

Public Interest Litigation: Access To Justice

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Introduction:

In India, over the last three and half decades or so, the mechanism of Public Interest Litigation has come to be recognized as a characteristic feature of the higher judiciary. The phrase 'Public law Litigation' was first prominently used by American academic Abram Chayes to describe the practice of lawyers or public spirited individuals who seek to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws and articulate public norms.¹ He identified four inimitability of public law litigation in the United States which is common to PIL actions in India. First, the joinder of parties has been liberalized.² Today, all parties with an "interest" in the controversy can join the litigation.³ Though "interest" has been defined narrowly sometimes to preserve efficiency concerns, the courts have responded by allowing class-action claims that are more flexible with regards to the parties.⁴ Second, the courts have given increasing importance to equitable relief.⁵

Prof. Chayes also focused on injunctive relief as an example of this procedural development.⁶ He argued that injunctions are a much greater constraint on a party's future actions than the risk of future liability. The injunction is continuing and a party may seek a further order from the court to change or modify the injunction if the circumstances so require. Finally, through an injunction, "the court takes public responsibility for any consequences of its decree that may adversely affect strangers to the action."⁷ This equitable relief is more concerned with balancing the interests of the parties than the traditional form of monetary relief. Public law litigation, unlike traditional forms of litigation, is concerned not only about past instances or occurrences but also about protecting against acts that are ongoing or that may occur in the future.⁸ Professor Chayes describes this model of fact-finding as "fact evaluation."⁹ Public law litigation concerns not only the parties, representing two sides of a disagreement but also the public interest. As such, the court must play a role in finding and evaluating those facts that might have an impact on the outcome of the suit. Finally, the decree must be different in public law litigation. The court is seeking to modify future instances or conduct; therefore, its decision cannot be logically deduced from the "nature of the legal harm suffered."¹⁰ He suggested a model for developing this type of decree. He argued that the court should act as a

mediator between the parties, in part to guarantee their ongoing compliance.¹¹ Further, the court should develop its own expertise and information to ensure that the decree will resolve the dispute. As he says, "the trial judge has passed beyond even the role of legislator and has become a policy planner and manager."¹²

PIL in India: Public Interest Litigation can be broadly defined as 'litigation for the protection of public interest'. Its unequivocal purpose is to estrange the suffering of all those who have borne the burnt of insensible treatment at the hands of fellow human being. Perspicuity in public life & fair judicial action are the right answer to check increasing peril of infringement of legal rights.¹³ It develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interest of the weaker elements in the community.

Till 1960s and seventies, the concept of litigation in India was still in its elementary form and was seen as a private pursuit for the vindication of private vested interests. Litigation was consisted mainly of some action initiated and continued by certain individuals, usually, addressing their own grievances or problems. Thus, the initiation and continuance of litigation was the prerogative of the injured person or the aggrieved party. Even this was greatly limited by the resources available with those individuals. There were very little organized efforts or attempts to take up wider issues that affected classes of consumers or the general public at large.¹⁴ As a result, there was hardly any link between the rights guaranteed by the Constitution of India and citizen of the country i.e. the laws made by the legislature on the one hand for the welfare of citizens but on the other hand the vast majority of illiterate citizens are deprived of the same.¹⁵

However, the entire scenario changed during Eighties with the Supreme Court of India led the concept of public interest litigation (PIL). The courts in India, in a series of creative steps, responded to the clarion call for justice to be done, by first recognizing that the traditional system of litigation, highly individualistic and adversarial, was ill-suited to meet the collective claims of the underprivileged in the society. They relied on the wide power in the Constitution and other sources such as the Directive principles, in India to develop an appropriate method to advance and protect fundamental rights and used this power to foster a public interest litigation system to fulfill the constitutional promise of social and economic order based on equality. Proactive and enlightened members of the judiciary exercised their insight to rebalance the distribution of legal resources, increase access to justice for the

disadvantaged, and imbue formal legal guarantees with substantive and positive content.¹⁶ This trend shows stark difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role. PIL is necessary rejection of "laissez faire" of traditional jurisprudence.

