



## PUBLIC INTEREST LITIGATION-BOOM & BANE

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PIL is the process of transformation of non-being into human beings and what its involved is eloquently described in the beautiful lines of Revinder Nath Tagore.

“Into the months of these dumb, pole and weak.  
We have to infuse the language of the soul.  
Into the hearts of their weary and worn, any and forlorn,  
We have to minister the language of humanity.”

Some how with this objective in mind our judiciary might have taken the golden step of litigation in the interest of public. Public Interest Litigation means a case filed in the court of law by public spirited person with the intention to get relief for a poor and downtrodden persons or group of persons. Advanced Law Lexicon has defined ‘Public Interest Litigation’ as : “The expression ‘PIL’ 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 the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.”<sup>1</sup> Supreme Court in *People’s Union for Democratic Rights & Others v Union of India & Others*<sup>2</sup> defined ‘Public Interest Litigation’ and observed that the “Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society.”

The emergence of PIL has recognized that the right to elective ‘access to justice’ is the most basic and fundamental human right in the welfare state which guarantees social rights. The court have liberalized the standard of locus standi to meet the challenges of the time. The PIL movement in the United States, has involved innovative uses of the law, lawyers and courts to secure greater fidelity to the parlous notions of legal liberalism and interest group, in an advanced industrial capitalistic society. PIL in India has acquired certain unique characteristics not found any where else. For instance, the courts have entertained letter, post-cards, telegram relating to any legal grievance of poor masses, addressed to the judge or to the court by any public inspired person as writ petition under Article 32 or Article 226. Secondly, the PIL movement in India is primarily ‘judge – induced, thus advocating active assertion of judicial power to ameliorate the miseries of masses.

With the emergence of the PIL in Indian legal system, two school of thought have simultaneously emerged. One school considers the PIL as unwarranted expansion of ‘judicial power which is aimed at upsetting the already well established principles,



as an encroachment on the legislative as well as executive power and as a conspiracy on the part of lawyers, judges, press and social – organizations to under mine the democratic process. On the other hand, the other school considers the PIL on an important strategy to represent the unrepresented and unorganized interest in the various social and political processes, to reach the socio-economic justice to the unorganized poor-masses of the country through judicial process in case failure of the other organs of the state in this respect; and to make the democratic system in India a participative democratize system in India. The emergence of PIL raise several fundamental questions relating to the role of the court, role of the lawyers, role of people, role of voluntary groups and organizations and role of press. The social back drop of the problem in India is projected in the lines of poetry quoted in Nehru's auto-biography.

“Bowed by the weight of centuries he leans,  
“Upon his hoe and grazes on the ground,  
“The emptiness of ages on his trace on mistake, and on his back the burden of the world.”

Over 30 Public Interest Litigations pertaining to issues of a wide spectrum which ideally should dealt by the executive are currently pending in the High Courts and Supreme Court by activist like M.C. Mehta, B.L. Wadhwa common cause society etc<sup>3</sup>. In *Shriram Food & Fertilizer case*,<sup>4</sup> the court through Public Interest Litigation directed the Co., manufacturing hazardous & lethal chemical and gases, posing danger to life and health of workmen & take all necessary safety measures before re-opening the plant. In the case of *M.C. Mehta v Union of India*<sup>5</sup>, Public Interest Litigation was brought against the Ganga water pollution so as to prevent any further pollution of the Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of the Ganga water. In *Parmanand Katara v Union of India*<sup>6</sup> - Supreme Court held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities. In the case of *State v Union of India*<sup>7</sup> it was held that Public Interest Litigation is a strategic arm of the legal aid movement which intended to bring justice. Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be abused and misused by the vested interest.

