

**JUSTICE P.N. BHAGWATI AND HIS CONTRIBUTIONS TO INDIAN
JURISPRUDENCE**

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Abstract

In 1986, India's then Chief Justice P. N. Bhagwati introduced to the Indian judiciary the concept of public interest litigation (PIL), which is based on the western jurisprudence principle of salus populi est suprema lex (welfare of the people is the supreme law). Widening the scope of justice and lowering the requisites of locus standi in writ jurisdiction, PIL offered the society's poor, illiterate and underprivileged sections access to justice. PIL empowered the courts to address the plight of society's downtrodden sections. Through the doctrinal methodology of research, this paper traces the introduction of public interest litigation in India and its evolution into epistolary jurisdiction. It also briefly dwells on a few milestone PIL cases that delivered much-needed justice with respect to issues of fundamental rights of citizens, and in labour, environment and other crucial sectors. Finally, it focuses on the increasing misuse of PILs by privately motivated groups, acting under the garb of public interest, and consequently, the limitations on PILs placed by Justice Bhagwati and the guidelines laid down by the Supreme Court for admissibility of PILs. In conclusion, the paper argues that, PIL being a strong tool to serve the society, the courts should exercise a strict check upon its misuse by unscrupulous elements.

Keywords: Public Interest Litigation, Salus Populi est suprema lex, writ jurisdiction, epistolary jurisdiction

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Introduction

The object of traditional judicial system was to solve disputes between private parties. It assigned a passive role to the courts. It assumed that people are aware of their rights. But what brought about a radical change in the traditional judicial system was the concept of public interest litigation. It introduced the notion of judicial activism and promoted the pro-active role of judges.

In western jurisprudence *salus populi est suprema lex* (welfare of the people is the supreme law) has been the basis of civil law. Justice P. N. Bhagwati is considered a *supporter* of the sociological school of jurisprudence, which aims at securing social interests and deems law as a tool to serve the society. He firmly believed in the doctrine of *salus populi est suprema lex*.

It was in 1986 in India that the then Chief Justice P. N. Bhagwati introduced the concept of public interest litigation to the Indian judiciary. Public interest litigation is based on the same doctrine and is meant to widen the scope of justice, especially to provide the society's poor, illiterate and underprivileged sections access to justice.

The introduction of public interest litigation (hereinafter referred to as PIL) gave birth to a new form of jurisdiction named the epistolary jurisdiction wherein under certain conditions even a letter addressed to the court could be considered as a writ petition.

It, however, proved to be a double-edged sword. The lowering of requisites of locus standi has prompted many privately motivated groups, posing as public interest, to exploit the PILs to further their own vested interests. Thus, nowadays the rampant misuse of PILs is growing and which, in turn, is posing a challenge before the Apex Court and the High Courts in terms of the validity and admissibility of PILs.

History of Public Interest Litigation

The term "Public Interest Law" became widely adopted in the United States during and after the social turmoil of the 1960s. It built on a tradition exemplified by Louis Brandeis, who before becoming a U.S. Supreme Court justice, incorporated into his legal practice advocacy for the interests of the general public.

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.”²

Until the 1980s only the aggrieved party could approach the courts and seek remedy for his/her grievances and it was only the aggrieved party which had the *locus standi* to seek the remedy. Thus, the basic purpose of the constitution makers was defeated as the weaker sections of the society were still excluded from justice and their basic rights.

The traditional view of principle of *locus standi* in writ jurisdiction allows only the person to file a writ in the court of law, who

- a) has suffered a legal injury by reason of violation of his legal right or his legally protected interest.
- b) is likely to suffer a legal injury by reason of violation of his legal right or his legally protected interest.

Therefore, to file a writ petition, a person must have either suffered or was likely to suffer “in person” the violation of his fundamental right.

The Concept of PIL in India

One of the pivotal roles of judiciary is to protect the fundamental rights of the citizens. For the enforcement of fundamental rights, one has to invoke writ jurisdiction of the Supreme Court or the High Courts. But the high cost and cumbersome procedure involved makes equal access to writ jurisdiction a distant dream for the underprivileged classes. The Supreme Court of India ushered in PIL and opened the portals of court for the common public.

