



PUBLIC INTEREST LITIGATION (PIL)

- A Brief Overview

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MAHARASHTRA LEGISLATURE SECRETARIAT
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FOREWORD

An attempt is being made to provide a glimpse of innovative concept, a Public Interest Litigation. Public Interest Litigation has assumed significant place in constitutional and administrative jurisprudence of this Country.

I hope this will help to understand the niceties of the above subject in a better way. I am also very much indebted to Hon. Shri Ramraje Naik-Nimbalkar, Chairman, Maharashtra Legislative Council and Hon. Shri Haribhau Bagade, Speaker, Maharashtra Legislative Assembly for their continuous support and motivation in accomplishing this task.

This brief compilation will prove very useful to the students, citizens, law teachers who have interest in legal system. Suggestions, if any are most welcome.

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PUBLIC INTEREST LITIGATION

Public Interest Litigation and Judicial Activism are the two concepts which became very popular in the public law field in the recent times. In fact, it can be said that Public Interest Litigation is an outcome of Judicial Activism.

The term “public interest litigation” was first used by Prof. Abram Chayes in 1976 to refer to cases seeking social change through court directives, which articulated public norms of governance and also enforced the public norms. Thus, it is free from traditional judicial trappings; legal centralism, precedents, and other procedural inflexibilities. In fact, it is not an “adjudication” in the real sense of the term, but a collaborative effort to bring a socio-economic change in society to make it more equal, just and inclusive. The PIL may thus be described as litigation in the interest of the “voiceless voices” to secure their legal rights and entitlements.

SAL and PIL are terms which are used interchangeably in India.¹ The term PIL comes to us from the US jurisdiction where it was designed to provide legal representation to previously unrepresented groups and interests. The necessity for this was the recognition that the ordinary market place for legal services fails to provide such services to significant segments of the US population and to significant interests. Such groups and interests include poor, environmentalists, consumers, racial and ethnic minorities, and others.²

¹ I am tempted to agree with Prof. Upendra Baxi that the term “SAL” is more appropriate in the Indian context. See, Baxi, “Taking Suffering Seriously: Social Action Litigation and the Supreme Court”, (December 1982) 29 International Commission of Jurists Rev. 37-49.

² Balancing the Scales of Justice-Financing Public Interest Law in America”, A Report by the Council for the Public Interest Law (1976) 6-7, quoted by Prof. S.K. Agarwal, *Public Interest Litigation in India: A Critique* (N.M. Tripathi 1985) 2.

Constitutional habitat

It may be pointed out that in SAL / PIL the court is not exercising any extra-constitutional jurisdiction as this strategy is now firmly rooted in Articles 14 and 21 of the Constitution. Article 14 provides protection against all arbitrariness and lawlessness in administrative actions, and Article 21 provides for protection of “life” which embodies everything that goes for a dignified living, including rightful concerns for others. It also encompasses violations of various directive principles of state policy in the Constitution, which are especially for the benefit of the weaker sections of society.

The concept of Public Interest Litigation virtually came to be known with the case Peoples Union for Democratic Rights – Vs. Union of India, AIR 1982 SC 1473.

The concept of locus standi, a traditional concept for the maintainability of writ petition has also been well liberalized by virtue of the expansion of the field of Public Interest Litigation. The liberal approach of the Courts relating to the aspect of locus standi was well recognized in S.P. Gupta vs. Union of India, AIR 1982 SC 149. Popularly known as Judges Transfer case.

The field of Public Interest Litigation in the last two decades has grown and expanded itself virtually covering all types of litigations involving public interest. The concept of Public Interest Litigation was given a convenient handle by Courts of law with a view to accommodate the poor, down trodden and weaker sections of the society to ventilate their grievances for seeking the necessary redressal with the aid and assistance of associations, organizations and public spirited individuals.

The subject Public Interest Litigation became very popular in the recent times. The concept of public interest litigation and the concept judicial activism became very familiar and popular and these concepts are being discussed and debated by the Bar, Bench, Jurists, Intellectuals, Journalists, Academicians and the General Public too is interested in this subject. The ambit of judicial review is now well expanded because of this above concept is now well recognized and also adopted by several pronouncements of the Apex Court and

different High Courts of our country. Thus in the present day context the importance of the subject Public Interest Litigation need not be over emphasized.

