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ROLE OF JUDICIARY IN STRENGTHNING PUBLIC INTEREST LITIGATION

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I. INTRODUCTORY

An independent and powerful judiciary is considered essential for democracies. All the courts at different levels in a country put together are called the judiciary. The Indian judiciary consists of a Supreme Court for the entire nation, High Courts in the States and District Courts at local level. India has an integrated judiciary. It means the Supreme Court controls the judicial administration in the country. Its decisions are binding on all other courts of the country.

The powers and the independence of the Indian judiciary allow it to act as the guardian of the fundamental rights. The citizens have a right to approach the Courts to seek remedy in case of any violation of their rights. In recent years, the Courts have given several judgments and directives to protect public interest and human rights. Anyone can approach the Courts if public interest is hurt by the actions of government. The Courts intervene to prevent the misuse of the government's power to make decisions. They check malpractices on the part of public officials. That is why the judiciary enjoys a high level of confidence.

II. MEANING OF PUBLIC INTEREST LITIGATION (PIL)

The chief instrument through which judicial activism has flourished in India is Public Interest Litigation (PIL) or Social Action Litigation (SAL). What is PIL or SAL? How and when did it emerge? In normal course of law, an individual can approach the courts only if he/she has been personally aggrieved. That is to say, a person whose rights have been violated, or who is involved in a dispute, could move the court of law.

The term "*Public Interest*" means "*the larger interests of the public, general welfare and interest of the masses*"² and the word "*Litigation*" means "*a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy.*" It is an expression in which "*any litigation is conducted for the benefit of public or for removal of some public grievance.*"

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²Oxford English Dictionary (2nded.) Vol.XII.

Thus, PIL means “litigation or legal proceeding for the benefit of minority or disadvantage people or community as whole.” PIL or SIL today has great significance and drew the attention of all concerned. The traditional rule of *Locus Standi* that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of the so-called **Public-Spirited Citizens**³ for the enforcement of constitutional and legal rights. Now, any public spirited citizen can move/approach the court for the public cause by filing a petition:

- (i) In the Supreme Court under Article 32 of the Constitution of India.
- (ii) In the High Court under Article 226 of the Constitution.
- (iii) In the Court of Magistrate under Section 133 of the Code of Criminal Procedure.

III. EMERGENCE OF PIL

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamgar Sabha v. Abdul Thai*,⁴ and *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*,⁵ wherein an unregistered association of workers was permitted to institute a writ petition under Article 32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated the reasons for liberalization of the rule of *Locus Standi* in *Fertilizer Corporation Kamgar Union v. Union of India*⁶ and the idea of Public Interest Litigation blossomed in *S.P. Gupta & Ors. v. Union of India*.⁷

This concept underwent a change around 1979. In 1979, the Court set the trend when it decided to hear a case where the case was filed not by the aggrieved persons but by others on their behalf. As this case involved a consideration of an issue of public interest, it and such other cases came to be known as public interest litigations. Around the same time, the Supreme Court also took up the case about rights of prisoners. This opened the gates for large number of cases where public spirited citizens and voluntary organizations sought judicial intervention for protection of existing rights, betterment of life conditions of the poor, protection of the environment, and many other issues in the interest of the public.

The main reason behind the introduction of PIL was that sometimes due to some circumstances, the victim himself could not approach to court such as in *Hussainara Khatoon*

³They are people of this country who do not have direct interest at stake in the PIL filed before a Court but work *Pro Bono Public*, i.e. in the larger interests of the public and for their general welfare in good faith. Noted public-spirited citizens in India who have represented mass interests before the Supreme Court and other High Courts are *M.C. Mehta* and *Subhas Dutta*.

⁴AIR 1976 SC 1455.

⁵AIR 1981 SC 298.

⁶AIR 1981 SC 344.

⁷AIR 1982 SC 149.

*v. State of Bihar*⁸ where prisoners themselves could not approach the court. So a PIL was filed by Kapila Hingorani under the name of all these prisoners and the Supreme Court released 40,000 prisoners whose suits were pending in the court. It was further added that the prisoners should get the benefit of free legal aid and fast hearing. In 1979, newspapers published reports about 'Under Trials'. There were many prisoners in Bihar who had spent long years in jail, longer than what they would have spent if they had been punished for the offences for which they were arrested. This report prompted an advocate to file a petition. The Supreme Court heard this case and it became famous as one of the early PIL's.

