

PUBLIC INTEREST LITIGATION: A CHILD OF JUDICIAL ACTIVISM

Shriya Tukaram Nandedkar*

ABSTRACT

The core of the paper lies in the introduction of public interest litigation, a very important aspect of judicial activism in India. The history of PILs in India has been significant and the same has been discussed in this article. This provides a brief idea about the evolution of public interest litigation in India to the readers along with the contemporary issues that led to the acceptance of public interest litigation in the system. Further, the concept of PIL has been discussed analytically which can give answers to the questions that may arise in an attempt to understand what a PIL is. The central idea of the paper is to provide the readers with information related to PIL in simple and lucid language.

INTRODUCTION

The legal and judiciary system of India is primarily based on the principle of Justice, Equity, and Good Conscience. When the statutes do not provide for a specific problem, this principle is always looked at as a last resort. The game-changing product of judicial activism in India i.e., Public Interest Litigation, commonly known as PIL is the result of this principle if dug deep into the history of PILs in India. The concept of public interest litigation has provided a pathway for the Indian judiciary to provide its citizens the guarantee of justice even in adverse circumstances such as poverty, illiteracy, etc. This suggests that the thought behind introducing the concept of Public Interest Litigation in India was to provide justice, equity, and good conscience by way of admitting an unconventional yet effective approach to resolving the issues involving the interest of the general public.

HISTORY OF PUBLIC INTEREST LITIGATION

As seen earlier, the necessity to resolve the issues affecting the interest of the general public drew the attention of the judiciary system to the public-friendly approach of filing public interest litigations for the welfare and protection of public interest. The first public interest litigation in India was filed in the year 1979, in the case of Hussainara Khatun v. Home

*LLB, SECOND YEAR, GOVERNMENT LAW COLLEGE, MUMBAI.

Secretary, State Of Bihar, 1979 AIR 1369¹, before the bench of N. Bhagwati, P.N.Desai, D.A. Mrs. Hingorani, an advocate had filed a petition concerning the plight of 17 undertrial detainees many of whom were detained for allegedly having committed petty offenses, beyond the period of imprisonment that would have been imposed upon them had they been charged with the offenses.

The petitioner had prayed for the release of these prisoners by filing a habeas corpus writ petition before the Hon'ble supreme court as their detainment was violative of Article 21 of the Indian Constitution. Article 21 of the Constitution says, "No person shall be deprived of his life or personal liberty except according to procedure established by law." The petitioner contended that the unreasonable imprisonment of those detainees amounted to false imprisonment which infringed the fundamental right given under Article 21 of the Constitution which enunciates the right to life and personal liberty. The respondents submitted that the delay in carrying out and concluding the trials was because of the delay in receiving the experts' opinions. The court in its judgment said that the respondent's contention is not satisfactory as there are many alternatives they could have considered. The court concluded that the imprisonment indeed resulted in the violation of Article 21 of the Constitution. It was also directed to provide free legal aid to those who could not afford to hire legal aid.

The Landmark case of Hussainara Khatun is called the mother case of public interest litigation in India. Similarly, N. Bhagwati may be called the pioneer judge of PILs in India. However, the first judge to mention public interest litigation in India was Justice Krishna Iyer in the case of *Mumbai Kamgar Sabha v. M/s Abdulbhai Faizullabhai and others*, 1976 (3) SCC 832.²

WHAT IS PUBLIC INTEREST LITIGATION?

Public Interest Litigation is as its very name suggests, a type of litigation that essentially deals with issues having the potential to harm the public interest. There are various issues such as poverty, food adulteration, environmental protection, labor payments, etc., that affect the interest of the public at large. Many times though these problems may seem to be affecting only one person when looked at from a wider angle the intensity and depth of these

¹ Hussainara Khatun v. Home Secretary, State of Bihar, 1979 AIR 1369

² Mumbai Kamgar Sabha v. M/s Abdulbhai Faizullabhai and others, 1976 (3) SCC 832.

issues to take the pleasures and interests away from the general public cannot be neglected. Therefore, public interest litigation is allowed to be filed when the cases come within the arena of the above-mentioned topics.

