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# **ADVOCATING FOR THE VOICELESS: THE ROLE OF PUBLIC INTEREST LITIGATION**

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## ***Abstract:***

*Law serves as the foundation of equality, justice and protector of human rights in democratic countries. However, some vulnerable and marginalized groups remain unnoticed by the legal system because of their socio- economic background and lack of awareness. Public Interest Litigation (PIL) under Article 32 of the Constitution of India has emerged as a tool for protecting the fundamental rights of the people and promoting social justice. This work emphasis on the development, scope and impact of PIL under Article32 of the Constitution of India. Article 32 empowers the Supreme Court to issue writs for the enforcement of Fundamental Rights. This research work highlights the main features of PIL, including access to justice, challenging arbitrary laws and promoting transparency and accountability. By the analysis of landmark cases, this study demonstrates the significant role of PIL in developing social justice, environmental protection and good governance. The findings emphasis on the importance of PIL as a catalyst for social change and promoting a more just and equitable society.*

**Key Words:** *Public Interest Litigation, Locus standi, vulnerable, marginalized groups, public law litigation*

## **INTRODUCTION**

In India, the mechanism of public interest litigation is recognized as a most significant characteristics feature of Higher Judicial. The terminology "public law litigation" was first prominently used by Abram Chayes, an American Academic to describe the practice of lawyers or the representatives of the people who wants to bring social reforms through orders or decrees of the courts that reforms legal rules, enforce present laws and formulate public norms.<sup>1</sup> Public

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<sup>1</sup> Public Interest Litigation: Access to Justice, available at: <https://www.manupatra.com/roundup/379/articles/public%20interest%20litigation.pdf> (last visited on August 30,2024)

Interest Litigation or PIL implies chief mechanism by which the concept of judicial activism is established as it provides exercising of writ jurisdiction by higher Judiciary like high courts or the Supreme Court of India to protect the fundamental rights and legal rights of the citizens of India at large. The concept of public interest litigation evolved in the United States of America for the first time but in India PIL emerged in the 1980s and its profounders are justice PN Bhagwati and Justice Krishna Iyer. As the terminology suggests, the same It meant for the protecting Public Interest which gets affected by many reasons like road safety, pollution, terrorism etc. One of the main and foremost necessity of a public interest litigation is the party filing the PIL has to do so in the interest of public and has to satisfy the Court on the same grounds as well. This article is meant for emphasizing and discussing the origin and development of public interest litigation in Indian context and its credibility in Indian judiciary.<sup>2</sup>

## UNDERSTANDING OF PUBLIC INTEREST LITIGATION

Public Interest Litigation connotes the litigations or cases filed by any person or persons in a court of law for the protection of "public interest". In any case where the interest of the public at large is affected can be cured or redressed by using the mechanism of PIL in a court of law such as pollution, terrorism, road safety, labour issues etc. The terminology "Public Interest Litigation" has been taken from USA jurisprudence, where it was used to facilitate legal representation to the marginalized sections like- poor, racial minorities, unorganized consumers, and the people who are affected by environmental issues. The expression "Public Interest litigation" is not defined in any law or statutes, but PIL has been interpreted by many judges and jurists to consider the intent of the mass of the people. The courts through Judiciary activism empowers the people to initiate PIL for the interest of others. However, the person or the group of persons who is filing the petition in favour of others must satisfy the court that the petition is filed for the interest of public and not just as a frivolous litigation. The matters which are entertained under public interest litigation are atrocities on women, neglected children, bonded labour matters, nonpayment of minimum wages to the workers, Food Adulteration, exploitation of casual workers, environmental pollution, and maintenance of Heritage and Culture etc.<sup>3</sup>

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<sup>2</sup> Origin and development of PIL in India, available at: <https://blog.ipleaders.in/origin-and-development-of-pil-in-india/> (last visited on August 30,2024)

<sup>3</sup> Public Interest Litigation (PIL) in India –Indian Polity Notes, available at: <https://byjus.com/free-ias-prep/public-interest-litigation-pil/> (last visited on August 30, 2024)

Generally, Public Interest Litigation can be defined as litigation for the protection of public interest. Its main motive is to reduce the sufferings of all persons who are getting inhuman treatment at the hand of their fellow human beings. PIL develops a new corner of jurisprudence which makes the state accountable for the violation of legal and constitutional rights that adversely affecting the public interest.<sup>4</sup> In ordinary parlance PIL is a tool which empower the third party to file a petition to the higher courts on behalf of those who may lack the resource, knowledge or power to do so by themselves.

## **THE CONSTITUTION OF INDIA AND PUBLIC INTEREST LITIGATION**

Public Interest Litigation is based upon Article 39A. Under the Constitution of India, Article 39A directs the state to ensure that the operation of the legal system promote justice, on a basis of equal opportunity and also provide free legal aid so that no one denied justice by reason of economic or other disabilities.<sup>5</sup> Under Article 32<sup>6</sup> and Article 226<sup>7</sup> of the Indian Constitution the writ jurisdiction can be invoked when there has been a violation of the Fundamental Rights of an individual or a group. The Fundamental Rights guaranteed under part III of the Constitution are enforceable and justiciable and any Act or statute which is inconsistent or nullifies the Fundamental Rights shall be declared as void. The main difference between Article 32 and 226 is that the former can be invoked for the violation of fundamental rights only whereas the later can be invoked for the violation fundamental rights as well as for any other legal rights.