In 1980, a prison inmate of the Tihar jail managed to send a scribbled piece of paper to Justice Krishna Iyer of the Supreme Court narrating physical torture of the prisoners. The judge got it converted into a petition. Though later on, the Court abandoned the practice of considering letters, this case, known as *Sunil Batra v. Delhi Administration*⁹ also became one of the pioneers of PIL.

Justice Krishna Iyer in the *Fertilizer Corporation Kamgar Union case*¹⁰ enumerated the following reasons for liberalization of the rule of Locus Standi:

- (i) Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights.
- (ii) Social justice wants liberal judicial review administrative action.
- (iii) Restrictive rules of standing are antithesis to a healthy system of administrative action.
- (iv) Activism is essential for participative public justice.

Therefore, a public minded citizen must be given an opportunity to move the court in the interests of the public.

Further, Bhagwati J., known as one of the pro-poor and activist judges of the Supreme Court in *S.P. Gupta case*¹¹ popularly known as **Judges Transfer case**, firmly established the validity of the PIL. Since then, a good number of public interest litigation petitions were filed.

Through the PIL, the court has expanded the idea of rights. Clean air, unpolluted water, decent living etc. are rights for the entire society. Therefore, it was felt by the courts that individuals as parts of the society must have the right to seek justice wherever such rights were violated. Secondly, through PIL and judicial activism of the post 1980 period, the judiciary has also shown readiness to take into consideration rights of those sections who cannot easily approach the courts. For this purpose, the judiciary allowed public spirited

⁸AIR 1979 SC 369.

⁹1980 AIR SC 1579: 1980 SCR (2) 557: 1980 SCC (3) 488.

¹⁰*Supra*, note 6.

¹¹*Supra*, note 7.

citizens, social organizations and lawyers to file petitions on behalf of the needy and the deprived.

In the case of *Bandhua Mukti Morcha v. Union of India*,¹² Justice Bhagwati observed as under:

“It must be remembered that the problems of the poor... are qualitatively different from those which have hitherto occupied the attention of the Court and they need... 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.”

IV. ROLE OF JUDICIARY IN SHAPING THE PIL

Two judges of the Indian Supreme Court (Bhagwati and Iyer JJ.),¹³ prepared the groundwork from mid-1970's to early 1980's, for the birth of PIL in India. This included modifying the traditional requirements of locus standi, liberalizing the procedure to file writ petitions, creating or expanding fundamental rights, overcoming evidentiary problems, and evolving innovative remedies.¹⁴ 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.

The Court justified such extension of standing in order to enforce rule of law and provide justice to disadvantaged sections of society.¹⁵ Furthermore, the Supreme Court observed that the term “*appropriate proceedings*” in Article 32 of the Constitution¹⁶ does not refer to the form but to the purpose of proceeding; so long as the purpose of the proceeding is to enforce a fundamental right, any form will do.¹⁷

This interpretation allowed the Court to develop epistolary jurisdiction by which even letters or telegrams were accepted as writ petitions.¹⁸ Once the hurdles posed by locus standi and the procedure to file writ petitions were removed, the judiciary focused its attention to providing a robust basis to pursue a range of issues under PIL.

¹²AIR 1984 SC 802.

¹³These two judges headed various committees on legal aid and access of justice during 1970's, which provided a backdrop to their involvement in the PIL project. See Cooper, Jeremy (1993). Poverty and Constitutional Justice: The Indian Experience. *Mercer Law Review*. pp. 611, 614-615.

¹⁴See Cooper, Poverty and Constitutional Justice (1993) 44 *Mercer Law Review* 611, 616-632; See Shah, Illuminating the Possible in the Developing World (1999) 32 *Vanderbilt Journal of Transnational Law*. pp.435, 467-473; Vijayashri Sripati, Human Rights in India Fifty Years after Independence (1997). *Denver Journal of International Law and Policy*. pp. 93, 118-125.

¹⁵It is suggested that the way a judge applies the rule of standing corresponds to how she sees her judicial role in the society. Barak, Aharon (2002). Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy. *Harvard Law Review*. pp. 16, 107-108.

¹⁶The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights contained in this Part is guaranteed.

¹⁷Shukla V.N., Singh M.P.(ed.), *Constitution of India*. pp. 278-279.

¹⁸See, for example, *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579; *Dr Upendra Baxi v. State of U.P.*, (1982) 2 SCC 308.

V. ENVIRONMENT AND PIL

The Indian Heritage and Culture has an intimate relation with the conservation and protection of the environment. The Indian State has also enshrined it in the Constitution which requires both the State and the citizen to “protect and improve the environment”. *The Environment Act, 1986* is one of those acts which extend to the whole of India without any exception.

