

Public Interest Litigation

Social Change and Public Interest Litigation in India

Social change is the necessity of any society. In India it is done through Public Interest Litigation. In this article an attempt was made to assess the impact of PIL over Indian Society. The jurisprudence of PIL is necessary to understand the nature of PIL in India.

Such is the disillusionment with the state formal legal system that it is no longer demanded by law to do justice, if justice perchance is done, we congratulate ourselves for being fortunate. In these circumstances one of the best things that have happened in the country in recent years is the process of social reform through Public Interest Litigation or Social Action Litigation.

Late 1970s marked discernible shift from legal centralism. Legal pluralism was very apparent now. It was realized that social conduct was regulated by the interaction of normative orders, notion of popular justice, community justice, and distributive justice were sought to be institutionalised, though outside the sphere of the formal legal system and in opposition to it.

Necessity of informal justice

Necessity of informal justice, whether as an alternative to state law or as to its agent to find its identity in opposition to state law stems from the nature of Anglo-Saxon law prescribing legal formalism and due to the failure of formal legal system to deliver justice that forced informal justice to take on a separate identity from state law. The British rule bequeathed to India a colonial legal heritage. The Anglo-Saxon model of adjudication insisted upon observance of procedural technicalities such as locus standi and adherence to adversarial system of litigation. The result was that the courts were accessible only to the rich and the influential people. The marginalized and disadvantaged groups continued to be exploited and denied basic human rights.

Public Interest Litigation as exists today

PIL today offers such a paradigm which locates the content of informal justice without the formal legal system. Non Anglo-Saxon jurisdiction directs courts to transcend the traditional judicial function of adjudication and provide remedies for social wrongs. PIL had already molded the state in to the instrument of socio-economic change. Social justice is the byproduct of this transcends from the formal legal system.

Evolution of Public Interest Litigation

The Indian PIL is the improved version of PIL of U.S.A. According to “Ford Foundation” of U.S.A., “Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others”. The emergency period (1975-1977) witnessed colonial nature of the Indian legal system. During

emergency state repression and governmental lawlessness was widespread. Thousands of innocent people including political opponents were sent to jails and there was complete deprivation of civil and political rights. The post emergency period provided an occasion for the judges of the Supreme Court to openly disregard the impediments of Anglo-Saxon procedure in providing access to justice to the poor. Notably two justices of the Supreme Court, Justice V. R. Krishna Iyer and P. N. Bhagwati recognised the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. In the post-emergency period when the political situations had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression, custodial violence, drawing attention of lawyers, judges, and social activists. PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists. This trend shows stark difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role. PIL is necessary rejection of laissez faire notions of traditional jurisprudence.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In *Hussainara Khatun v. State of Bihar*, AIR 1979 SC 1360, the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of undertrial prisoners languishing in various jails in Bihar. These proceedings led to the release of more than 40,000 undertrial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

In 1981 the case of *Anil Yadav v. State of Bihar*, AIR 1982 SC 1008, exposed the brutalities of the Police. News paper report revealed that about 33 suspected criminals were blinded by the police in Bihar by putting the acid into their eyes. Through interim orders S. C. directed the State government to bring the blinded men to Delhi for medical treatment. It also ordered speedy prosecution of the guilty policemen. The court also read right to free legal aid as a fundamental right of every accused. *Anil Yadav* signalled the growth of social activism and investigative litigation.

In *(Citizen for Democracy v. State of Assam)*, (1995) 3SCC 743, the S. C. declared that the handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or while in transport or transit from one jail to another or to the court or back.

Concept of PIL

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". Ordinarily, only the aggrieved party has the right to seek redress under Article 32.

In 1981 Justice P. N. Bhagwati in *S. P. Gupta v. Union of India*, 1981 (Supp) SCC 87, articulated the concept of PIL as follows, "Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or

legal injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.”

The rule of locus standi have been relaxed and a person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration (Ashok Kumar Pandey v. State of W. B., (2004) 3 SCC 349).