PIL is not defined under any statute or in any act. It has been evolved and interpreted by judges for the welfare of public at large. Basically, Public interest litigation is litigation for protection of public interests which may include disputes related to pollution, terrorism,

¹ <http://www.lawteacher.net> (last visited on November 10, 2017).

constructional hazards etc. The concept was first pondered upon in the case of *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar*³.

In 1981, in *S.P Gupta v. Union of India*⁴, Justice P. N. Bhagwati put forth the concept of public interest litigation as;

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.

Thus, PIL has empowered the courts to address the plight of downtrodden sections of the society by exercising judicial activism and taking up any matter *suo moto* without waiting for somebody to approach them.

Role of Judiciary in Evolution of Public Interest Litigation in India

The intense efforts of Justice P. N. Bhagwati and Justice V. R. Krishna Iyer brought about a revolution to convert Apex Court of the country into the Supreme Court of all Indians by relaxing the rule of *locus standi* to provide justice to the poor and the exploited class of people.

Judicial activism or the pro-active role of judges played a major role in the evolution of public interest litigation. The post-emergency period is known as the period of judicial activism.

³ 1979 AIR 1369.

³ AIR 1982 SC 149.

The judiciary realised that its elitist social image defeats the purpose of its existence. Therefore, the courts moved closer to people and became much more accessible and its doctrinal law became much more people-oriented. For this, it adopted two strategies. Firstly, the courts reinterpreted the provisions of the fundamental rights more liberally so as to maximise the rights of the people, particularly of the disadvantaged sections of the society who are in a greater need while they have much lesser access to these rights.

Secondly, the courts facilitated access to the courts by relaxing its technical rules of *locus standi*, entertaining even letter petitions or acting *suo moto* and developing a public law, proactive technology for the enforcement of human rights⁵.

PILs against Violation of Fundamental Rights

The flexible rules of *locus standi* allow claims against violations of human rights by public spirited individuals or groups on behalf of victims of social and political oppression. Through PIL the court's intervention is sought after against inhuman working conditions of labourers⁶, for preventing industries from engaging into hazardous activities⁷ and against illegal detention⁸ etc.

Owing to this flexibility in the rule, even a brief glance at these cases depicts the change in the clientele in courts. Referring to the changed clientele of the court, Justice Bhagwati said, in ***Bandhua Mukti Morcha v. India***⁹;

It must be remembered that the problems of the poor which are now coming before the Court are qualitatively different from those which have hitherto occupied the attention of the Court and they need a different kind of lawyering skill and a different kind of judicial approach. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights.

Under Article 32 and Article 226 of the Constitution of India, the Apex Court and the High Courts are conferred with the power to issue writs in the form of *habeas corpus*, *mandamus*, *certiorari*, *prohibition* and *quo warranto*. The Supreme Court can issue these for

⁴ S.P. Sathe, JUDICIAL ACTIVISM IN INDIA, 2nd ed. 2015, p.107.

⁵ AIR 1992 SC 38.

⁶ AIR 1987 SC 1086.

⁷ AIR 1978 SC 1675.

⁸ AIR 1984 SC 802, 815.

the enforcement of fundamental rights, while the High Courts issue these for enforcement of fundamental rights and for 'any other purpose'. The courts have made distinction between issuing writs for enforcing fundamental rights and issuing writs for other purposes. Judges insist that the petitioner should exhaust all the alternate remedies before approaching the court for the writ 'of other purposes'.

Public Interest Litigation and the Rule of *Locus Standi*

One of the most important methods by which courts saved themselves from spurious or vicarious litigation was by ascertaining that the person who petitioned the court had the *locus standi* to do so. To prove his/her *locus standi*, a person must show that he/she is adversely affected by the impugned action or that his/her own right is violated. Further, the issue he/she raises must be a justiciable issue. An issue is justiciable when it can be resolved through judicial process.¹⁰

The Supreme Court is the guarantor of rights of people of India, majority of whom are poor. The liberalisation of the rule of *locus standi* was done to enable courts to reach these disadvantaged sections of the society who are deprived of their basic rights, to enable individuals or groups of people to bring to notice matters of common concern and to increase public participation in judicial adjudication.

The rule of standing or the rule of *locus standi* was liberated to allow persons with 'sufficient interest' to file a petition on behalf of the vulnerable section of the society.