1. Public Liability and Public Nuisance

M.C. Mehta & Anr. V. Union of India & Ors.,¹⁹ discusses the concept of Public Liability. This case is also known as *Oleum Leakage case*. It is a landmark judgment in which the principle of **Absolute Liability** was laid down by the Supreme Court of India. The Court held that the permission for carrying out any hazardous industry very close to the human habitation could not be given and the industry was relocated.

The instant case evolved the **Deep Pocket Principle**. This judgment guided the Parliament to add a new chapter to the *Factory Act, 1948*. The Public Liability Act was passed and the policy for the Abatement of Pollution Control was also established.

When the Directive Principles of State Policy has clear statutory expressions then the court will not allow Municipal Government to make fun of the statutes by sitting idly. It was decided by the Supreme Court in the *Municipal Corporation, Ratlam v. Vardhichand*.²⁰

2. Sustainable Development

The Bench of Justices P.N. Bhagwati and Ranganath Mishra in *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*²¹ introduced the concept of **Sustainable Development**. An NGO named RLEK filed a case against limestone quarrying in the valley in 1987.

3. Environmental Impact Assessment

Justice Jeevan Reddy in the landmark judgment of *Indian Council for Enviro-Legal Action v. Union of India*²² held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the **Polluter Pays Principle**.

4. Water Pollution

The writ petition filed by the activist advocate M.C. Mehta in the Supreme Court highlighted the pollution of the Ganga River by the hazardous industries located on its banks. Justice

¹⁹1986 SCR (1) 312.

²⁰AIR 1980 SC 1622.

²¹AIR 1987 SC 2187.

²²AIR 1999 SC 1502.

E.S.Venkataramiah gave a historic judgement in *M.C. Mehta v. Union of India*²³ ordering the closure of a number of polluting tanneries near Kanpur.

The Apex Court in *M.C. Mehta v. Union of India*²⁴ also known as *Taj Trapezium case* delivered its historic judgment in 1996 giving various directions including banning the use of coal and cake and directing the industries to Compressed Natural Gas (CNG).

5. Environmental Awareness and Education Case

The Supreme Court in *M.C. Mehta v. Union of India*, WP 860/1991 ordered the Cinema theatres all over the country to exhibit two slides free of cost on environment in each show. Their licenses will be cancelled if they fail to do so. The Television network in the country will give 5 to 7 minutes to televise programmes on environment apart from giving a regular weekly programme on environment.

Environment has become a compulsory subject up to 12th standard from academic session 1992 and University Grants Commission will also introduce this subject in higher classes in different Universities and now it is subject of higher classes also.

VI. THE THREE PHASES OF PIL

At the risk of over-simplification and overlap, the PIL discourse in India could be divided into three broad phases.²⁵ One will notice that these three phases differ from each other in terms of at least the following four variables: who initiated PIL cases; what was the subject matter/focus of PIL; against whom the relief was sought; and how judiciary responded to PIL cases.

1. The First Phase

In the first phase- which began in the late 1970's and continued through the 1980's, 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 labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women. The 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 recognizing the rights of these people and giving directions to the government to redress the alleged violations. In short, it is arguable 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.

²³AIR 1988 SCR (2) 538.

²⁴AIR 1987 SC 965.

²⁵Dam divides PIL in three functional phases: creative, law-making and super-executive. Dam, Shubhankar(2000). Law-making Beyond Lawmakers: Understanding the Little Right and the Great Wrong (AnalyzingThe Legitimacy ofthe Nature of Judicial Law-making in India's Constitutional Dynamic).*Tulane Journal of International andComparative Law* 109, pp. 115-116. This division, however, does not fully explain the complexity of PIL, because itfocuses only on one aspect of it.

2. The Second Phase:

The second phase of the PIL was in the 1990's during which several significant changes in the chemistry of PIL took place. In comparison to the first phase, the filing of PIL cases became more institutionalized in that several specialized NGO's and lawyers started bringing matters of public interest to the courts on a much regular basis. The breadth of issues which were raised in PIL 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 and regarding something that would clearly fall within the domain of the legislature. The response of the judiciary during the second phase was by and large much bolder and unconventional than the first phase.

3. The Third Phase

On the other hand, the third phase- the current phase, which began with the 21st century, is a period in which anyone could file a PIL for almost anything. It seems that there is a further expansion of issues that could be raised as PIL, e.g., calling back the Indian cricket team from the Australia tour and preventing an alleged marriage of an actress with trees for astrological reasons.

