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Public Interest Litigation and the Role of the Indian Supreme Court as an Instrument of Social Justice

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The undeveloped concept of public interest litigation can be traced in the system of *actio popularis* of Roman law which permitted anyone in the society to initiate an action for a public delict in the court of law or to bring an action of restitution or injunction for the protection of public property or a religious charitable property. Thus the system of *actio popularis* of Roman law can be described as historical basis of the present form of public interest litigation. The Bhopal Gas Disaster (Processing of Claims) Act, 1985 which enabled the Union Government to file claims for damages on behalf of the gas victims exhibits a good example of Roman *actio popularis* in modern times. Different terminologies have been used for it in modern times such as class litigation, representative action, public interest litigation, social action litigation etc, out of all of them the term “public interest litigation” is most popular. The public interest litigation (PIL) is one of the most important facets of the administrative law and administrative justice. The preamble, the directive principles and the fundamental duties of our Constitution. The judgement of the Supreme Court in *Bandhua Mukti Morcha*¹ is one of the cases which refers to socio-economic problems and that appears to be the reason why the Supreme Court referred to Rabindranath Tagore’s views in the above judgement.

PIL is considered as an instrument which extends legal aid to the poor masses and weaker sections of the society. In a country like India, where more than 40 per cent of the people live below poverty line the state or public authorities against whom PIL is brought by social workers or by public institutions are expected to welcome such litigations as it would result in ensuring basic human rights, constitutional as well as legal, to those who are in a socially, and economically disadvantageous position.

What is meant by a PIL petition? Who can file such petitions? Who are expected to finance them? Is it required to be filed under article 32 in the Supreme Court of India, or under article 226 in the High Court’s? Against whom can such petitions be filed? Can an ordinary post card or telegram be sufficient to file such petitions? What should be the approach of the government and other corporations? What is the view of the Supreme Court and various High Courts when entertaining such petitions? Is it possible for PIL to be mis-used, say for publicity or for political purpose? What precautions should be taken to achieve the real objective of PIL? How far does PIL fulfil the objective

of the directive principles of state policy and fundamental duties?

Meaning of Public Interest litigation

“Public interest litigation” means a legal action initiated in a Court a law for the enforcement of public interest or gerteral interest in which the public or a class of community have pecuniary interest of some interest by which their legal rights or liabilities are affected. The council for public interest law set up by the Ford Foundation in U.S.A. defined the Public Interest Litigation as follows:

“Public interest litigation is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been taken in the recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups or interests include the poor, environmentalists consumers, racial ethnic minorities and others.”

S. Ratnavel Pandian, J. in Janta Dal v. H.S. Chowdhary,” said, “Lexically the expression “Public Interest Litigation” means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

Legal aid to Poor

Article 39A was added to the directive principles in order to ensure equal justice promised to all citizens by the preamble. Article 14 guarantees equality before the law. Article 39A was added in 1976 when it was found that, though several welfare laws were enacted under our Constitution to realise the goal of social justice, these have remained only on paper without being properly implemented. The total indifference and failure of the legislative wings in the implementation of such socio-economic legislations gave rise to certain issues. Non-implementation of these legislations affected the poorer sections of society. The judiciary therefore was expected to set right the situation of changing the century-old “outlook”. It was said that while reaching the decision in implementation of socio-economic legislations, the operators of the state organisations, including the judiciary, failed to examine the social climate in interpreting the welfare laws. Some of the courts still continue to stick to old rules of construction without any regard to new constitutional jurisprudence and human rights. The old rules on locus standi and cause of action are required to be liberalised in the backdrop of socio-economic changes contemplated through various social welfare legislations. It created more and more new categories of rights in favour of masses and a corresponding new category of duties on the public authorities.

Development of Public Interest Litigation in India

The seeds of the concept of PIL was initially sown in India by Krishna Iyer, J., in 1976 (without assigning the terminology) in **Mumbai Kamgar Sabha v. Abdul bhai**². He, while disposing an industrial dispute in regard to the payment of bonus, has observed:

“Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigant but the rural poor, the urban lay and the weaker societal segment for whom law would be an added terror if technical misdescription and deficiencies in drafting, pleading and setting out the cause title create a secret weapon to non-suit a part.

In **Peoples Union for Democratic Rights v. Union of India**,³ 12 it was held that the Peoples Union for Democratic Rights⁴ and locus standi⁵ to file a petition for enforcement of various labour laws under which certain benefits are conferred on the workers. The Union brought this fact to the notice of the Court through a letter. The

Court rejected the argument that such 'public interest litigation' would create arrears of cases and therefore they should not be encouraged. Bhagwati, J., (as he then was) declared, "No State had the right to tell its citizens that because a large number of cases of the rich are pending in our courts we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford rich lawyers is disposed off."

