

Public Interest Litigation: A Window For Justice

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Abstract: *Public interest litigation is an innovative tool of judicial activism. India has borrowed this concept from the judicial system of USA. Although there was a system of conventional private litigation but this system was unable to cater the need of the entire population of India. This is the reason that PIL is introduced in Indian judicial system to achieve those goals that are not been achieved by traditional tools. There are a large number of populations in India which are not capable to approach judiciary through complex judicial procedure, so PIL work as window for those who are unable to reach via door. The journey of PIL has gone through many phases in India. This study is a humble attempt to go through this journey to analyze the achievements and pitfalls. From time to time higher judiciary has laid down several guidelines to stop the misuse of PIL. This study under the light of these guidelines, try to assess the success of PIL and also discuss various hindrances faced by the target group. This study is based on the secondary data in which research papers, judicial decision, court commentaries, news articles has been analyzed to find out drawbacks of PIL and provide few valuable suggestions for effective accessibility to justice by PIL.*

1. INTRODUCTION

India is always known for its unity in diversity, but this diversity matrix socio-economic inequality in it. Our constitution maker were very well aware about it, so they provided special provisions to remove this inequality in the form of fundamental rights and directive principles of state policy. The importance of FRs and DPSP is also emphasized by Granville Austin by describing these as “the conscience of the constitution” (Austine). When we look at these two provisions carefully, we found that their main aim was to form an egalitarian society. After independence, since the commencement of the constitution till 1970s, it was found that the disadvantaged section of the society was unable to find access to judiciary for the violation of their rights. This inaccessibility was caused by many reasons, such as poverty, illiteracy, unawareness about their fundamental rights among disadvantaged section. At this point of time, two judges of Supreme Court, Justice V.R Krishna Iyer and Justice P.N. Bhagwati come with an innovative idea called public interest litigation to enhance the accessibility of disadvantaged section to judiciary as a part of judicial activism. Indian judiciary has borrowed this concept from the judiciary of USA. Indian constitution envisioned “the judiciary as a bastion of rights and justice” (Austine). So our constitution maker provided independent status to judiciary with special power to fill the gap that is left by the executive. Initiative taken in the form of PIL is the manifestation of such powers. According to the apex court of India, PIL is “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 have pecuniary interest or some interest by which their legal rights or liabilities are affected” (Janta Dal v. H.S Chowdhary and others). The judiciary played more assertive role in case of PIL in comparison of traditional actions. As PIL is introduced by judiciary to bring social transformation in Indian society, so it is also known as Social Interest litigation.

Difference between PIL and Ordinary litigation

The traditional rule of “locus standi” is followed in case of traditional ordinary litigation that means if there is a dispute between two person/parties; the litigating party/person may go the court to seek relief against another. So in this rule the victimized person/party is solely eligible to file litigation. In case of PIL the apex court relaxed the rule of “locus standi” that means any vigilant public spirited person/social organization can seek the refuse of judiciary, if there is violation of rights of a person or group of persons who are unable to find access to court due to socio-economic backwardness. So the first condition to file a PIL is the violation of constitutional or legal rights of this disadvantaged section. In its essence the initiation of PIL is a collective effort on the part of court, public authority and petitioner for the realization of fundamental rights and enhances effective access to justice. Judiciary also stressed that PIL is a collective and cooperative project in which we should work together for the rights of disadvantaged sections of our society (Sathe). For the realization of such efforts PIL was sine qua non in comparison of traditional ordinary litigation.

Review of literature

Public interest litigation (PIL) A Boon or Bane? (Vadivel)– This paper discuss about the boon and bane of PIL. It goes through the origin of the concept in India and its recent application. It also discusses how PIL is misused and bring out with the guidelines of Supreme Court to avoid such misuse. Public interest litigation: A Critical Review (Deva) – this paper provide a brief reference of constitutional provisions as a foundation of PIL; later discuss the evolution and different phases of PIL. As it is a critical review paper it discusses the pros and cons of PIL in a phase manner. Public interest litigation: Access to Justice (Bohra) – this paper explains meaning and evolution of PIL in India, cited judicial decisions to highlight the factors responsible for the evolution of PIL in India. It also discusses how it is catering the need of disadvantaged section of society. Ghosh in his work namely, Judicial activism and Public Interest Litigation in India, highlighted various pros and con of PIL by going through the journey of PIL in phased manner, in the light of various landmark judgements. Also, Sadual in his paper on, Public Interest litigation in India: pros and cons explains the origin and evolution of PIL with reference to various landmark judgements. It highlighted the various pros and cons of PIL and how PIL is bringing social transformation in Indian society. A Study On the Advantages and Disadvantages of Public Interest Litigation (Jain)– this paper provide a historical background of PIL and its evolution in India. It also discuss the procedure related the filing of PIL. In later phase, this paper comes with the guidelines of court to avoid misuse of PIL.