Also, at times letters are entertained and considered as a writ petition which took shape as a new form of jurisdiction called the epistolary jurisdiction as in *People's Union for Democratic Rights and others v. Union of India and others*¹¹ popularly referred to as the *Asiad* case where Justice P. N. Bhagwati held that:

Where judicial redress is sought of a legal injury or legal wrong suffered by a person or a class of persons who by reasons of poverty, disability or socially or economically disadvantaged position are unable to approach the Court and the Court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, Court would

⁹ S.P. Sathe, JUDICIAL ACTIVISM IN INDIA, 2nd ed. 2015, p.201.

¹⁰ AIR 1982 SC 1473.

cast aside all technical rules of procedure and entertain the letter as writ petition on the judicial side and take action upon it.

Features of Public Interest Litigation

In public interest litigation, the scope of the lawsuit is shaped by the parties and the court, rather than by referring to a specific past event or a personal injury, which works in the greater interest of the public. The party-structure of a public interest litigation is not limited to individuals as it considers grievances of the society as whole or of a particular section of the society. The fact inquiry takes into consideration the current problems rather than a simple investigation of the past happenings.

In traditional litigations, the aggrieved seeks compensation for the past actions while in a PIL, the parties seek relief from the court of law which is prospective in nature, having broad impact on the society and preventing the contingent harm to the public at large. The subject-matter of lawsuit in a PIL is a 'grievance' about some public policy which is usually absent in a private suit where the parties solely represent a personal interest or distress. The judiciary plays a very vital and active role in PILs. It shapes and organises litigation, contrary to the role of judges in the traditional adversarial system.¹²

Public interest litigation is a strong tool to serve the society, especially the weaker sections, if used wisely. It is upon the courts to keep a check upon its misuse and it is only in such situations that there can be constructive use of the above mentioned features of public interest litigation. Also, India being a welfare state, PIL is an exceptional tool for making the executive conscious of their duties towards the public.

Public Interest Litigation Activism

¹¹ Sonia Hurra, PUBLIC INTEREST LITIGATION IN QUEST OF JUSTICE, 1st ed. 1993, p.248.

Public Interest litigation is now entering into 'new areas' or new laws which were never highlighted before. Today a PIL can be filed not only for enforcement of governmental commitments but also for maintaining public harmony, preserving rule of law, anticipating decline in morality etc.

Some of the new areas where public interest litigation has been filed are discussed below:

A. Widening the scope of 'Right to Life' and 'Personal liberty'

The Article 21 of the Indian Constitution says that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

The Apex Court and High Courts have widened the scope of this Article to protect the rights of the convicts.

For instance, in *Attorney General of India v. Lachma Devi*¹³, Justice P. N. Bhagwati ruled that death sentence by public hanging was unconstitutional, and in case, any jail manual provided public hanging it would be violative of Article 21 of the Constitution. It was found that in this case the crime of which the accused was charged and was adjudged as guilty was brutal but a brutal crime does not have to be granted a brutal penalty such as public hanging.¹⁴

B. Labour Law

In *People's Union for Democratic Rights v. Union of India*¹⁵ the Supreme Court entertained public interest litigation praying for issuing a writ for the acknowledgement of various labour laws in respect of workmen employed in construction work for Asian games. In this case, the Supreme Court gave a new interpretation to the term 'forced labour' in Article 23 for prohibition of trafficking of human beings and forced labour. This interpretation is given to deal with people who are in habit of violating labour laws.

C. Environmental Law

The judiciary has played an active role to protect the humanity against the adverse effects of environmental pollution.

In *M.C. Mehta v. Union of India*¹⁶ popularly known as Oleum Gas Leak case, a writ petition was brought before the court in the form of a PIL concerning the scope of Articles 21 and 32. The case not only gave a new dimension to the environmental law but also put down

¹² 1986 Cri. L. J. 364.

¹³ 1986 Cri. L. J. 364, p.365.

¹⁴ AIR 1982 SC 1473.

¹⁵ AIR 1987 SC 965.

recommendations regarding a national environmental policy for general supervision over the hazardous chemical industries. The court in this case said:

We would therefore like to impress upon the Government of India to evolve a national policy for location of chemical and other hazardous industries in areas where there is little danger or risk to the community, and when hazardous industries are located in such areas, care must be taken to see that large human habitation does not grow around them.