Rule of locus standi was relaxed and modified by the Courts in India in the cases of writs like habeas corpus and quo warranto. The rule of locus standi was also diluted by the Supreme Court in the cases of new branch of proceedings under Articles 32 and 226 known as public interest litigation. This jurisdiction conferred on the Supreme Court by Article 32 is an important and integral part of the basic structure of the Constitution. The fundamental rights may become meaningless without providing an effective remedy for their enforcement. The proceedings of public interest litigation



or social action litigation attempts to provide an adequate and effective remedy for the enforcement of the fundamental rights. At the beginning the Supreme Court started to encourage the public spirited citizens who are moving the Court for the purpose of vindicating the rights of poor masses. In appropriate cases the Court started to direct the State to pay to the petitioner costs of the petition. A petitioner need not to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for enforcement of the fundamental right of the poor and deprived sections of the community. It was well settled that the public interest litigation could be initiated by means of letters and telegrams addressed to the Court. The letter or telegram addressed to an individual justice of the Court cannot also be rejected merely on the ground that it is not addressed to the Court. In other words a letter or telegram addressed by a public spirited citizen can legitimately be regarded as an 'appropriate proceeding' for the purposes of Article 32 of the Constitution. In addition to this a letter or telegram may be unsupported by an affidavit. The Court found that the purpose of jurisdiction under Article 32 would be frustrated if the Court insists on an affidavit as a condition of entertaining the letter as petition. The Court has liberalized the technical procedural laws, especially the law relating to pleadings, applicable to public interest litigations. When a matter of grave public importance is for consideration before the Court every technicality in the procedural law shall not be available as a defence. The Court may also appoint a Commission or other body for the purpose of investigation of facts to reduce burden of the petitioner to make expenses to collect evidence. The Supreme Court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich, the businessmen and the industrialists. The weaker sections of Indian humanity have had no access to justice on account of their poverty, ignorance and illiteracy. The strategy of public interest litigation has been evolved by the Supreme Court with a view to bring justice within the easy reach of the poor and the disadvantaged sections of the community. The Supreme Court in *Bandhua Mukti Morcha v Union of India*<sup>8</sup> considered that the public interest litigation is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the down-trodden sections of the community. The Supreme Court recently in *Guruvayur Devaswom Managing Committee v C.K. Rajan*<sup>9</sup> summarized the principles in regard to the nature and scope of the public interest litigation under Article 32 and Article 226 of the Constitution of India.

One Shri C.K. Rajan addressed a letter dated 3.2.1993 to one of the Hon'ble Judges of the High Court of Kerala and thereby bringing to his notice purported serious irregularities, corrupt practices, mal-administration and mismanagement prevailing in the temple. He was called by the High Court and its Registrar recorded his statement on 11.2.1993. The said letter was treated as an original petition under Article 226 of the Constitution of India. The High Court in its order dated 12.2.1993 highlighted 23 aspects of the matter which had been brought to its notice and appointed one Shri S. Krishnan Unni, District Judge Officiating as the Director of Training, High Court of Kerala as the Commissioner to make a general enquiry and in particular make a study



on the various aspects highlighted in the said complaint. The court held that 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.

The Supreme Court has expanded the wings of public interest litigation in the course of time. The instrument of public interest litigation has served to protect the human rights of poor and disadvantaged masses. It has covered several areas of litigations. The Supreme Court has used the jurisdiction for prohibition of exploitation of workmen, enforcing the rights of children employees, and release of bonded labourers. It was used for the eradication of the child prostitution, devadasi system, and rescue and rehabilitation, through various welfare measures, of prostitutes and their children. The Court has used the instrument of public interest litigation for seeking relief against mala fide acts of the public servant in the discharge of his functions as public servant, protection of the environment and the people's right to natural resources, release of under trials on bail and to direct the speedy trial, seeking release of children below 16 years detained in jails, to direct the CBI to conduct investigation as to corruption, and also for the protection of independence of the judiciary. The public interest litigation was also used by the Court to award the monetary compensation in appropriate cases of violations of right to life personal liberties. The award of compensation in public interest litigation proceeding is the admirable and pleasant idea of providing justice to the poor and disabled victims of violations of right to life personal liberties. The public interest litigation has opened a new dimension of providing justice and has given new hope to the justice-starved millions of Indians. The Supreme Court of India has made the significant use of its public interest litigation jurisdiction.

