup> It was used dominantly by American scholar and academician *Abraham Chaves* who referred to it as "the practice by public spirited persons who thrived to bring change in the society either by ameliorating the rules or by ensuring proper implementation of the existing laws through judicial assistance".<sup>3</sup> Since then PIL's have paved way in multiple countries as a tool for ensuring and enhancing rights and justice for the deprived class.

This paper is an attempt to study the concept of PIL in Indian context by tracing its evolution in the Indian judicial system. The special focus, however, would be on understanding its institutional as well as consequential limitations and how PIL as a mechanism, which sought to provide justice to all, has somewhat backfired. Further, the author suggests some structural refinements in the procedures of PIL in order to fine tune it with the existing societal needs.

### EVOLUTION OF PIL IN INDIA

The concept of PIL was introduced in India by the Hon'ble Supreme Court in late 1970's – post emergency with an aim to re-establish public trust in the institution by promoting litigations for the marginalised section of the society.<sup>4</sup> In Indian context the initial trends of

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<sup>1</sup> Ansuman Rabboni and P. Kingsley Alfred Chandrasekaran, *A Perspective Analysis on Public Interest Litigation of India*, The Indian Journal of Political Science, Vol. 72, No. 2 (April - June, 2011), pg. 463-475.

<sup>2</sup> Abraham Chaves, *The Role of the Judge in Public Law Litigation*, , Harvard Law Review, Vol. 89, (1976), pg.1281.

<sup>3</sup> Ibid.

<sup>4</sup> Parmanand Singh, *Promises and Perils of Public Interest Litigation in India*, Journal of the Indian Law Institute, Vol. 52, No. 2 (April-June 2010) pg. 172-188.

PIL can be traced in *Krishna Iyer J.* observation in *Mumbai Kamagar Sabha v. Abdulbhai* where he stated that, in a socio economic condition such as ours, “public interest can be promoted by expanding ambit of locus standi and when the remedy is shared by a large number of people who are deprived, freedom can be granted in individualisation of the right”.<sup>5</sup> The term Public Interest Litigation was used for the first time by *Krishna Iyer J.* in *Fertilizer Corporation Kamagar Union v. Union of India* where he held that, PIL is part of the process of partaking in justice and hence it must be liberal in its response.<sup>6</sup> He further added that locus standi must be relaxed in order to ensure the needs of changing times.<sup>7</sup>

While exercising its power of judicial review, the Supreme Court observed that a major portion of society, downtrodden with poverty, discrimination and illiteracy remains deprived of justice.<sup>8</sup> It is this realisation of constitutional duty and obligation that pushed the court to derive the PIL mechanism in order to facilitate justice for the deprived and marginalised section of the population.<sup>9</sup> The Supreme Court in *Akhil Bharatiya Soshit Karamchari Sangh* case, while holding the terms, ‘*aggrieved persons*’, ‘*individual litigation*’ as *archaic* stated that Indian jurisprudence is comprehensive and people oriented, hence allows class action litigations and PIL’s to ensure access to justice for all.<sup>10</sup> Further, in *Bandhua Mukti Morcha* case the court clarified that PIL’s are not adversary litigation instead it grants the government opportunity to work for the welfare and attainment of basic rights of the vulnerable and deprived class of the society.<sup>11</sup>

The Supreme Court in *S.P. Gupta v. Union of India* noted that relaxing the rule of locus standi is the only way to put a check on violations of law.<sup>12</sup> As a result, whenever a question of enforcement of public duty or protection of public interest is raised, any person, acting in ‘*good faith*’ with ‘*sufficient interest*’ is allowed to take up the matter, thereby diluting the rule of locus standi.<sup>13</sup> Further, the court expanded the traditional understanding of the term ‘*aggrieved person*’ in order to accommodate the cases involving rights of the people of weaker sections of the society who could now be represented by any public spirited person. Hence, in order to make the courts accessible, traditional requirements of locus, procedure and evidence were

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<sup>5</sup> *Mumbai Kamagar Sabha v. Abdulbhai*, AIR 1976 SC 1455.

<sup>6</sup> *Fertilizer Corporation Kamagar Union v. Union of India*, AIR 1981 SCC 344.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Parmanand Singh, Supra*, note 4, pg. 173.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*, AIR 1981 SC 317.

