

**PUBLIC INTEREST LITIGATION IN INDIA: AN OVERALL VIEW****\* MURALIVASAN T.MANASAA .S.R<sup>1</sup>****INTRODUCTION:**

Public interest litigation in India acts as vehicle for creating and enforcing rights, and addresses the needs of the citizens and helps them to get their right directly from the judicial authority in way of courts. **PIL in India serves as a paradigm** for other, for the developing nations who struggles and can provide recourse to disadvantaged countries. Public Interest litigation in India has great impact on Indian legal system where, itself refers the litigation for any public interest and it is **filed before any court of law by any public spirited person for the protection of “public interest.”** Public interest in sense refers to **‘any act for the benefit of public is public interest.’ and those act are such as pollution, Terrorism, Road safety, constructional hazards etc. in all these activities we can clearly see the public interest.** And it has the most special unique distinguishing feature where any public spirited person so its mean that there **should not be interest of only himself.** It is also the power given to the distinguishing unique feature where, this petition can be filed by any public by the courts through judicial activism. However, the person must prove the satisfaction of the court is not just a frivolous litigation. This paper mainly highlights the origin and development of PIL in India, how it can be filed, present condition, remedies and measures available to citizens through this litigation.

**WHAT IS PUBLIC INTEREST LITIGATION?**

In simple words, it means litigation filed in a court of law, for the protection of "Public Interest", such as those against pollution, terrorism, constructional hazards or those for road safety etc. Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where Public interest litigation can be filed. For example:

- Violation of basic human rights of the poor

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- Content or conduct of government policy<sup>2</sup>
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights

It denotes the writ petition which is filed in high court or Supreme Court under article 226 for high court and article 32 for Supreme Court. The above mentioned areas are the main area where any public interest litigation can be filed against State/Central government, Municipal Authorities, and not any private party. However private party can be include in this as a respondent after making concern state authority. The concept and definition of PIL are well explained in a detailed manner in certain definitions and also in Indian cases, some are mentioned below:

**In Black's law Dictionary (Sixth Edition<sup>2</sup>)** public interest is defined as follows:

—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government....

**Advanced Law Lexicon** has defined ‘Public Interest Litigation’ as under: 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.

Some of the Indian cases, which define “**PUBLIC INTEREST LITIGATION,**” are mentioned below:

- ❖ **People's Union for Democratic Rights and Others v/s Union of India and Others**
- ❖ **SHRIRAM Food & Fertilizer case,**
- ❖ **M.C. Mehta v Union of India**
- ❖ **PARMANAND KATARA v Union of India**
- ❖ **State v Union of India**

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<sup>2</sup><http://shodhganga.inflibnet.ac.in/legalserviceindia.com>

**ORIGIN AND DEVELOPMENT OF PIL IN INDIA:**

It should be noted at outset that PIL, at least as it had developed in India, is different from class action or group litigation, Whereas the latter is driven primarily by efficiency considerations, the PIL is concerned at providing access to justice to all societal constituents. PIL in India has been a part of the constitutional litigation and not civil litigation. Therefore, in order to understand the evolution of PIL in India, it is necessary to have basic understanding of the constitutional framework and the Indian judiciary. After gaining independence from the British rule on August 15, 1947, the people of India adopted a Constitution in November 1949 with the hope to establish a “sovereign socialist secular democratic republic”. Among others, the Constitution aims to secure to all its citizens justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and of opportunity) These aims did not work out merely because The main tools employed to achieve such social change were the provisions on fundamental rights(FRs) and the directive principles of state policy (DPs), which Austin described as the “conscience of the Constitution” was not implemented in a fair manner, hence , provisions related to FRs, DPs and the independent judiciary were formed together provided a firm constitutional foundation to the evolution of PIL in India. Two judges of the Indian Supreme Court (Bhagwati and Iyer JJ.) gave the foundation with a strong base groundwork, from mid-1970s to early 1980s, for the birth of PIL in India. This included modifying the traditional requirements of LOCUS STANDI, liberalising the procedure to file writ petitions, creating or expanding fundamental rights overcoming evidentiary problems, and evolving innovative remedies. Modification of the traditional requirement of standing was sine qua non for the evolution of PIL and any public participation in justice administration. The need was more pressing in a country like India where a great majority of people were either ignorant of their rights or were too poor to approach the court. Realising this need, the Court held that any member of public acting bona fide and having sufficient interest has a right to approach the court for redress of a legal wrong, especially when the actual plaintiff suffers from some disability or the violation of collective diffused rights is at stake. Then, came where In India, the first PIL case was filed in the year 1967, where in the case of **Mumbai KAMAGAR SABHA vs. Abdul Thai (AIR 1976 SC 1455; 1976 (3) SCC 832)**, wherein **KRISHNA IYER** where he allowed a group of people to file a petition on behalf of others, **wherein an unregistered** association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redress of common grievances. And also Krishna IYER enunciated