Supreme Court in Indian Banks’ Association, Bombay and ors v. M/s Devkala Consultancy Service and Ors., J. T. 2004 (4) SC 587, held that “In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus a private interest case can also be treated as public interest case”.

In Guruvayur Devaswom Managing Commit. And Anr. Vs. C.K. Rajan and Ors, J.T. 2003 (7) S.C. 312, S.C. held, “The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persona. It expanded its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by pass the, real issues on the merits by suspect reliance on peripheral procedural shortcomings... Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice”.

Aspects of PIL

(a) Remedial in Nature

Remedial nature of PIL departs from traditional locus standi rules. It indirectly incorporated the principles enshrined in the part IV of the Constitution of India into part III of the Constitution. By riding the aspirations of part IV into part III of the Constitution had changed the procedural nature of the Indian law into dynamic welfare one. *Bandhu Mukti Morcha v. Union of India*, *Unnikrishnan v. State of A.P.*, etc were the obvious examples of this change in nature of judiciary.

(b) Representative Standing

Representative standing can be seen as a creative expansion of the well-accepted standing exception which allows a third party to file a habeas corpus petition on the ground that the injured party cannot approach the court himself. And in this regard the Indian concept of PIL is much broader in relation to the American. PIL is a modified form of class action.

(c) Citizen standing

The doctrine of citizen standing thus marks a significant expansion of the court's rule, from protector of individual rights to guardian of the rule of law wherever threatened by official lawlessness.

(d) Non-adversarial Litigation

In the words of S. C. in *People's Union for Democratic Rights v. Union of India*, AIR 1982 S.C. 1473, "We wish to point out with all the emphasis at our command that public interest litigation...is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief". Non-adversarial litigation has two aspects.

1. Collaborative litigation; and
2. Investigative Litigation

Collaborative Litigation: In collaborative litigation the effort is from all the sides. The claimant, the court and the Government or the public official, all are in collaboration here to see that basic human rights become meaningful for the large masses of the people. PIL helps executive to discharge its constitutional obligations. Court assumes three different functions other than that from traditional determination and issuance of a decree.

- (i) **Ombudsman-** The court receives citizen complaints and brings the most important ones to the attention of responsible government officials.
- (ii) **Forum** – The court provides a forum or place to discuss the public issues at length and providing emergency relief through interim orders.
- (iii) **Mediator** – The court comes up with possible compromises.

Investigative Litigation: It is investigative litigation because it works on the reports of

the Registrar, District Magistrate, comments of experts, newspapers etc.

(e) Crucial Aspects

The flexibility introduced in the adherence to procedural laws. In *Rural Litigation and Entitlement Kendra v. State of U.P.*, (1985) 2 SCC 431, court rejected the defense of *Res Judicata*. Court refused to withdraw the PIL and ordered compensation too. In *R.C. Narain v. State of Bihar*, court legislated the rules for the welfare of the persons living in the mental asylum. To curtail custodial violence, Supreme Court in *Sheela Barse v. State of Maharashtra*, issued certain guidelines. Supreme Court has broadened the meaning of Right to live with human dignity available under the Article 21 of the Constitution of India to a greatest extent possible.

(f) Relaxation of strict rule of Locus Standi

The strict rule of locus standi has been relaxed by way of (a) Representative standing, and (b) Citizen standing. In *D.C. Wadhwa v. State of Bihar*, AIR 1987 SC 579, S.C. held that a petitioner, a professor of political science who had done substantial research and deeply interested in ensuring proper implementation of the constitutional provisions, challenged the practice followed by the state of Bihar in promulgating a number of ordinances without getting the approval of the legislature. The court held that the petitioner as a member of public has 'sufficient interest' to maintain a petition under Article 32.

The rule of locus standi have been relaxed and a person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration...court has to strike balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive and the legislature (*Ashok Kumar Pandey v. State of W. B.*, (2004) 3 SCC 349).