Test litigation, representative actions, Social Action Litigation probono public and like broadened forms of legal proceedings are in keeping with current accent on Justice to common man observed by Justice Krishna Iyer in *Mumbai Kamgar Sabha vs. Abdulla Bhai*, See AIR 1981 SC 344.

The petitioner seeking a direction under Article 32 or Article 226 of the constitution of India must show that some legal right of his is being infringed by the Government or by any other public body charged with statutory duties. Such legal right normally must be personal or individuals right. (AIR 1962 SC 1044, AIR 1966 SC 828, AIR 1956 Sau. 47, AIR 1953 SC 384, AIR 1968 Gau.67). The person aggrieved or affected alone can maintain a writ petition. (AIR 1952 SC 12, AIR 1960 Ker. 378, AIR 1962 MP 172, AIR 1962 SC 1183, AIR 1962 SC 1044) in case of infringement of specific legal right (AIR 1965 AP 425) which is subsisting. (1961 (2) Cr.L.J.195). The normal rule is that if the personal rights or interest are not adversely affected, such a person cannot maintain a writ petition (AIR 1951 SC 41, AIR 19534 SC 384, AIR 1953 Mad.96, AIR 1953 Raj.33) but however the horizon of law had been developed into a wider litigation (AIR 1982 SC 149) OR “SOCIAL ACTION LITIGATION”. (AIR 1987 SC 579). If a person is entitled to participate in the proceedings relating to the decision making process culminating in the impugned decision, such person was held to have locus standi to maintain an action challenging such decision. Similarly a rate payer also can challenge an illegal action of a local authority. (AIR 1976 SC 2177, AIR 1973 Mad.55). The statute itself may expressly recognize the locus standi of an applicant though no legal right or regularly protected interest of the applicant has been violated resulting in legal injury. (AIR 1976 SC 578, AIR 1980 SC 1622).

In *S.P. Gupta vs. Union of India and others*, (AIR 1982 SC 149 R 188), (See AIR 1984 SC 802 also), his Lordship Bhagwati, J. Observed on this aspect “(Judges Transfer Case)” observed – ‘It may therefore
G.C.P. Hb 585—3 (500—6-2016)

now be taken as well established that whether 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 is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of person, they may approach courts for redressal of legal wrong or injury caused to such person or determinate class or persons. Where the weaker sections of the community are concerned, such as under trial prisoners languishing in jails without a trial, inmates of Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely making out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This court will readily respond even to a letter addressed by such individual acting pro bono public.”

The three considerations which are emphasized in the matter of public litigation are that;

- (a) the person moving the court must have sufficient interest
- (b) there must be a public injury and
- (c) the action must be bonafide (AIR 1985 AP 64)

It is true, the Constitutional Courts in India gave new and liberal dimension to the law of standing and made access to courts easy, with a view to bring the law into service of the poor and oppressed. The public interest litigation in India is basically concerned with the issues relating to infringement of legal and fundamental right of poor masses by the agencies of the State and offers a viable strategy improving

the lives of the less advantaged persons of the society through the judicial process. Its true nature and the scope is explained in S.P. Gupta's case.

The public interest litigation is aimed at combating inhuman prison conditions (*Sunila Batra vs. Delhi Administration*, AIR 1978 SC 1675), and securing release of bonded labour (*P.U.D.L. vs. Union of India*, AIR 1982 SC 1473), (*Bandhua Mukti Morcha vs. Union of India*, AIR 1984 SC 802). The public interest litigation has come to stay in India and it has added new dimensions to the nature of judicial process. The origin and its growth would show its efficacy in the matter of enforcing the right to a speedy trial (*Hussainara Khatoon vs. Home Secretary State of Bihar*, AIR 1979 SC 1360), and (*Abdul Rehman Antulay and Other vs. R.S. Nayak and another*, (1992) 1 SCC 225), the right to legal aid (*M.H. Hoskot vs. State of Maharashtra*, AIR 1978 SC 548), right to livelihood (*Olga Tellis vs. Bombay Municipal Corporation*, (1985) 3 SCC 545), a right against pollution, a right to be protected from industrial hazards, the right to human dignity and right to basic needs (*Kisan Patnaik vs. State of Orissa*, 1989 (1) Scale 32).