The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties as a result any citizen of India or any consumer groups or social action groups can approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation.¹⁷

The development of Public Interest Litigation (PIL) in the country has, however, very recently uncovered its own pitfalls and drawbacks. The genuine causes and cases of public interest have in fact receded to the background and irresponsible PIL activists all over the country have started to play a major but not a constructive role in the arena of litigation. They try to utilize this extraordinary remedy, available at a cheaper cost, as a substitute for ordinary ones.

Judiciary and Public Interest Litigation in India: Landmark Decisions

One of the earliest cases of public interest litigation was that reported as Hussainara Khatoon (I) v. State of Bihar.¹⁸ This case was concerned with a series of articles published in a prominent newspaper - the Indian Express which exposed the plight of under-trial prisoners in the state of Bihar. A writ petition was filed by an advocate drawing the Court's attention to the deplorable plight of these prisoners. Many of them had been in jail for longer periods than the maximum permissible sentences for the offences they had been charged with. The Supreme Court accepted the locus standi of the advocate to maintain the writ petition. Thereafter, a series of cases followed in which the Court gave directions through which the 'right to speedy trial' was deemed to be an integral and an essential part of the protection of life and personal liberty.

Soon thereafter, two noted professors of law filed writ petitions in the Supreme Court highlighting various abuses of the law, which, they asserted, were a violation of Article 21 of the Constitution.¹⁹ These included inhuman conditions prevailing in protective homes, long pendency of trials in court, trafficking of women, importation

of children for homosexual purposes, and the non-payment of wages to bonded labourers among others. The Supreme Court accepted their locus standi to represent the suffering masses and passed guidelines and orders that greatly ameliorated the conditions of these people. In another matter, a journalist, Ms. Sheela Barse,²⁰ took up the plight of women prisoners who were confined in the police jails in the city of Bombay. She asserted that they were victims of custodial violence. The Court took cognizance of the matter and directions were issued to the Director of College of Social Work, Bombay. He was ordered to visit the Bombay Central Jail and conduct interviews of various women prisoners in order to ascertain whether they had been subjected to torture or ill-treatment. He was asked to submit a report to the Court in this regard. Based on his findings, the Court issued directions such as the detention of female prisoners only in designated female lock-ups guarded by female constables and that accused females could be interrogated only in the presence of a female police official.²¹

Public interest litigation acquired a new dimension - namely that of 'epistolary jurisdiction' with the decision in the case of Sunil Batra v. Delhi Administration.²² It was initiated by a letter that was written by a prisoner lodged in jail to a Judge of the Supreme Court. The prisoner complained of a brutal assault committed by a Head Warden on another prisoner. The Court treated that letter as a writ petition, and, while issuing various directions, opined that:

"...technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found".

In Municipal Council, Ratlam v. Vardichand²³ the Court recognized the locus standi of a group of citizens who sought directions against the local Municipal Council for removal of open drains that caused stench as well as diseases. The Court, recognizing the right of the group of citizens, asserted that if the:

"...centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men."

In Parmanand Katara v. Union of India²⁴ the Supreme Court accepted an application by an advocate that highlighted a news item titled "Law Helps the Injured to Die"

published in a national daily, The Hindustan Times. The petitioner brought to light the difficulties faced by persons injured in road and other accidents in availing urgent and life-saving medical treatment, since many hospitals and doctors refused to treat them unless certain procedural formalities were completed in these medico-legal cases. The Supreme Court directed medical establishments to provide instant medical aid to such injured people, notwithstanding the formalities to be followed under the procedural criminal law.²⁵

In many other instances, the Supreme Court has risen to the changing needs of society and taken proactive steps to address these needs. It was therefore the extensive liberalization of the rule of locus standi which gave birth to a flexible public interest litigation system. A powerful thrust to public interest litigation was given by a seven-judge bench in the case of S.P. Gupta v. Union of India.²⁶ The judgment recognized the locus standi of bar associations to file writs by way of public interest litigation. In this particular case, it was accepted that they had a legitimate interest in questioning the executive's policy of arbitrarily transferring High Court judges, which threatened the independence of the judiciary. Explaining the liberalization of the concept of locus standi, the court opined:

"It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him."