Conclusion- The general objectives of public interest litigation can be summarised as follows:

- Increasing respect for the law
- Restoring confidence in the law and the justice delivery system
- Redress and compensation for victims and survivors
- Monitoring human rights violations and trends
- Documentation of human rights violations (the victims, the violation and the offender)
- Fighting lawlessness



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- Strengthening the Constitution
  - Fighting against impunity which is fuelling lawlessness and the breakdown of the rule of law
  - Introducing personal accountability to State actors like policeman, war veterans, soldiers, intelligence officers and other public officials
  - Introducing institutional and collective accountability to police, army, State organs and Ministries
  - Pursuing human rights violators or representative state organs to justice
  - Creating a basis for international litigation or lobbying or advocacy by exhausting domestic remedies.

The expected outcomes of public interest litigation in general can be summarised as follows:

- Restoration of and respect for the rule of law
- Restoration of public confidence in the justice delivery system
- Restoration of professionalism in, and de-politicisation of, the police force and other state organs
- Accountability in the public sector
- Improvement of the human rights situation in India
- There are also occasions where individuals or organizations try to move the Court to entertain causes for which there are effective remedial mechanism within the judiciary or other organs of state. PIL should be confined to cases where a legal wrong or legal injury is caused to a determinate class or groups of persons or note that some members of the bar and even the bench are responsible for some of these inordinate adjournments.
- It must further be noted that in handling PIL matters there is always a lingering possibility of failing to distinguish between standing and justifiability. Protagonists of PIL must remember that it is not every default on the part of the state or public agency that is unjustifiable. As stated by Bhagwati, J. in *S.P. Gupta v. Union of India*<sup>10</sup>, courts must therefore be very careful and should not make decisions which would amount to trespassing into areas which are the reserve of the executive and the legislature in accordance with the provisions of the Constitution.
- PIL courts must be aware of the fact that there is a danger of giving relief to a person, group of class or people who seek no such relief if the court entertains a cause in which there is group injury by an act or omission of the state or public authority and such act or omission causes specific injury to an individual



or a specific class who though injured do not maintain any action. Secondary public injury cannot be used to maintain a PIL action.

In *SachidanandPandeyv. State of West Bengal* Khalid, J.<sup>11</sup> warned, and we concur, that there has to be a systematized system of receiving and dealing with PIL cases. Refusing to accept them under lame excuses is repugnant to the rendering of justice but a haphazard chaotic system of dealing with PIL matters can also defeat the ends of justice. It is pertinent also that there must be some restraints which are self imposed by public minded persons in their approach to the court so that the doors of justice are opened only to those who need them and so as to avoid “impairing the dignity, authority and functional disposition of the court” as per Venkatachaliah J. in *Sheela Barse v. Union of India*<sup>12</sup>. In dealing; with PIL matters the courts must also be careful to ensure that politicians are not allowed to flout their influence to delay administrative action or to gain political objective. Both actions may be injurious or groups of persons who may then hold PIL and the courts in disrepute.

<sup>1</sup><http://www.legalblog.in/2011/02/public-interest-litigation-definition.html>, (Site last visited, 28/2/12).

<sup>2</sup> (1982) 3 SCC 235.

<sup>3</sup> The Times of India Delhi Edn. Dt. 23th Nov. 2000

<sup>4</sup> M.C. Mehta v Union of India AIR (1986) 2 SCC 176.

<sup>5</sup> (1988) 1 SCC 471.

<sup>6</sup> AIR 1989 SC 2039.

<sup>7</sup> AIR 1996 Cal 218.

<sup>8</sup> Supra .

<sup>9</sup> AIR 2003 SC 312.

<sup>10</sup> Supra note

<sup>11</sup> (1987) 7 SCC 295

<sup>12</sup> AIL 1988 SC 2211