The public interest litigation has helped in the improvement of inhuman living condition of mentally sick persons in asylums. In all these cases, the Court at the instance of the public interest litigants passed necessary orders compelling the State and its instrumentalities on behalf of the disabled persons who by themselves were not in a position to set the law in motion and get the law enforced. The rule relating to standing was relaxed and the complaints from responsible citizens and social action groups were entertained by the Apex Court and all such public interest litigants were declared to have sufficient interest in the matter. “Every responsible citizen has an interest in seeing that the law is enforced.... And that is sufficient interest in itself to warrant his applying for litigation or mandamus to see that is enforced.

(Lord Dennings – The Discipline of Law).

The whole object of the public interest litigation and the reason for relaxing the traditional rule of standing is explained by the Supreme Court in very clear terms. In people's Union for Democratic Rights and others Vs. Union of India and others, the Apex Court observed;

“ We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid and 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 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. Public interest litigation is brought before the Court for the purpose of enforcing the right of one individual against another as happen in the case of ordinary litigation, but it is intended to promote and vindicate public interest and 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. 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.

Thus in the case of public interest litigation the following aspect have to be considered :—

(a) While deciding matters concerned with public interest litigation the Courts are expected to act with care and ;

(b) The Courts are bound to come to the rescue of weaker and downtrodden sections of the Society where the grievances concerned with such sections of society are brought to the notice of the Court by way of public interest litigation ;

(c) Public interest litigation is not in the nature of adversary litigation but it is a challenge to government and officers to make the basic human rights meaningful.

(d) Courts must be careful to see that under the guise of redressing a public grievance they should not encroach upon the sphere reserved by the constitution to the executive and legislature.

(e) Court should not give scope to any one to indulge in reckless allegation under the guise of public interest litigation.

(f) Courts have to see whether the persons moving the court have sufficient interest and whether there is public injury and whether the act is a *bonafide* one.

(g) Even in the domain of public interest litigation the third party will not be welcome to question statutory orders relating to property.

(h) Courts must be slow and also should act carefully while dealing with political questions, by way of public interest litigation.

(i) Courts should be reluctant to decide matters involving pure political questions.

(j) Courts before dealing with such questions should carefully scrutinize whether such political questions also involved the determination of any legal or constitutional right or obligation.

(k) Courts must be very vigilant in deciding such matters since a clear demarcation in such matters into categories specified in (i) and (j) may not be always possible.

(l) Courts should be satisfied that the public interest litigation is a *bonafide* litigation and not a *malafide* litigation.

Notable cases :—

1. S. P. Gupta vs. Union of India “(Popularly known as Judges Transfer case)” – In this case the Supreme Court entertained petition by lawyers challenging the constitutionality of law ministers circular regarding transfer of Judges of High Courts and non confirmation of sitting additional Judges of High Courts. Standing was allowed on the ground that the independence of the judiciary is a matter of grave Public Concern.

2. Peoples Union for Democratic Rights Vs. Union of India (Popularly known as Asiad Case) – In this case the Supreme Court entertained petition from a public spirited organisation on behalf of Labours belonging to socially and economically weaker section and employed in the construction work of various projects connected with Asian Games 1982 complaining violation of various labour laws including non payment of minimum wages and granted relief.

3. D. S. Nakara Vs. Union of India - It was held that the registered co-operative society consisting of public spirited citizens seeking to espouse the cause of old and retired inform pensioners unable to seek redress through tardy and expensive judicial process can approach the court through SAL / PIL petition.

4. Bandhua Mukti Morcha Vs. Union of India - A public spirited organization access for release of bonded labourers working in stone quarries.