<sup>3</sup>the reasons for liberalization of the rule of **LOCUS STANDI** in Fertilizer Corporation **KAMGAR vs. Union of India** (AIR 1981 SC 149 1981 (2) SCR 52) and the ideal of 'Public Interest Litigation' was blossomed in **S.F. Gupta and others vs. Union of India**, (AIR 1982 SC 149). The PIL evolved and developed to a great extent.

### **Indian PIL considered as social action litigation**

After the birth of public interest litigation in India, where it paved and connected to the evolution of PIL in the united states, the great scholars and jurists distinguished the experiences of US and Indian, where the argument started with statement that, where India should refer PIL as social action litigation, where it was labelled by an eminent scholar BAXI, where he stated because Indian PIL had some distinguishing characteristics, whereas he referred US as civic participation in governmental decision making, and another argument in case of Indian it was directed against state repression or governmental decision making where as in US, it sought represent interests without groups. At last, it was concluded that, Although there prevailed still differences between how the PIL jurisprudence has unfolded in the United States and India, the distinction as to the subject-matter or the basic objective of the PIL is not that much as it used to be when an argument was made to label PIL as SAL.

### **Three phases of PIL:**

At the risk of over-simplification and overlap, the PIL discourse in India could be divided, in into three broad phases. One will notice that these three phases differ from each other in terms of at least the following four variables they are mentioned below:

- ❖ Who initiated PIL PROCEDURE
- ❖ What was the subject matter/focus of PIL
- ❖ Against whom the relief was sought and
- ❖ How judiciary responded to PIL cases.

### **The first phase**

It began in the late 1970s and continued through 1980 where the PIL cases were generally filed by **public-spirited persons (lawyers, journalists, social activists or academics)**. **Most of the cases related to the rights of disadvantaged sections of society such as child**

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<sup>3</sup> <https://pdfs.semanticscholar.org>  
<http://www.manupatrafast.com>

**labourers, bonded labourers, prisoners, mentally challenged pavement dwellers, and women.** There relief was sought against the action or non-action on the part of executive agencies resulting in violations of fundamental rights under the Constitution. During this phase, the judiciary responded by **recognising the rights of these people** and giving directions to the government to redress the alleged violations. In short, it was argued that in the first phase, **the PIL truly became an instrument of the type of social transformation/revolution** that the founding fathers had expected to achieve through the Constitution.

#### **The second phase:**

It began in **1990s during which several significant changes in the chemistry of PIL** took place. In comparison to the first phase, **there prevailed changes in filing of PIL cases where it became more institutionalised where it added several specialised NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis.** The breadth of issues raised in PIL and also expanded tremendously from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government. It is to be noted that in this phase **the petitioners sought relief not only against the action/non-action of the executive but also against private individuals,** in relation to policy matters.

#### **The third phase:**

The third phase the current phase, which began with the 21st century, it came up with dramatic change where in this period, there prevailed a prestige way, which anyone could file a PIL for almost anything. It seems that there is a further expansion of issues that could be also be raised as PIL.

### **FACTORS RESPONSIBLE FOR THE GROWTH OF PIL IN INDIA**

Among the numerous factors that have contributed to the growth of PIL to India, there are some following factors mentioned below which deserve special attention:

The character of the Indian Constitution, Unlike Britain, India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy)

provides a framework for regulating relations between the state and its citizens and between citizens inter-se.