The unique model of public interest litigation that has evolved in India not only looks at issues like consumer protection, gender justice, prevention of environmental pollution and ecological destruction, it is also directed towards finding social and political space for the disadvantaged and other vulnerable groups in society. The Courts have given decisions in cases pertaining to different kinds of entitlements and protections such as the availability of food, access to clean air, safe working conditions, political representation, affirmative action, anti-discrimination measures and the regulation of prison conditions among others. For instance, in People's Union

for Democratic Rights v. Union of India²⁷ a petition was brought against governmental agencies which questioned the employment of underage labourers and the payment of wages below the prescribed statutory minimum wage-levels to those involved in the construction of facilities for the then upcoming Asian Games in New Delhi. The Court took serious exception to these practices and ruled that they violated constitutional guarantees. The court now permits Public Interest Litigation or Social Interest Litigation at the instance of "Public spirited citizens" for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps.²⁸

Similarly, in Bandhua Mukti Morcha v. Union of India²⁹ the Indian Supreme Court explained the need to abandon the traditional approach to the judicial process in order to 'forge new tools' to give meaningful content to the fundamental rights of the large masses of the people. Justice Bhagwati said:

'It is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the Court for the purpose of securing enforcement of their fundamental rights. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution'³⁰

Among other interventions, one can refer to the Shriram Food & Fertilizer case³¹ Court through Public Interest Litigation directed the Co. Manufacturing hazardous & lethal chemical and gases posing danger to life and health of workmen & to take all necessary safety measures before re-opening the plant.³²

It is also through the vehicle of PIL, that the Indian Courts have come to adopt the strategy of awarding monetary compensation for constitutional wrongs such as unlawful detention, custodial torture and extra-judicial killings by state agencies.³³

In the realm of environmental protection, many of the leading decisions have been given in actions brought by renowned environmentalist M.C. Mehta. He has been a tireless campaigner in this area and his petitions have resulted in orders placing strict liability for the leak of Oleum gas from a factory in New Delhi³⁴ directions to

check pollution in and around the Ganges river,³⁵ the relocation of hazardous industries from the municipal limits of Delhi,³⁶ directions to state agencies to check pollution in the vicinity of the Taj Mahal³⁷ and several forestation measures. A major decision was made in a petition that raised the problem of extensive vehicular air pollution in Delhi. The Court was faced with considerable statistical evidence of increasing levels of hazardous emissions on account of the use of diesel as a fuel by commercial vehicles. The Supreme Court decided to make a decisive intervention in this matter and ordered government-run buses to shift to the use of Compressed Natural Gas (CNG), an environment-friendly fuel.³⁸ This was followed some time later by another order that required privately-run 'auto-rickshaws' (three-wheeler vehicles which meet local transportation needs) to shift to the use of CNG. At the time, this decision was criticized as an unwarranted intrusion into the functions of the pollution control authorities, but it has now come to be widely acknowledged that it is only because of this judicial intervention that air pollution in Delhi has been checked to a substantial extent.

In a landmark judgment in *Delhi Domestic Working Women's Forum v. Union of India* in year 1995 Supreme Court issued guidelines for rehabilitation and compensation for the rape on working women.

Another crucial intervention was made in *Council for Environment Legal Action v. Union of India*³⁹ wherein a registered NGO had sought directions from the Supreme Court in order to tackle ecological degradation in coastal areas.