Public interest litigation is also utilised for curbing the abuse of power and maintenance of law if the injury is caused to 'Public Interest' and not merely to any specific individual. Political executive is accountable for their actions to the public, they could commit errors and take advantage of their position and escape liability. Public interest litigation has now entered in the arena of 'executive accountability' wherein political executive can be probed upon their erroneous official actions, if they hamper public interest.

Limitations to Public Interest Litigation in India

Public interest litigation is a new invention by which public participation in judicial review and administrative action has grown significantly. Now the courts are reaching the underprivileged classes to deliver them justice and strengthen the concept of access to justice by delivering justice to the most vulnerable sections of the society.

For the requirement of better infrastructure facilities and in the name of building a modern city, the past two decades have witnessed a striking increase in the pace of slum demotion in the capital of the country with almost a million slum dwellers being displaced. Societies come together and file writ petitions against such slums and get them demolished in the name of 'public interest'. One such petition was central petition of Pitampura Sudhar Samiti¹⁷

Public interest litigation has proved to be a boon for the society but the Courts should be very careful in scrutinising the claims of PILs so that it ceases to be a resort for the pseudo socialists for furthering their personal and political interests. The abuse of PIL has increased owing to its multifaceted use. Consequently, the Apex Court has been compelled to lay certain guidelines to govern the management and disposal of PILs.

¹⁷ Pitampura Sudhar Samiti v. Government of National Capital Territory of Delhi, CWP 4215/1995.

In *S.P. Gupta v. Union of India*¹⁸ Justice P. N. Bhagwati laid down several limitations to be considered before dealing with the cases of public interest litigation. The limitations are:

1. Courts must see that the member of public who approaches the court in such cases is acting bonafide and not for personal gain or private profit or political motivation or other oblique considerations.

2. Court must not allow its process to be abused by politicians and others to delay a legitimate administrative action or gain a political object.

3. Court must not overstep the limits of its judicial functions and trespass into areas reserved for the executive and legislature by the constitution.¹⁹

Steps Necessary to Stop the Abuse of Public Interest Litigation

The guidelines laid down by the Supreme Court should be considered and every petition should be tested upon certain guidelines before admission of any PIL. As of now, a letter can be treated as a writ petition and be acted upon. But, not every letter can be treated as a writ petition. A letter can be treated as a writ petition when:

1. The letter is addressed by an aggrieved party or
2. A public spirited individual or
3. A social action group for enforcement of the constitutional or legal rights of a person in custody or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.²⁰

Although, it is necessary to curb the misuse of public interest litigations, a move from the government to regulate this might result in strong opposition from the people who are unaware of its abuse. Any move of the government to regulate the PILs would be equated as restricting the fundamental rights by these people.

In cases where, a PIL being filed by a private party or any public spirited group, the court issues an interim stay to a project and later fails in the litigation, then the public must be compensated for the delay in the project.

¹⁷ AIR 1982 SC 149, p.195.

¹⁸ AIR 1982 SC 149, p.195.

¹⁹ <http://www.legalblog.in/2011/02/public-interest-litigation-steps.html> (last visited on November 10, 2017).

Conclusion

The majority of Indian population lives below poverty line. They are exploited by the powerful. For them, fundamental rights enshrined in constitution have no meaning. Despite several welfare and development schemes for them, they stay where they are.

Owing to liberalisation of '*locus standi*' rule and increasing willingness of the judiciary to render remedial justice (approach to justice that focuses on needs of the victims and the offenders, as involving the community) to weaker sections, there is flood of PILs in Supreme Court and High Courts. An analysis of PILs filed in Supreme Court and High Courts shows that the courts are more concerned with the 'kinds of issues' raised than the persons bringing those issues. The courts have been liberal in admitting post-cards, letters and newspaper items as writs under article 32 of Indian Constitution.

PIL is a necessary and valuable tool in hands of judiciary in the cause of poor and the underprivileged, although judiciary alone cannot remove the barriers of poverty, ignorance and guarantee access to justice. For this, all the three wings of government must act co-operatively.

The problems of the poor cannot be solved merely by public interest litigation alone; they have to be backed by social organisations.

The legal aid services budget should be increased to enlarge the programme nationwide. Further, legal profession should also provide support for PIL and develop new mechanisms to meet its responsibility to ensure wider availability of legal services, which precisely is the objective behind introduction of the concept of public interest litigations.

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