Violation of labour laws

The scope and nature of public interest litigation has been decisively laid down by the Supreme Court in the **Asiad Workers**⁶ case. The matter was brought to the notice of the court by means of a letter which was treated as a writ petition on the judicial side. The court started enquiry into the allegations of violations of various labour laws in relation to workmen employed in the construction works of various projects connected with the Asian Games. In the course of the judgement, P.N. Bhagwati J (as he then was) made certain revealing statements such as "mere initiation of social and economic rescue programmes by the Executive and Legislature would not be enough and it is only through multi dimensional strategies, including public interest litigation, that these and economic rescue programmes can be effective". About the role of judiciary, he said, "the time has now come when the courts must become the courts of the poor and the struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitivised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of law is changing. It holds out great possibilities for the future". He spoke about the legal profession as well. "There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach".

Bandhu Mukti Morcha v. Union of India⁷, it has been held that the provisions conferring on the Supreme Court the power to enforce fundamental rights in the widest possible terms show the anxiety of the Constitution-makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. It is not at all obligatory that an adversary procedure must be followed in proceedings under Art. 32 for the enforcement of fundamental rights. There is no such compulsion in clause (2) of Art. 32 or in any other part of the Constitution. Public interest litigations for the enforcement of fundamental rights is very much included in Art. 32.

Child Welfare

In **Lakshmi Kant Pandey v. Union of India**,⁸ a writ-petition was filed on the basis of a letter complaining of malpractices indulged in by social organisation and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents.. Bhagwati, J. (as he then was) laid down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents. With the object of ensuring the welfare of the child his Lordship directed the Government and various agencies dealing with the matter to follow these principles in such cases as it is their constitutional obligation under Arts. 15 (3) and 39 (c) and (f) to ensure the welfare of the child.

In **M. C. Mehta v. State of Tamil Nadu**,⁹ it has been held that the children cannot be employed in match factories which are directly connected with the

manufacturing process as it is a hazardous employment within the meaning of Employment of Children Act, 1938. They can, however, be employed in packing process but it should be done in area away from the place of manufacture to avoid exposure to accidents. Every children must be insured for a sum of Rs. 5000/- and premium to be paid by employer as a condition of service.

Pro bono publico

PIL has developed its institutional roots by the judgement of the Supreme Court in Judges case which held “any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right to such person or determined class of persons in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determined class of persons, where the weaker sections of the community are concerned, such as under trials languishing in jails, inmates of the protective home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have an easy access to justice, this court will not insist on a regular writ petition to be filed by the public spirited individual espousing their case and seeking relief for them. This court will readily respond even to a letter addressed by such individual acting pro bono publico.”

Duty of Government

When the petitions are filed in the interest of the public the governments are not expected to raise technical objections saying that no fundamental rights of the petitioners or the workmen on whose behalf the petition has been filed, have been infringed. On the contrary, the government should welcome an inquiry by the court if it is found that the citizens are deprived of their legitimate rights under the Constitution. In this regard, it would be necessary to mention the petition filed on behalf of the public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedom conferred upon him by the Constitution. A confession made by him in a proceeding, whether he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceedings. Such a confession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forgo his precious personal freedom on promise of transitory, immediate benefits.”

Right to livelihood

The Supreme Court further observed that “the right to life includes the right to livelihood. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation

would not have to be in accordance with the procedure established by law, if the right to life is conceded. That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life¹⁰¹⁰

Conclusion

Public Interest Litigation (PIL) stands as a landmark judicial innovation that transformed the Indian Supreme Court into a proactive institution of social justice. By relaxing the traditional rule of locus standi and simplifying procedural hurdles, the judiciary democratized access to justice—ensuring that the fundamental rights of the poor, marginalized, and disenfranchised are actively protected. From safeguarding human rights and environmental protection to curbing administrative apathy, the Supreme Court's creative interpretation of Article 21 has continuously redefined the contours of equitable governance. However, the enduring success of PIL hinges on maintaining a careful balance. To prevent judicial overreach and preserve the constitutional separation of powers, the apex court must vigilantly filter out frivolous, politically motivated, or commercially driven petitions. When exercised with prudent restraint and social sensitivity, Public Interest Litigation will remain an indispensable instrument for advancing social justice, strengthening accountability, and upholding the democratic ethos of the Indian Constitution.

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Reference-

1. AIR 1984 SC 802.
2. AIR1976SC1455
3. AIR 1983SC339
4. The People's Union for Democratic Rights (PUDR) is an independent, voluntary civil liberties organization based in Delhi, India. Established originally in 1977 and adopting its current name on February 1, 1981, it investigates human rights violations, publishes fact-finding reports, and uses legal action to protect marginalized
5. Locus standi is a Latin term that literally means "place to stand". In English law, it translates to the legal right or capacity of a person to bring a lawsuit, appear in court, or be heard on a specific matter
6. AIR 1982 SC 1473.
7. AIR1984SC802
8. (1984) 2 SCC 244; See also Laxmi Kant Pandey v. Union of India, (1987) 1 SCC 667; Sheela Barse v. Secretary, Children Aid Society, (1987) 3 SCC 50.
9. AIR 1991 SC 417.

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