<sup>11</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

<sup>12</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>13</sup> *Rex v. Inland Revenue Commissioners*, (1981) 2 WLR 722; *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

modified and novel remedies were established.<sup>14</sup> Once the procedural obstacles were remedied the court then looked to pursue wide range of matters under the aegis of PIL's. In this regard the court expanded the meaning of *Article 21* by stating that '*life and liberty means more than mere physical existence which includes living with dignity*'.<sup>15</sup> With the expanded *Article 21* the court could now deal with a range of matters. Since the issues under PIL's usually dealt with issues which did not have instant remedies the court developed "*creeping jurisdiction*" by issuing series of interim orders and ensuring its compliance by reviewing the matter from time to time.<sup>16</sup>

It is important here to note the fear that surrounded when the PIL jurisdiction was being webbed by the Supreme Court. Many feared that relaxing the rules of locus, evidence and filing procedure will make PIL's prone to misuse owing to frivolous and vexatious litigation. Further, concerns were raised over resources that would be wasted over these frivolous litigations instead of genuine cases. However, negating these possibilities, *Krishna Iyer J.*, one of the champions of PIL jurisprudence, stated that the floodgate argument is a *phony bogey* and stated how a bonded labourer could ever know of moving the Supreme Court as they are living a life of animals?<sup>17</sup> Further on the question of waste of resources and delay in adjudication, another Supreme Court judge *Gulab Gupta J.* chose to blame the procedures of CPC and Cr.P.C which can be bypassed and hence cause delay.<sup>18</sup> He denied the possibility of PIL's causing delay in dispensation of justice.

### **LIMITATIONS AND MISUSE**

By now, PIL has been ingrained into the Indian legal system and is one of the most sought for remedies despite availability of other constitutional provisions. With its relaxed procedural norms and innovative solutions, PIL makes the remedy ominously easier. The Supreme Court in *State of Uttaranchal v. Balwant Singh Chaufal* has itself highlighted the expansion of PIL jurisprudence in three phases.<sup>19</sup> In the 1<sup>st</sup> phase the court dealt with concerns primarily safeguarding fundamental rights of the deprived section of the society, the 2<sup>nd</sup> phase was

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<sup>14</sup> *Parmanand Singh, Supra*, note 4.

<sup>15</sup> *Sunil Batra v. Delhi Administration* (1978) 4 SCC 494; *Olga Tellis v. Bombay Municipal Corp* AIR 1986 SC 180.

<sup>16</sup> Baxi, *Taking Suffering Seriously* (1985) *Third World Legal Studies* 107, 122.

<sup>17</sup> V.R Krishna Iyer, *Towards a Burgeoning Indian Jurisprudence of Social Action and Public Interest Litigation*, *Indian Bar Review*, Vol. I, (1989), pg.141.

<sup>18</sup> Gulab Gupta, *Public Interest Litigation as an Instrument of Social Justice*, *Central India Law Quarterly*, Vol. 5, (1992), pg.83-84.

<sup>19</sup> *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402.

focused towards environmental protection matters while the 3<sup>rd</sup> phase deals with maintaining uprightiness and sanctity of governance.<sup>20</sup> The change in shift of matters pertaining to PIL is evident enough to convey the spreading arms of judiciary over the functions of other organs. Clearly, there has been a shift from protecting and upholding rights of marginalised people to upholding the integrity of governance which essentially means stepping into shoes of the executive. It is important to understand that lack of institutional grounding and vesting excess jurisdiction on the judges along with the populist nature of court has allowed this massive shift in PIL jurisprudence.<sup>21</sup>

We must agree to the fact that there are problems with the whole system when there are PIL's which actually reach the Supreme Court calling back the Indian cricket team from Australia on account of some unfair umpiring or over the fact of an actress marrying a tree due to some superstition.<sup>22</sup> These are just few examples which have come across our courts and quite evidently these lead to waste of resources and cause delay in delivery of justice in actually relevant matters.

In this paper we shall deal with two-pronged limitations in context of procedures of PIL, one being the *consequential limitation* which deals with urgency to regulate the procedures related to PIL while another is *institutional limitation* which deals with the problem of PIL as a mechanism and the overreaching judicial activism by constitutional courts.