### **EVOLUTION OF PUBLIC INTEREST LITIGATION IN INDIA**

The emergence of public interest litigation in India is influenced by the development of PIL in the jurisprudence of America. However, in India the supreme court, formulated new methods for the purpose to impart justice to the large sections of the deprived people. They have the constitutional assurance for the protection of their human rights but still their freedom and liberty have no meaning as they are denied the basic Human Rights. Even after so many years of Independence the state failed to create a new equal and just society free from exploitation and atrocities for the people of marginalized section. During the emergency period (1975-1976) the condition become more pathetic for the general people to live a dignified life. Judges like

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<sup>4</sup> *Supra* note 1

<sup>5</sup> The Constitution of India, Article 39 (a)

<sup>6</sup> The Constitution of India, Article 32

<sup>7</sup> The Constitution of India, Article 226

justice Krishna Iyer and PN Bhagwati showed dynamic wisdom of social consciousness and become a flag bearer of legal service movement. The state's miscarriage to resolve the social economic issues influenced and motivated conscious people, the social action groups, and NGOs to raise the voice against these kinds of atrocities on the marginalized section of the state. They had the only choice to seek the help of the judiciary.<sup>8</sup>

Soon after, this resulted in judicial activism, which motivated a number of judges like justice Krishna Iyer and PN Bhagwati to create a new method to utilize the constitutional power of the court in favour of the people. This led to the creation of new mechanism of public interest litigation in India with the intention to bring law and order into the service of the marginalized and the oppress section of the society.<sup>9</sup>

Supreme Court of India in its various decisions developed Public Interest Litigation to impart justice to the needy and deprived section of the society. The court by using the mechanism of public interest litigation make it easy to access justice for the poor in order to secure their social as well as economic justice and also protect the fundamental rights and make it meaningful to them. According to PM Bakshi, an Indian Jurist, stated that the base of the concept of PIL was constructed in India by Justice Krishna Iyer for the first time in the case of<sup>10</sup> *Mumbai Kamgar Sabha v. Abdulbhai*<sup>11</sup>, without using the exact phrase. In this case He examined that the traditional rule of "Locus standi" should be relaxed for supporting the cause of public interest before the court of law, Justice Krishna Iyer observed:<sup>12</sup>

"Even Article 226, viewed on wider perspective, may be amenable to ventilation of collective or common grievances as distinguished from assertion of individual rights, ... Public interest is promoted by a spacious constructions of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the Higher Courts where the remedy is shared by a considerable number, particularly when they are weaker."<sup>13</sup>

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<sup>8</sup> Dr. Hari BanshTripathi, "Public Interest Litigation in Comparative Perspective" *NJA Law Journal* 59- 62 (2007)

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> *Mumbai Kamgar Sabha v. Abdulbhai*, 1976 AIR 1455

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

But in the case of *Fertilizer Corporation Kamgar Union v. Union of India*<sup>14</sup>, for the first time the phrases like 'Public Interest Litigation' and 'epistolary jurisdiction' were used by Justice Krishna Iyer. Justice Iyer had declared in this case, "law, as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction."<sup>15</sup>

*Hussainara Khatoon v. State of Bihar*<sup>16</sup>, is the first case which was filed as public interest litigation in the Indian Supreme Court which was filed by Kapila Hingorani, a senior advocate, in 1979 in the form of a writ of habeas corpus. In this case was filed to bringing to light the fact of unlawful detention of 18 prisoners who were suffering detention awaiting trials for very long periods. This writ petition ultimately led to the revelation of over 80,000 such prisoners who were languishing in various prisons for long awaiting their trial to start.<sup>17</sup>

In the case of *S.P. Gupta and others v. President of India and others*<sup>18</sup>, the Supreme Court has firmly established the rule regarding the public interest litigation. The Court held that any individual member of the public having "sufficient interest" can approach the Court for enforcing constitutional or legal rights of other persons and redressal of a common grievance. **Justice Bhagwati** in this case said that it would have to be decided from case to case as to whether the person approaching the court for relief has "sufficient interest" and has not acted with mala fide or political motives. In the instant case, the court upheld the right of the practising lawyers to maintain a writ petition under Art. 32 on matters affecting the independence of judiciary.<sup>19</sup>

In fact, in *Sunil Batra v. Delhi Administration*<sup>20</sup> the Supreme Court of India, for the first time accepted a letter written to the Supreme Court by Sunil Batra, an inmate of Tihar Jail Delhi, highlighting the inhuman torture inflicted on a fellow prisoner by the jail administration. The Supreme Court treated the latter as a writ petition, and while disposing that petition the apex court issued certain directions, including taking suitable action against the erring officials and also expanded the scope of habeas corpus to check the violations of fundamental rights of under

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<sup>14</sup> *Fertilizer Corporation Kamgar Union v. Union of India*, AIR 1981 SC 344