It is depressing to note that on account of trumped-up proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though the Supreme Court spares no efforts in fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard (*Ashok Kumar Pandey v. State of W. B.*, (2004) 3 SCC 349).

(g) Epistolary Jurisdiction

The judicial activism gets its highest bonus when its orders wipe some tears from some eyes. This jurisdiction is somehow different from collective action. Number of PIL cells was open all over India for providing the footing or at least platform to the needy class

of the society.

Features of PIL

Through the mechanism of PIL, the courts seek to protect human rights in the following ways:

- 1) **By creating a new regime of human rights** by expanding the meaning of fundamental right to equality, life and personal liberty. In this process, the right to speedy trial, free legal aid, dignity, means and livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, bondage and servitude, exploitation and so on emerge as human rights. These new reconceptualised rights provide legal resources to activate the courts for their enforcement through PIL.
- 2) **By democratization of access to justice.** This is done by relaxing the traditional rule of locus standi. Any public spirited citizen or social action group can approach the court on behalf of the oppressed classes. Courts attention can be drawn even by writing a letter or sending a telegram. This has been called epistolary jurisdiction.
- 3) **By fashioning new kinds of relief's** under the court's writ jurisdiction. For example, the court can award interim compensation to the victims of governmental lawlessness. This stands in sharp contrast to the Anglo-Saxon model of adjudication where interim relief is limited to preserving the status quo pending final decision. The grant of compensation in PIL matters does not preclude the aggrieved person from bringing a civil suit for damages. In PIL cases the court can fashion any relief to the victims.
- 4) **By judicial monitoring of State institutions** such as jails, women's protective homes, juvenile homes, mental asylums, and the like. Through judicial invigilation, the court seeks gradual improvement in their management and administration. This has been characterized as creeping jurisdiction in which the court takes over the administration of these institutions for protecting human rights.
- 5) **By devising new techniques of fact-finding.** In most of the cases the court has appointed its own socio-legal commissions of inquiry or has deputed its own official for investigation. Sometimes it has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or experts to inquire into human rights violations. This may be called investigative litigation.

PIL as an Instrument of Social Change

PIL is working as an important instrument of social change. It is working for the welfare of every section of society. It's the sword of every one used only for taking the justice.

The innovation of this legitimate instrument proved beneficial for the developing country like India. PIL has been used as a strategy to combat the atrocities prevailing in society. It's an institutional initiative towards the welfare of the needy class of the society. In *Bandhu Mukti Morcha v. Union of India*, S.C. ordered for the release of bonded labourers. In *Murli S. Dogra v. Union of India*, court banned smoking in public places. In a landmark judgement of *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14, Supreme Court issued guidelines for rehabilitation and compensation for the rape on working women. In *Vishaka v. State of Rajasthan* Supreme court has laid down exhaustive guidelines for preventing sexual harassment of

working women in place of their work.

Conclusion

It would be appropriate to conclude by quoting Cunningham, “Indian PIL might rather be a Phoenix: a whole new creative arising out of the ashes of the old order.”

PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries. It contests the assumption that the most western the law, the better it must work for economic and social development such law produced in developing states, including India, was the development of under develop men.

The shift from legal centralism to legal pluralism was prompted by the disillusionment with formal legal system. In India, however instead of seeking to evolve justice-dispensing mechanism ousted the formal legal system itself through PIL. The change as we have seen, are both substantial and structural. It has radically altered the traditional judicial role so as to enable the court to bring justice within the reach of the common man.

Further, it is humbly submitted that PIL is still is in experimental stage. Many deficiencies in handling the kind of litigation are likely to come on the front. But these deficiencies can be removed by innovating better techniques. In essence, the PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. We may end with the hope once expressed by Justice Krishna Iyer, “The judicial activism gets its highest bonus when its orders wipe some tears from some eyes”.

(Sources: By Advocate Jasper Vikas George 08/03/2005)