### CONSEQUENTIAL LIMITATIONS

As mentioned above, the relaxation of procedures in order to facilitate filing of PIL's for weaker sections of the society made it prone to misuse. Recent developments show that abuse of PIL's is more extensive than its use in genuine cases.<sup>23</sup> It has become a handy tool for activists and people in general to file litigations which serve their personal interests. It is due to these reasons even genuine cases are being looked at with suspicion and the whole mechanism seems to have lost its credibility.

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<sup>20</sup> Ibid.

<sup>21</sup> Anuj Bhunia, *GOOD JUDGES, BAD JUDGES* (Ch. 4) in *COURTING THE PEOPLE: PUBLIC INTEREST LITIGATION IN POST-EMERGENCY INDIA* (2007).

<sup>22</sup> Sharona KP, *Introducing the framework of public interest litigation: Vehicle for social reformation*, *International Journal of Multidisciplinary Research and Development*, Vol. 6; Issue 1; (January 2019); pg. 61-64.

<sup>23</sup> Firstpost, *Soli Sorabjee on PILs: Every matter of public interest cannot be a matter of Public Interest Litigation*, January 21, 2016, available on <https://www.firstpost.com/india/soli-sorabjee-on-pils-every-matter-of-public-interest-cannot-be-a-matter-of-public-interest-litigation-2592886.html> (last visited on August 11, 2020).

It has been argued that by widening the jurisdiction of PIL the apex court has scripted its own collapse as it would open floodgates. In *Chhetriya Pradushan Mukti Sangharsh Samiti v. State of Uttar Pradesh*, Sabyasachi Mukherjee, CJ. stated that, along with the duty to prevent violation of Fundamental Rights, it is also the duty of courts to ensure that the weapon under Article 32 is not subjected to misuse.<sup>24</sup> Further, if PIL as a mechanism fails to serve its purpose after promising so much, it would be a matter of dissatisfaction and contempt.<sup>25</sup> In *Bandhua Mukti Morcha* case Pathak J. had highlighted the need of placing limits on the relaxation of procedure by stating that whatever process is adopted, it must be recognized by judicial practices.<sup>26</sup>

In recent times, the concept of PIL has been turned into “*Publicity Interest Litigation*” where the petitioners keep wasting the precious judicial time just for the sake of cheap publicity. Instances of frivolous litigation under the garb of PIL’s is on all-time high, casting a shadow on the brighter side of the PIL’s and even the judiciary recognises the graveness of this issue. It is evident from the instances of PIL such as asking to drive out all Muslims to Pakistan or asking central government to construct Great Wall across the border or renaming India as ‘Bharat’.<sup>27</sup> Recently the Hon’ble Supreme Court in *Tehseen Poonawalla v. Union of India* observed that, “misuse of PIL’s is a serious concern for the judiciary as these interest driven petitions under the garb of public interest deviate the time of court from genuine cases”.<sup>28</sup>

With the increasing frequency of such frolicsome litigations, one can say that the fear once negated by *Krishna Iyer J.* has actually come true and the courts need to deal with them seriously. It must be understood that every matter of public significance cannot be brought under the umbrella of PIL’s. Distinguished Jurist and Former Attorney- General of India, Soli Sorabjee had advised that “PIL’s must avoid three pitfalls associated with it namely: ‘Private’, ‘Political’ and ‘Publicity’ Interest Litigations”.<sup>29</sup> He stated that sometimes judges also want publicity by engaging in ‘*sensational*’ PIL’s and advised that frivolous applications must be dismissed at the threshold and costs must be imposed as deterrent.<sup>30</sup>

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<sup>24</sup> *Chhetriya Pradushan Mukti Sangharsh Samiti v. State of Uttar Pradesh & Ors*, AIR 1990 SC 2060.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Bandhua Mukti Morcha*, *Supra*, note 11.

<sup>27</sup> Outlook Magazine, *PIL’s: From Public Interest to ‘Publicity Interest’ Litigations*, April 1, 2019, available on <https://www.outlookindia.com/magazine/story/india-news-gavel-on-the-duds/301330> (last visited on August 12<sup>th</sup> 2020).

<sup>28</sup> *Tehseen Poonawalla v. Union of India*, (2018) 6 SCC 72.

<sup>29</sup> *Supra* note 23.