- India has some of the most progressive social legislation, not found anywhere in the world whether it be relating to bonded labour, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
- The liberal interpretation of locus standi, where any person can apply to the court on behalf of those who are economically or physically unable to come before it, has helped. Judges themselves have in some cases initiated suo moto action based on newspaper articles or letters received.
- Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the "right to life" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bar fetters and hand cuffing in prisons, etc.
- Sensitive judges have constantly innovated on the side of the poor. For instance, in the Bandhua Mukti Morcha case in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labour as a case of bonded labour unless proven otherwise by the employer. Similarly in the AsiadWorKels judgment case, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labour commissioner and lower courts.
- In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

### **WHEN A PIL CAN BE FILED?**

These are some areas and situations where a PUBLIC INTEREST LITIGATION can be filed, some are mentioned below:<sup>4</sup>

**In case where a factory / industrial unit is causing air pollution and people nearby are getting effected.**

**Where, in an area / street there are no street lights, causing inconvenience to commute**

**In case of some construction company is cutting down trees, causing environmental pollution.**

**In case, Where poor people, are affected, because of state government's arbitrary decision to impose heavy "tax and also For directing the police / Jail authorities to take appropriate decisions in regards to jail reforms, such as segregation of convicts, delay in trial, production of under trial before the court on remand dates.**

So these are the various areas in which any public spirited person can file any PIL for the interest of public.

### **HOW TO FILE A PIL?(PROCEDURAL ASPECT)**

1. Make an informed decision to file a case.
2. Consult all affected interest groups who are possible allies.
3. Should be careful in filing a case because
  - i. Litigation can be expensive.
  - ii. Litigation can be time consuming.
  - iii. Litigation can take away decision making capability/strength from communities.
  - iv. An adverse decision can affect the strength of the movement.
  - v. Litigation involvement can divert the attention of the community away from the real issues.

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<sup>4</sup> <https://www.lawteacher.net>  
<http://www.legalserviceindia.com>  
<https://www.lawyered.in/>

4. If you have taken the decision

i. Collect all the relevant information

ii. Be meticulous in gathering detail for use in the case. If you plan to use photographs, retain the negatives and take an affidavit from the photographer. Retain bills.

iii. Write to the relevant authorities and be clear about your demands.

iv. Maintain records in an organized fashion.

v. Consult a lawyer on the choice of forum.

vi. Engage a competent lawyer. If you are handling the matter yourself make sure you get good legal advice on the drafting.

vii. A PIL can be filed only by a registered organization. If you are unregistered, please file the PIL in the name of an office bearer/member in his/her personal capacity.

viii. You may have to issue a legal notice to the concerned parties/authorities before filing a PIL. Filing a suit against the government would require issuing **a notice to the concerned officer department at least two months prior to filing.**

#### **Where a PIL can be filed?**

All the PILS are used to file in high court or Supreme Court. Person can go to **high court** by filing **article 226 of Indian constitutional law** and other way person can go to supreme court under **article 32 of the Indian constitutional law** but there are some distinguishing feature among these two articles where, Article 226 is something distinguished from article 32 of constitutional law, **Under article 32 that person can go to supreme court whose only fundamental rights are violation nothing else but if any person going through the violation of not only fundamental right but also constitutional right and any other legal right also or secondly we can see by this view that It will purely and solely depend on the "Nature of the case", if the question involves only a small group of people being effected by action of State authority, the PUBLIC INTEREST LITIGATION can be filed in high court.**

#### **Procedure to File Public Interest Litigation:**

##### **In case of High Court:**

If a PUBLIC INTEREST LITIGATION is filed in a High court, then two (2) copies of the petition have to be filed. Also, an advance copy of the petition has to be served on the each respondent, i.e. opposite party, and this proof of service has to be affixed on the petition.

**In case of Supreme Court:**

If a PUBLIC INTEREST LITIGATION is filed in the Supreme court, then (4)+(1) (i.e. 5) sets of petition has to be filed opposite party is served, the copy only when notice is issued.

**Court Fees:**

A Court fees of RS. 50, per respondent (i.e. for each number of opposite party, court fees of RS. 50) has to be affixed on the petition.