Advantages of PIL

- A PIL can be filed directly in the Supreme Court (article 32) and High court (article 226). So need not to go through the hierarchy of Subordinate courts to file a PIL that lead to quick access to higher judiciary.
- The nominal cost of PIL make it easy for the petitioner to file a PIL, as the cost to file a PIL in supreme court is 500 rupees plus expenses on documentation (Dhamija)
- PIL has played an active role to keep the government accountable that means it has contributed to good governance which ultimately helps a common citizen to have easy access to government.

- It provides direct access to the civil society to participate to bring social changes via judiciary. So the role of civil societies not limited just to spread awareness but also to take active part in social engineering.
- A conventional private litigation can help generally the petitioner only but a PIL can help not only the person but a group of persons or a section of society at large. So the impact of PIL is wider than the private litigation.
- The higher judiciary has provided extensive guidelines about the subject areas covered under PIL. These areas are the most important subject to work on by the government. So the PIL fill the gap that is left by the government while dealing with these areas.
- A PIL provided a ladder to the disadvantaged section of society to have access to justice in speedy manner. It achieved those objectives which are not achieved by the traditional private litigation.

Disadvantages of PIL

- A low cost of PIL encourages a number of PIL to be filed. So many frivolous cases have been seen in the name of PIL without any justified grounds.
- PIL empower the judiciary with unusual powers to direct the executive in an assertive manner. So sometimes it can be seen that the judiciary is encroaching the area of executive that is not a good sign for a democracy like India.
- Many a times a PIL is filed by an advocate, NGOs, etc. just to gain cheap popularity rather than supporting a disadvantaged section of society.
- Easy access to higher judiciary allures even the advantaged section to file a PIL for personal interest. There a case in which a PIL is filed by a former navy chief for seeking court intervention in the tweaking of age limit while appointing a vigilance commissioner. Supreme court junked it and said that PIL is for a section of society who cannot knock at the door of court (DELHI)

Guidelines for admitting a PIL

As the frivolous petition in the name of PIL were increases in the higher judiciary, the apex court came with specific guidelines to hinder such junks. Supreme Court of India asserted that "PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasise the parameters within which PIL can be resorted to by a petitioner and entertained by the court" (BALCO Employees Union v. Union of India). So the apex court came with the following guidelines to hinder the misuse of PIL (State of Uttaranchal v. Balwant Singh Chaupal):

1. Court must focus on encouraging genuine PIL and discouraging extraneous considerations.
2. Each High Court should properly formulate rules for encouraging the genuine PIL and discouraging frivolous PIL.
3. There should be prima facie verification of PIL.
4. Prima facie satisfaction of court is necessary before entertaining the PIL.
5. Court should be completely satisfied that substantial public interest is involved in PIL.
6. The petition which involves larger public should be preferred over other PIL.
7. Court should ensure that there should be no personal gain behind any PIL and is it aimed at redressal of genuine public injury.
8. Court should fine the PIL having ulterior motives by imposing exemplary costs or adopting similar novel methods.

2. CONCLUSION

There is no doubt that the contribution of PIL in social engineering is remarkable. It has tried to fill the gap that has been left by the executive. PIL has played an active role to keep the government accountable. It provides direct access to the civil society to participate to bring social changes via judiciary. The impact of PIL is wider than the private litigation. It has provided a ladder to the disadvantaged section of society to have access to justice in speedy manner. It has achieved those objectives which are not achieved by the traditional private litigation. Despite all these contributions it has faced many shortcomings. It can be seen that the judiciary is encroaching the area of executive that is not a good sign for a democracy like India. Although apex judiciary has come with certain guidelines to stop its misuse but still introspection is needed again to renovate this tool for social transformation. PIL has done a lot for the disadvantaged section of the society and it is capable to do more if it works under a certain framework.

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