From the judiciary's point of view, one could argue that it is time for judicial introspection and for reviewing what courts tried to achieve through PIL. As compared to the second phase, the judiciary has seemingly shown more restraint in issuing directions to the government. Although the judiciary is unlikely to roll back the expansive scope of PIL, it is possible that it might make more measured interventions in the future.

One aspect that stands out in the third phase deserves a special mention. In continuation of its approval of the government's policies of liberalization in *Delhi Science Forum*, the judiciary has shown a general support to disinvestment and development policies of the Government.²⁶ What is more troublesome for students of the PIL project in India is, however, the fact that this judicial attitude might be at the cost of the sympathetic response that the rights and interests of impoverished and vulnerable sections of society (such as slum dwellers and people displaced by the construction of dams) received in the first phase.

²⁶It is suggested that in recent years the Supreme Court has been influenced by liberalization and corporate businessinterests at the cost of human rights. See Cassels, Jamie (2000). Multinational Corporations and Catastrophic Law 31 *Cumberland Law Review* 311, 330; Parmanand Singh, State, "Market and Economic Reforms" in ParmanandSingh et al. (eds), *Legal Dimensions of Market Economy* (New Delhi: Universal Book Traders, 1997), pp. 23, 30-31; PrashantBhushan, "Has the Philosophy of the Supreme Court on Public Interest Litigation Changed in the Era of Liberalisation?", <http://www.judicialreforms.org/files/2%20Philosophy%20of%20SC%20on%20PIL%20%20Prashant%20Bhushan.pdf> (Accessed October 8, 2008).

The Supreme Court's observations such as the following also fuel these concerns:²⁷

“Socialism might have been a catchword from our history. It may be present in the Preamble of our Constitution. However, due to the liberalization policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away.”

It seems that the judicial attitude towards PIL in these three phases is a response, at least in part, to how it perceived to be the “*issues in vogue*”. If rights of prisoners, pavement dwellers, child/bonded labourers and women were in focus in the first phase, issues such as environment, AIDS, corruption and good governance were at the forefront in second phase, and development and free market considerations might dominate the third phase. So, the way courts have reacted to PIL in India is merely a reflection of what people expected from the judiciary at any given point of time.

PIL should not be the first step in redressing all kinds of grievances even if they involve public interest. In order to remain effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench, the Bar, and most importantly by the masses.²⁸

“The overuse of PIL for every conceivable public interest might dilute the original commitment to use this remedy only for enforcing human rights of the victimized and the disadvantaged groups.”

VII. CONCLUSION

In his work *Social Action Litigation: The Indian Express* Justice Bhagwati observed,

“Today, we find that in third world countries, there are large number of groups which are being subjected to exploitation, injustice and even violence. In this climate of conflict and injustice, judges have to play a positive role and they cannot content themselves by invoking the doctrine of self-restraint and passive interpretation. The judges in India have fortunately a most potent judicial power in their hands, namely the power of judicial review. The judiciary has to play a vital and important role not only in preventing the remedying abuse and misuse of power but also in eliminating exploitation and injustice.”

PIL has become the most important vehicle of judicial activism. Judiciary, which is an institution that traditionally confined to responding to cases brought before it, began considering many cases merely on the basis of newspaper reports and postal complaints received by the court. Therefore, the term judicial activism became the more popular description of the role of the judiciary.

²⁷*State of Punjab v. Devans Modern Breweries Ltd.*, (2004) 11 SCC 26.

²⁸Prof. Sathe, S.P. (2003). *Judicial Activism in India: Transgressing Borders and Enforcing Limit*. Oxford University Press, UK.

As stated earlier, the Judicial Activism in India can be witnessed with reference to the review power of the Supreme Court under Article 32 of the Constitution particularly in public interest litigation cases. The Supreme Court played crucial role in formulating several principles in public interest litigation cases. Further, the Supreme Court gave variety of guidelines in various cases of public interest litigation e.g., *Ratlam Municipality case*, *Taj Trapezium case*, *Ganga Pollution case* etc.

PIL, as it is conveniently called, has become a major and prominent segment of the jurisdiction of the Supreme Court and High Courts in India. Whilst its necessity and utility in upholding the rule of law is undoubted, its extravagant and unprincipled use at times by courts has brought PIL into controversy. Major steps need to be taken in order to prevent an “*over-activist*” judiciary from transgressing *its limits*.

Courts have not hesitated in charting unknown territory, but the fast-increasing numbers of PIL's have increased the load on the judiciary. Responding to that, Justice R.S. Sodhi says:

“There are always two sides to a coin. There will be people who will try and exploit (PIL's); whether courts allow themselves to be misused... that is where the wisdom of the courts lie.”