An important step in the area of gender justice was the decision in *Vishaka v. State of Rajasthan*⁴⁰. The petition in that case originated from the gang-rape of a grassroots social worker. In that opinion, the Court invoked the text of the Convention for the Elimination of all forms of Discrimination against Women (CEDAW) and framed guidelines for establishing redressal mechanisms to tackle sexual harassment of women at workplaces. Though the decision has come under considerable criticism for encroaching into the domain of the legislature, the fact remains that till date the legislature has not enacted any law on the point. It must be remembered that meaningful social change, like any sustained transformation, demands a long-term engagement. Even though a particular petition may fail to secure relief in a wholesome manner or be slow in its implementation, litigation is nevertheless an important step towards systemic reforms. A recent example of this approach was the decision in *People's Union for Civil Liberties v. Union of India*⁴¹

where the Court sought to ensure compliance with the policy of supplying mid-day meals in government-run primary schools. The mid-day meal scheme had been launched with much fanfare a few years ago with the multiple objectives of encouraging the enrolment of children from low-income backgrounds in schools and also ensuring that they received adequate nutrition. However, there had been widespread reports of problems in the implementation of this scheme such as the pilferage of food grains. As a response to the same, the Supreme Court issued orders to the concerned governmental authorities in all States and Union Territories, while giving elaborate directions about the proper publicity and implementation of the said scheme.

Factors contributed in growth of PIL in India:

Among many other the major factors which contributed in growth of PIL in India are:

1. 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.
2. India has some of the most progressive social legislation relating to bonded labor, minimum wages, land ceiling, environmental protection, etc which are rarely found anywhere in the world.. This has made it easier for the courts to drag up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
3. Remedial nature of PIL departs from traditional locus standi rules. Thus a person acting bonafide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court and genuine infraction of statutory provisions. The judges themselves have in some cases initiated suo moto action based on newspaper articles or letters received.
4. It is indirectly incorporated the principles enshrined in the Part IV into Part III of Indian Constitution 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.

5. Perceptive judges have persistently innovated on the side of the poor. Like, in the Bandhua Mukti Morcha case, the apex court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer. Similarly in the Asiad Workers judgment case, Justice Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts.

6. In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is capacious or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

Conclusion:

PIL in India has produced astounding results which were unthinkable three decades ago. The greatest contribution of it has been enhancing the accountability of governments towards human rights of underprivileged. Judges alone cannot provide effective responses to governmental lawlessness but they can surely a culture formation where political power becomes increasingly sensitive to human rights.

But, public interest litigants, all over the country, have not taken very humanely to such court decisions. They do fear that this will sound the death-knell of the people-friendly concept of PIL. However, bona fide litigants of India have nothing to fear. Only those activists who prefer to file frivolous complaints will have to pay compensation to the opposite parties. It is actually a welcome move because no one in the country can deny that even PIL activists should be responsible and accountable. It is also notable here that even the Consumers Protection Act, 1986 has been amended to provide compensation to opposite parties in cases of frivolous complaints made by consumers. In any way, it now does require a complete rethink and restructuring. It is however, obvious that overuse and abuse of PIL can only make it stale and ineffective. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints.

The power of the Court to entertain any circumstance that may hinder societal growth, or may cause hardship to a class of individuals is not unconstrained. It is

carefully regulated with tight reins, and cases of public interest are taken up only after scrupulous scrutiny.

Similarly there may be cases where the PIL may affect the right of persons not before the court, and therefore in shaping the relief the court must invariably take into account its impact on those interests and the court must exercise greatest caution and adopt procedure ensuring sufficient notice to all interests likely to be affected.

At present, the court can treat a letter as a writ petition and take action upon it. But, it is not every letter, which may be treated as a writ petition by the court. The court would be justified in treating the letter as a writ petition only in the following cases:

- (i) It is only where the letter is addressed by an aggrieved person or
- (ii) A public spirited individual or
- (iii) A social action group for the enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights. Under these circumstances the Supreme Court of India is required to step in by incorporating safe guards provided by the civil procedure code in matters of stay orders /injunctions in the arena of PIL.

However shedding all the doubts and abuses against misuse of PIL, it must be accepted that is working as an important instrument of social change. It is working for the welfare of every section of society. It is the sword of every one used only for taking the justice. The innovation of this legitimate instrument proved beneficial for the developing country like India. PIL has been used as a strategy to combat the atrocities prevailing in society. It is an institutional initiative towards the welfare of the needy class of the society.

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6. See Abram Chayes, *Developments in the Law—Injunctions* (1965)
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