**Procedure:**

Proceedings, in the PUBLIC INTEREST LITIGATION commence and carry on in the same manner. However, in between the proceedings if the judge feels he may appoint a commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems etc. After filing of replies, by opposite party, and rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

**Whether A Writ Petition Be Treated As A Public Interest Litigation?**

**Yes, a writ petition filed by the aggrieved person, whether on behalf of group or together with group can be treated as a PUBLIC INTEREST LITIGATION however, but it got certain conditions where, the writ petition should involve a question, which affects public at large or group of people, and not a single individual. Only the effected/Aggrieved person can file a writ petition. There should be a specific prayer, asking the court to direct the state Authorities to take note of the complaint/allegation, Which has been explicitly mentioned with evidence of certain cases,**

In a landmark judgment, in **D.K. Basu v State of West Bengal**, the court acted upon a **letter petition which drew attention to the repeated instances of custodial deaths in West Bengal**. The court further mandated that a relative of the arrested must be promptly notified. It made clear that the failure to comply with this direction would be punishable as

contempt of court. The early PILs had witnessed the award of compensation by the court to victims of human rights violations.<sup>5</sup>

In the case of **Upendra bakshi v Union of India** a letter highlighting the pathetic condition of the young offenders was sent to S.C judge which was taken into consideration.

In the case of **HINDUSTAN TIMES V CENTRAL POLLUTION BOARD** a newspaper cutting was taken as complaint

In other case of **kamalnath** had a lakeside hotel in mussorie, where the proprietors wanted to increase the area. They encroached the canal and built rooms there, thereby violating right to clean environment by taking pollution a grievous level. A news item of the same appeared and it was considered by the court.

### **THE PRESENT SCENARIO:**

#### **Expanding Old Rights and Creating New Ones**

There is an urgent need to expand old rights and create new rights. Indeed, the success of legal advocacy needs to be viewed by the social activist in these terms and not merely in terms of winning or losing cases it is important to try and create new rights based on a vision of the future.

#### **Sensitizing Lawyers**

There is a need of sensitizing the lawyers and one of the most difficult tasks for a social activist is to find a lawyer with a vision who is able to see the bigger picture and be prepared to fight for it. This calls for activists to sensitize lawyers on update basis and not restrict this activity to the peculiarities of a specific case. Also there is a need to sensitise law students in order to build a body of public interest lawyers in this country.

As per present scenario, it is to be noted that in the past, many people have tried to misuse the privilege of **PUBLIC INTEREST LITIGATION** and thus now the court, generally require a **detailed narration of facts and complaint**, & then decide whether to issue notice and call the opposite party. However as there **is no statute laying down rules and regulations for a PUBLIC INTEREST LITIGATION** Still the court can treat a letter

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<sup>5</sup> <https://www.lawteacher.net>  
<https://www.thebetterindia.com>

as a PUBLIC INTEREST LITIGATION, However the letter should bring the true & clear facts, and if the matter is really an urgent one, the court can treat it is a PUBLIC INTEREST LITIGATION.

#### **REMEDIES AVAILABLE BY PUBLIC INTEREST LITIGATION:**

##### Interim Measures

The court can afford an early interim measure to protect the public interest till the final order such as for example:

Release of under trial on personal bonds ordering release of all under trial who have been imprisoned for longer time, than the punishment period, free legal aid to the prisoners, imposing an affirmative duty on magistrates to inform under trial prisoners of their right to bail and legal aid etc...

#### **MISUSE OF PILS:**

For the last few years, there have been serious concerns about the use and misuse of public interest litigations and these concerns have been expressed at various levels. Now the time has come for a serious re-examination of the misuse of public interest litigation. There are numerous cases in the history of law where PIL has been misused. As in the case of **Shubhash Kumar V state of Bihar**. In this case there was a prole who was fired by the director of the company so he filed a PIL that this company is acting something wrong so this should be tried. So in this case by the fact of the case we can see that this is purely misuse of PIL nothing else. As same in the case of **S.P. Gupta V Union Of India**. There was also misuse of PIL came into picture. Cautioning the High Courts on the misuse of the PIL, the Bench said "**PIL is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking**". The Bench made it clear that a PIL should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

**CONCLUSION:**

PIL has an important role to play in the civil justice system in that it affords a ladder to justice to disadvantaged sections of society, some of which might not even be well-informed about their rights. Furthermore, it provides a venue to enforce diffused rights for which either it is difficult to identify an aggrieved person or where aggrieved persons have no incentives to knock at the doors of the courts. PIL could also contribute to good governance by keeping the government accountable. Last but not least, PIL enables civil society to play an active role in spreading social awareness about human rights, in providing voice to the marginalised sections of society, and in allowing their participation in government decision making. There is a need for change in public interest litigation by enforcing it in an orderly manner so that, it cannot be misused and remain to be helpful in all situations.