

A Review Of The Conceptual Foundations Of Public Interest Litigation**Pawar Archana Adhik**, Assistant Professor

Ph. D. Scholar, Madhav University, Pindwara (Sirohi)

Abstract

That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The 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 prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.

Keywords: Democratic, Destructive, Protecting, Enforcement, Political Rights etc.**Introduction**

According to Black's Law Dictionary- "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 class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

In the case of People's Union for Democratic Rights v. Union of India, it was held that Public Interest Litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, 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 parties, one making a claim or seeking relief against the other and that other opposing such claim or relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and un-redressed.

The Conceptual Foundations of Public Interest Litigation

Part III of the Indian Constitution enumerates a Bill of Rights within Articles 12 to 32. Article 13 provides that any laws which are inconsistent with the Constitution are void. While Article 13 does not directly speak of the Supreme Court of India having the power to declare the law unconstitutional, this has been taken to be the structural assumption of the Constitution and in particular of Articles 13 and 32. Article 14 enshrines the equal protection of the laws and equality before the law, and later articles set this out in more detail in specific areas. Article 19 is one of the most fundamental articles, safeguarding freedom of speech, association, assembly, the right to move and reside within the territories of India, and to practice any trade or profession.

The right to life and liberty is enshrined in Article 21, which has been the cornerstone in the establishment and development of PIL in India. The courts have expanded the meaning of this Right to ensure safe and dignified living for the people of India. Religious freedoms are covered by Articles 25-27, and cultural minorities are protected by Articles 28-30.

It is Article 32 which provides the teeth with which to enforce the preceding provisions. An individual is granted the right to move the Supreme Court to provide a remedy for breach of any of the more particular rights mentioned above. The Supreme Court has a wide range of such remedies at its disposal, and the right guaranteed by Article 32 cannot be suspended except as otherwise provided by the Constitution. The importance of Article 32 was emphasized by Dr Ambedkar, one of the principal architects of the Constitution, who regarded this article as the very soul and heart of the constitutional document.

Whereas Part III of the Constitution is entitled Fundamental Rights, Part IV thereof deals with 'Directive Principles of State Policy'. Article 37 states explicitly that the principles of Part IV are not enforceable in any Court, but affirms that they are nonetheless fundamental to the governance of the country and the Article imposes an obligation on the State to comply with these principles when making laws. Thus, Article 38 directs the State to reduce inequalities in status and opportunity, and Article 39 mandates that the distribution of society's resources must be such as to serve the common good. Subsequent articles within Part IV flesh out the socio-economic obligations which the State must pursue within particular areas.

The Conceptual Foundation of Public Interest Litigations is thus derived from the Constitution.

The first theme of the foundation of PIL is the necessary interrelationship between Parts III and IV of the Constitution. Notwithstanding this clear constitutional provision the Court has forged a connection between Parts III and IV in two related ways. On the one hand, it has construed the substantive rights which are protected by Part III as entailing certain minimum social and economic rights which flow from Part IV. Thus Article 21 which enshrines the right to personal life and liberty is read expansively as a protection of human dignity. This reading is imbued with more force by breathing life into the concept of dignity using the Directive Principles of State Policy as the foundation for the minimum social and economic requirements which render dignity possible. On the other hand, the Court has forged a procedural link between Part III and Part IV of the Constitution. Article 32 grants individuals the right to move the Supreme Court for the enforcement of the rights guaranteed by Part III of the Constitution. The expansive interpretation of standing under Article 32 is justified, in part at least, because of the poverty or disability of those who might be directly affected by the state action. Thus relative deprivation in terms of the social and economic benefits contained in Part IV provides the justification for according standing to a member of the public who will vindicate the public interest. It also furnishes the rationale for modification of the normal process of adversarial adjudication. This procedure is altered in order that, for example, evidence can be duly gathered about the plight of those who would be incapable of testifying for themselves, or where a broader social survey is required in order to reach a decision in the case. Thus, the Court has consistently emphasized the unity of the provisions of the Constitution.

Abuse of Judicial Resources

If properly managed, the PIL has the potential to contribute to an efficient disposal of people's grievances. But considering that the number of per capita judges in India is much lower than many other countries and given that the Indian Supreme Court as well as High Courts is facing a huge backlog of cases, it is puzzling why the courts have not done enough to stop faulty PIL cases. In fact, by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary might be violating the right to speedy trial of those who are

waiting for the vindication of their private interests through conventional adversarial litigation.

A related problem is that the courts are taking unduly long time in finally disposing of even PIL cases. This might render “many leading judgments merely of an academic value”. The fact that courts need years to settle cases might also suggest that probably courts were not the most appropriate forum to deal with the issues in hand as PIL.

In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions-

1. The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
2. Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Court's who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.
3. The courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
4. The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
5. The court should be fully satisfied that substantial public interest is involved before entertaining the petition.
6. The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
7. The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
8. The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting

similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

Advantages and disadvantages of public interest litigation in India

The definition regarding the term ‘public interest litigation’ is that it is the litigation for the public interest. In India, Article 32 of the Constitution contains provisions regarding the involvement of public in the judiciary. A Public Interest Litigation (PIL) may be introduced in a court *suo moto*, rather than the aggrieved party or any other third party. In such a suit, the right to file the suit is given to the member or by the Court through judicial activism. The member of the public may be a non-governmental organisation (NGO), an institution or an individual.

Even though Public Interest Litigation (PIL) is not defined in any statute or any Act, it has been interpreted by the judges to consider the into end of the public at large. There are certain objectives of PIL which, according to Justice V.R. Krishna Iyer, “is a process of obtaining justice for the people, of voicing people’s grievances through the legal process. The aim of PIL is to give to the common people of this country access to the Courts to obtain legal redress_According to the Supreme Court’s guidelines regarding the filing of Public Interest Litigation, it complies of the following letter petitions such as:

1. Bonded labour matters
2. Neglected children
3. Non-payment of minimum wages to workers and their exploitation
4. Petitions from jails complaining of harassments, release on personal bond, speedy trial as a fundamental right
5. Petition against police for refusing to register a case, harassment at police station
6. Petition on harassment of women, rape, kidnapping or murder
7. Petitions on harassment of scheduled caste, scheduled tribe and other economically backward classes.

8. Petitions pertaining to environmental pollution, disturbance of ecological balance, maintenance of heritage and culture, forest and wildlife etc.
9. Petitions from riot victims
10. Family pensions

Conclusion

Public Interest Litigation has, no doubt, served to the maximum for the welfare of the society. For such a long time, the PIL has contributed a lot in molding the law, in accordance with the changes and development in the society. Without this doctrine of Public Interest Litigation, it would have been a very difficult way to enact and amend laws as per the changing circumstances of the society. Therefore, this concept has fastened the process of amend laws in accordance with the changing needs of the society. Though, this doctrine has been of utmost importance, the misuse of it, is much obvious as it has a simple and cheaper procedure, but the Supreme Court has reduced the misuse of this doctrine by framing suitable guidelines, which are to be strictly followed by the courts before entertaining a petition of PIL. Thus, the doctrine of PIL has been preserved from being misused, and its efficacy is again retained.

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