5. People Union for Democratic Right Vs. State of Bihar – The Supreme Court entertained petition by a public spirited organization for compensation on behalf of persons victim of unjustified police atrocities.

6. D.C. Wadhva Vs. State of Bihar – The Supreme Court held that a Professor of Political Science who is deeply interested in ensuring proper implementation of constitutional provisions can approach the court through PIL petition against the practice of issuing ordinances on large scale to bye pass legislature as a being fraud on the constitution.

7. Sunil Batra (II) Vs. Delhi Administration – Court allowed access to a prisoner complaining about brutal attack and assault by head warden on a fellow prisoner on the ground of class standing.

8. Municipal Council, Ratlam Vs. Vardhichand – Court held that public duties are owned not by any individual but by the public, therefore, for the enforcement of any public duty any public-spirited person will be granted standing. Supreme Court issued directions to the municipal council on a PIL petition by a citizen to construct public conveniences and drains etc, and to, keep the streets clean.

9. Charan Lal Shahu Vs. Union of India – In order to provide immediate relief to the Bhopal gas tragedy, on a PIL petition, the Court upheld the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and the settlement arrived at between the Union of India and the Union Carbide Company.

10. M.C. Mehta Vs. Union of India – On a PIL petition by a lawyer of the Supreme Court, the Court granted relief to the victims of gas leak from the Shriram Fertilizer and Chemical Plant at Delhi and also liberated the Indian tort law from the bondage of Rylands v. Fletcher by holding that no exception to strict liability laid down in this case will be applicable if any hazardous activity is undertaken.

11. Parmanand Katara Vs. Union of India – On a PIL petition the Court directed the Government that every injured person brought for medical treatment should instantaneously be given medical aid without waiting for the completion of police procedural formalities in order to avoid negligent death of an accident victim.

12. Banwasi Seva Ashram Vs. State of U.P. (1993) – On PIL petition the Supreme Court granted relief to Adivasis and other backward people using forest as their habitat and means of livelihood against their eviction from the forest land by the government.

13. Sampat Singh Vs. State of Haryana (1993) – Writ petition as PIL filed by MLAs and MPs seeking direction for a CBI inquiry on the basis of FIR alleging serious charge of corruption and misuse of power by person holding cabinet rank in Central Government and for setting aside the order of the Magistrate discharging that person. Court held that since petitioners were not a party to earlier proceedings at any stage, hence they have no locus standi to file PIL petition.

14. Indian Council for Enviro-Legal Action Vs. Union of India (1966) – Where the court relied on expert reports and no objection was taken immediately regarding absence of cross examination of the experts, the court held that no such objection can be raised at belated stage.

15. Sudip Mazumdar Vs. State of M.P. (1966) – The court directed the government to remove inadequacies of safety precautions in Army's ammunition test firing range resulting in death and maiming of tribals who stray into the range for collection of scrap of ammunition.

16. Vellore Citizens' Welfare Forum vs. Union of India (1966) – Court issued suitable directions to give relief to people against pollution of tanneries and asked the Madras High Court to establish a Green Bench to monitor further progress.

17. Vishaka vs. State of Rajasthan (1997) – In the absence of legislation the court filled in the gap by giving wide directives to protect working women from sexual harassment.

18. K. L. Sethia vs. Union of India (1997) – Where the relief claimed is not based on any fundamental right court cannot grant relief. Thus the court refused to issue direction to the government to include Rajasthani language in the Constitution.

19. Daljit Singh Dalal vs. Union of India (1997) – Court refused relief where in the petition no public interest was involved. Court held that factual disputes cannot be raised and examined under Art.32 of the Constitution.

20. Malik Brothers vs. Narindra Dadhich (1999) – Court refused relief where no public interest was involved and the consequence was frustration of any law of the land.

21. Desist from construction around Jogeshwari caves: Bombay HC to State Government - The Bombay High Court, directed the State Government and the Slum Rehabilitation Authority not to carry out any construction activity around the Jogeshwari caves and to ensure the caves are not damaged.