The introduction of public interest litigation into the Indian judiciary system has relaxed the principle of Locus Standi. According to the principle of locus standi, only the person who has been affected adversely by an action or whose legal rights have been infringed may move the court. The essence of the principle is that no person other than the one who has suffered the legal injury shall apply for the restoration of the legal rights, the infringement of which has resulted in the legal injury. This principle prevents the advantage from being taken of somebody else's lack of knowledge or disability. However, due to the inception of public interest litigation, the postulate of locus standi has been alleviated. According to the theory of PIL, someone who has not been directly affected by the issue may also file a petition for the same if the issue in question affects the interest of the public at large.

Public interest litigation is one kind of writ petition. A writ is a command given by the court to do something or refrain from doing something in order to enforce and protect the fundamental rights enshrined in the constitution of India, 1949³. The Hon'ble High Courts and the Hon'ble Supreme Court enjoy the writ jurisdiction under ⁴article 226 and article 32⁵ of the Constitution of India ⁶respectively. Both the High Court and the Supreme Court can decide on the public interest litigations filed. However, the High Court and the Supreme Court solely shall have the power to decide whether or not to entertain the PILs filed.

A citizen of India or even an organization may file a public interest petition. The only precaution that needs to be taken is to see whether the petition complies with all the guidelines or not and whether the petition has not been filed for some personal benefit. The flexibility and open nature of PILs have made them a popular tool of natural justice in a short period.

PUBLIC INTEREST LITIGATION ITS SCOPE AND INDIAN JUDICIARY

No statute in India provides for Public Interest Litigation. PIL in India is the depiction of freedom used by the Indian judiciary for guaranteeing justice. A public interest litigation can

³ The Constitution of India 1949

⁴ Ibid, Article 226

⁵ Ibid, Article 32

⁶ Ibid

be filed for any purpose where the interest of the general public is mentioned. To name a few, terrorism, healthcare, environmental protection, workers' wages, child education, women empowerment, etc. The list is inclusive as it solely depends upon the nature and scope of the contemporary issue. India has also witnessed the rejection of admitting PIL by the courts where the PILs were being filed for personal profits of political or individual nature. There are several PILs filed for the protection of the environment by M.C. Mehta such as **The Taj Mahal Case**⁷, **Ganga Pollution Case**⁸, **Protecting the Beas River**⁹, **Oleum Gas Leak Case**¹⁰, etc. **No wonder Mr. M.C. Mehta is known as the Green Man. Similarly, Justice Kuldeep Singh is known as the Green Judge of India as he has passed several judgments on PILs related to environmental issues.**

India has also witnessed the rejection of admitting PIL by the courts where the PILs were being filed for personal profits of political or individual nature. The abuse of the PIL and wastage of the court's time is in no way tolerated as the sole purpose of the Indian Judiciary system in India is to provide justice to the Indian public and not to provide anyone with any kind of personal benefits (The reason why Indian judiciary is one of the most efficient functioning systems in the world). This shows the separate existence of the judiciary from other arms such as the legislature, state, etc. A public interest litigation cannot be filed against any private person. It can be filed by any Indian citizen or even an organization only against the state, municipalities, etc.

HOW CAN A PIL BE FILED?

The petitioner who wishes to file a PIL may write a letter to the Chief Justice of India or the Chief Justice of the High Court as the case may be. The chief justice then decides on the admission of the public interest litigation. The clerical or office staff has no say in the matter of admitting a public interest litigation. There are instances when the courts have accepted a PIL even through the newspaper content if they found it to be satisfactory.

CONCLUSION

Public Interest Litigation in India has proven to be a significant evolution in the history of judicial activism. The prompt steps taken towards the implementation of the same into the

⁷ M.C. Mehta v. Union of India, 1987 AIR 1086, 1987 SCR (1) 819

⁸ M.C. Mehta v. Union of India, 1988 AIR 1115, 1988 SCR (2) 530

⁹ Mehta v. Kamal Nath and Others [(1997) 1 SCC 388]

¹⁰ M.C. Mehta & Anr. v. Union of India & Ors, 1987 AIR 965, 1986 SCR (1) 312

system have led to the speedy and less cumbersome resolution of the various issues adversely affecting the public interest. At times, the PILs were also used for personal gain but, the stringent actions of the honorable courts and their focus on providing pure justice saved the PILs from being a tool to be used for self-interest. In the upcoming days, public interest litigation would certainly be recognized as a statement practice in India that works for the betterment and welfare of the country further improving the overall situation of the country be it healthcare, women's situation, child education, or anything which potentially can affect the public at large.