<sup>30</sup> *Ibid.*

Considering the dire need to ensure restraint in PIL matters the Hon'ble Supreme Court in *Balwant Singh* case laid down certain guidelines relating to PIL in order to discourage erroneous and mala fide PIL's. It was directed to all the High Courts to formulate rules guiding the procedure to be followed while entertaining PIL's, to verify and satisfy itself with the genuineness of PIL's before admitting it and to impose exemplary cost in order to discourage PIL's filed with ulterior motive.<sup>31</sup>

Even after realising, accepting and taking measures against irrelevant litigations, the situation has hardly changed as PIL's intended with self-benefit continue to come across the courts. Hence, the need is efficient application of guidelines in order to maintain the sanctity of the otherwise valuable instrument to ensure justice for the weaker sections of the society.

### **INSTITUTIONAL LIMITATIONS**

Another limitation with regards to PIL is more of a question on PIL itself as a mechanism. This prong of the argument relates to the constitutional balance between different organs which the PIL is alleged to disturb. Indian Constitution does not provide for separation of powers in strictest sense, however partial separation of powers in order to ensure smooth functioning of all the organs is recognised. It is argued that with the tool of PIL, judiciary is expanding its ambit and stepping into the authority of executive and legislature disregarding this separation of powers. Professor Upendra Baxi calls this as "*Structural adjustment of Judicial Activism*" where adjustments are being made in order to accommodate new roles and exercise new powers.<sup>32</sup> Usha Ramanathan, another scholar states that problem is not with the PIL itself but new and odd practices of judicial interference that is being used by Supreme Court is problematic.<sup>33</sup>

In the exercise of its PIL jurisdiction the Supreme Court is not only correcting the demeanour of government but also prescribing exemplary conducts. In doing so the judiciary, which is ill-equipped to function like other organs of governance, is doing away with its basic functions and stepping into the domain of other bodies. It is important here to understand that the courts are not at all furnished with the institutional ability to step into policy matters. *Pathak J.* had warned against this judicial overreaching in *Bandhua Mukti Morcha* case, where he observed that, "*while correcting the faults of legislature and executive the courts very often step into*

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<sup>31</sup> *Balwant Singh, Supra*, note 19.

<sup>32</sup> Upendra Baxi, '*The Structural Adjustment of Judicial Activism*', pg. A-A145.

<sup>33</sup> Frontline Magazine, Usha Ramanathan, Of Judicial Power, March, 16, 2002, available on <https://frontline.thehindu.com/other/article30244290.ece> (last visited on August 12<sup>th</sup> 2020).

*policy making*".<sup>34</sup> Under PIL jurisprudence, the courts take suo-moto cognizance of policy matters and appoint amicus curies. Due to relaxed procedures, it often considers half-finished evidences and in order to rectify the identified issues they issue peculiar remedies of all kinds which have the force of law.<sup>35</sup> It has to be realised that due to lack of resources, it is difficult for the courts to ensure the adherence to these remedies and the justice remains '*symbolic*'. Many a times, it happens that the original applicant is removed from the litigation and the appointed amicus oversees the further proceedings.<sup>36</sup> Often in such situations, the sought remedies are never provided and the issue becomes more of a question of rectifying the executive's fault on a larger scale. This acts as a blot on the integrity and reliability of the judiciary as its decisions are not adhered with<sup>37</sup> and on the other hand the purpose of PIL, which was to ensure justice for the marginalised groups, remains unachieved.

This needs to be realised that the founding figures of PIL had realised the constitutional obligation to provide access to justice to the deprived and relegated sections of the society. They would have never thought of expansion of jurisdiction of PIL's to formulate and settle policy issues or monitor the executive tasks. It is important that the judiciary realises the importance and rationale of separation of powers and restraint itself from over expanding the ambit of PIL.

### **TACKLING THE MENACE: ROAD AHEAD**

It is evident from the aforementioned discussion that PIL as a tool of redressing social issues of the marginalised class needs to be handled with due care, which clearly our courts have failed to do. While handling cases under PIL it has to be kept in mind that the judiciary must not invade the jurisdiction of the executive and legislature as clearly this overreaching adversely effects all the organs of governance.