22. Ishrat Jahan encounter case : Gujarat HC wants Government reply on PIL challenging Pandey's appointment - The Gujarat High Court asked the public prosecutor to take instructions from the state government on the Public Interest Litigation (PIL) challenging appointment of DGP P.P. Pandey, a key accused in Ishrat Jahan fake encounter case, as in charge police chief recently.

23. Won't go on strike again, will hold peaceful protests: Doctors to Bombay HC - The Maharashtra Association of Resident Doctors (MARD) gave an undertaking that henceforth they would not go on strikes. The issue of strikes and subsequent suffering of patients has been raised by public interest litigation.

24. Punjab and Haryana HC won't vacate stay on quota for Jats, others - THE VACATION bench of the Punjab and Haryana High Court refused to vacate the stay granted by its regular bench on May 26 on the Haryana government's decision to grant 10 per cent reservation in jobs and educational institutions to Jats, Jat Sikhs, Ror, Bishnoi, Tyagi, Mulla Jat or Muslim Jat under the newly created Backward Class 'C' category.

25. Mumbai coastal road project: Tenders floated without green nod, say residents - MEMBERS of 27 residents' organisations came together to raise their concerns and objections to the Brihanmumbai Municipal Corporation's (BMC's) Rs 12,000 crore Coastal Road project while demanding the scrapping of the project entirely. Citing the recommendations made by the Maharashtra Coastal Zone Management Authority (MCZMA), members stated that the BMC had initiated the tendering process without getting the environmental clearance.

26. IPL 2016: Water woes brew in Jaipur - Freelance journalist Mahesh Pareek, filed a PIL challenging the three Mumbai Indians matches scheduled to be held at the Sawai Mansingh Stadium in Jaipur. Citing articles 21 and 47 of the constitution, the petition filed in the Rajasthan HC seeks a stay on the matches. "The matches were shifted from Maharashtra because of drought. Well, there is a drought in Rajasthan too. The Bombay HC intervened on a similar plea, moving the matches out. We hope the Rajasthan HC also decides in our favour.

27. Mathura violence: SC agrees to hear PIL for CBI probe - The Supreme Court will hear a Public Interest Litigation seeking direction to the Samajwadi Party-led Uttar Pradesh government to recommend a CBI probe into the last week's Mathura clashes in which more than two dozen people, including two police officers, were killed.

28. HC stays bridge, road contracts to tainted firms - A vacation bench of Justices Bhushan Gavai and Shalini Phansalkar Joshi was hearing a Public Interest Litigation (PIL), questioning the awarding of fresh contracts for bridge and road related works to tainted contractors. The PIL had said that a criminal case had been lodged against the contractors, after enquiries into their previous contracts with the BMC.

29. Bombay HC asks state to release water from Ujani dam for Aurangabad - The Bombay High Court asked the Maharashtra Water Resources Regulatory Authority (MWRRA) to consider releasing water from Ujani dam to Jayakwadi dam on humanitarian grounds, so that residents of Aurangabad and surrounding areas can tide over the water scarcity. Pointing out that water supply had gone down to three percent in Jayakwadi dam, the court said the intervener had, in fact, claimed there was no water left in the dam.

30. Bombay HC rejects Govt bid to regularize illegal constructions —A division bench of Justice A S Oka and Justice Prakash Naik was hearing a Public Interest Litigation pertaining to illegal constructions in Digha in Navi Mumbai. The government had submitted a policy to regularize illegal constructions and sought permission from the court to implement it. The policy was meant to regularize certain illegal structures built prior to December 31, 2015.

31. Fire accidents: Is there a compensation policy for firemen, victims, asks Bombay HC - The Bombay High Court inquired from the Brihanmumbai Municipal Corporation (BMC) if it had a policy for compensation and jobs for families of victims and those firemen who lost their lives firefighting.

If there was no such policy, the court asked the civic body to formulate one. The direction was passed, while the court was hearing a public interest litigation filed by advocate Dr Sharmila Ghuge, seeking directions for the authorities concerned to implement provisions of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006, and other allied provisions of law and guidelines issued in the matter.

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