As I have highlighted in this paper that the limitations and misuse of the PIL have taken aback its brighter aspects. In my opinion the *consequential limitations* can be dealt with by the judiciary by tightening the knots on those who engage in frivolous litigation. The court has already formulated guidelines in *Balwant Singh* case which needs to be implemented in an efficient and effective manner.<sup>38</sup> Relaxing the rules for welfare has been grossly misused but

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<sup>34</sup> *Bandhua Mukti Morcha, Supra*, note 11.

<sup>35</sup> *Ansuman Rabboni and P. Kingsley Alfred Chandrasekaran, Supra*, note 1.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Balwant Singh, Supra*, note 19.

now is the time when strict safeguarding of these relaxed rules has to be done. Recently, the Madras High Court in *Dhakshanamoorthy v. The Commissioner* noted that “*the judiciary has to be very careful to check behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking*”.<sup>39</sup> The court further observed the need to be *ruthless*’ while dealing with such imposters who impersonate themselves as public spirited.

This can be done by rejecting the irrelevant petitions at the threshold itself and imposing costs which would set precedent and act as deterrent for others. Fortunately, the courts have started to deal with such frivolous PIL’s with hard hands. For instance, recently in *Suraj Mishra and anr. v. Union of India and anr*, the apex court not only imposed cost of Rs. 50,000 on the litigant but also directed the registry to not entertain any PIL by the concerned petitioner.<sup>40</sup> In another matter where the petitioner filed petition seeking ban on Thumbs Up and Coca-Cola, a 3-judge bench of the Supreme Court headed by *Chandrachud J.* imposed exemplary cost of Rs. 5 lakhs for abusing the process of law.<sup>41</sup>

Another important aspect which needs serious consideration apart from dismissing petitions and imposing costs is that this refinement would require a self-restraint on the judges as well to engage in sensational cases. These refinements needs to be done to secure the Public Interest Litigations from becoming ‘Publicity or Political’ Interest Litigations. *Markandey Katju J.* in *Common Cause v. Union of India* noted that, “*unfortunately, the truth is that PILs are being entertained by many courts as a routine, most of which are frivolous or for which the judiciary has no remedy.*”<sup>42</sup> Hence, it is very important that the required measures be undertaken immediately, before it becomes an *uncontrollable nuisance* and choke the constitutional courts.

With regards to the *institutional drawbacks* as well, it is the judiciary which needs to restrain itself from stepping into executives’ shoes which causes a denigration to the veracity of the Supreme Court itself. New rights and remedies that emerge out of PIL’s have changed prospects towards judges and it is expected that all remedies are available to them.<sup>43</sup> It is suggested that lack of uniformity in guidelines for dealing with PIL’s grant huge discretion to

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<sup>39</sup> *Dhakshanamoorthy v. The Commissioner*, Writ Petition No. 5027 of 2019 (Madras HC).

<sup>40</sup> *Suraj Mishra and anr. v. Union of India and anr*, Writ Petition (Civil) No. 1328/2018.

<sup>41</sup> Deccan Herald, SC imposes Rs 5 lakh cost on PIL Petitioner for seeking ban on Coca-Cola and Thumbs Up, June 11, 2020, available on <https://www.deccanherald.com/national/sc-imposes-rs-5-lakh-cost-on-pil-petitioner-for-seeking-ban-on-coca-cola-and-thumbs-up-848448.html>. (Last visited on August 11, 2020).

<sup>42</sup> *Common Cause v. Union of India*, Writ Petition (Civil) No. 580 of 2003.

<sup>43</sup> *Parmanand Singh*, *Supra* note 4.



judges and that is where the problem lies. The court needs to look back at the basic purpose for which PIL was introduced and prevent it from fading. This would require the courts to develop the mechanism through which they do not intervene into the matters for which the executive is better equipped. It is important for the courts to restrict themselves to the to the cases focusing on ill-fated sufferers of governmental supremacy & lawlessness i.e 1<sup>st</sup> and at most 2<sup>nd</sup> phase of PIL jurisprudence as highlighted in the *Balwant Singh case*.

The jurisdiction which was introduced by the Supreme Court is now looking back at it for refinements in order to prevent it from being considered as mere hollow promise to the deprived masses of our population. A lot needs to be changed procedurally as well as fundamentally and the onus once again is on the Supreme Court to strengthen the doctrine which is arguably its most significant innovation.