<sup>15</sup> *Ibid*

<sup>16</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1976 SC 1360

<sup>17</sup> *Ibid*

<sup>18</sup> *S.P. Gupta and others v. President of India and others*, AIR 1982 SC 149

<sup>19</sup> Dr. J.N. Pandey, "Constitutional Law of India" 456- 457 (Central Law Publication, Allahabad, 57<sup>th</sup> Ed., 2020)

<sup>20</sup> *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579

trials and convicted prisoners.<sup>21</sup>

Supreme Court judges like Justice Krishna Iyer and Justice PN Bhagwati played the lead role for evolution and development of PIL in India. Now people having sufficient interest can approach the Supreme Court and High Courts for the enforcement of constitutional and other legal rights other persons under Article 32 and 226 respectively.

## SIGNIFICANCE OF PUBLIC INTEREST LITIGATION

PIL serves various critical functions in society. They are:

- 1. Empowerment of Weaker Sections:** First and foremost, PIL opens the door for the weaker sections to avail justice who otherwise denied justice due to their incapacity. This power is given to the public by courts to protect their rights.<sup>22</sup>
- 2. Enforcement of Fundamental Rights:** PIL is an instrument by which the courts can enforce the fundamental rights protected by the constitution. When the government fails to enforce these rights, PIL serves as a tool to hold the government accountable.<sup>23</sup>
- 3. Less Expensive:** It is an economical way for the citizens to seek remedy for their grievances as the fees are nominal compared to the private litigation fees which lot of people cannot afford.<sup>24</sup>
- 4. Relaxation of Locus Standi:** PIL is an exception to the old concept of locus standi. In earlier, the person whose rights are violated can only file a petition for the enforcement of the same but now through PIL a third party can also file a petition for the enforcement of other's rights.<sup>25</sup>
- 5. It opens the door of the court to address other issues:** PIL is an opportunity for the courts to address important issues in areas like environmental protection, consumer protection, etc., which affect a large number of people and otherwise maybe ignored.<sup>26</sup>
- 6. Judicial Oversight and Accountability:** PIL encourages judicial oversight of the government and make the government accountable. Government agencies can be held accountable by the courts, resulting in their better performance.<sup>27</sup>

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<sup>21</sup> *Supra* note 8

<sup>22</sup> Dr. Priyadashi Nagda, "Public Interest Litigation in India: A Critical Study" Vol., 10, *International Journal of Creative Research Thoughts (IJCRT)* 178- 185 (January 2022)

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

7. **Catalyst for legal and Policy Reforms:** In many PIL cases Courts have directed the government agencies to formulate government policies according to the public concerned.<sup>28</sup>

## **CHALLENGES AND CRITICISMS OF PUBLIC INTEREST LITIGATION**

PIL has, however, led to new problems such as an unanticipated increase in the workload of the superior courts, lack of judicial infrastructure to determine factual matters, gap between the promise and reality, abuse of process, friction and confrontation with fellow organs of the government, and dangers inherent in judicial populism.<sup>29</sup>

### **Criticisms of PIL:**

1. It has been criticized that a single letter can be entertained as a PIL for the violation of fundamental rights which can lead the court into flood with litigation resulting deciding many other important cases.<sup>30</sup>
2. It is pointed out that interference by the Courts through the PIL in the sphere of Executive and Legislature is not justified as it is likely to cause conflict between the three organs of the government.<sup>31</sup>
3. The court has no capacity to enforce its orders and in many cases the conditions have not changed.<sup>32</sup>
4. It has been also criticized that the public interest irrigation is used for the harassment by many. Sometimes it is used to protect one's private interest in shape of public interest.<sup>33</sup>
5. One prerequisite for a matter to be fit for PIL is that it must be instituted as 'bonafide' and not seek personal, political or publicity interests. Even not for aforesaid reasons, all public interest matters cannot be a subject for PIL. For example, rise in price of onions or the untimely running of trains or revision of train fares cannot form the basis for PIL. The Supreme Court's jurisdiction under Article 32 is nor an elixir for all troubles but a remedy for violation of fundamental rights.<sup>34</sup>
6. The misuse of PIL has been so rampant that it takes up the time and space of courts,

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<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

<sup>30</sup> *Supra* note 19, at 463

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

<sup>33</sup> *Supra* note 22

<sup>34</sup> *Ibid*

leads to a large number of complex and long-lasting cases which can choke the legal system and create substantial costs.<sup>35</sup>

7. PIL has been criticized for disturbing the constitutional balance between legislature, executive and judiciary. There is a risk of courts abandoning their customary role in the pursuit of becoming relevant to a developing society.<sup>36</sup>
8. PIL give judges wide discretion in interpreting the public interest which may violate the separation of powers doctrine and may be better done by a democratically elected legislature.<sup>37</sup>

## IMPACT OF PUBLIC INTEREST LITIGATION

Although, the concept of PIL has been criticized by many people but its impact in the social reformation has been profound. PIL has led many important landmark judgments on the issues like environmental protection, human rights violation, regulation of child labour, rights to education etc. Some important judgments are mentioned bellow:

1. ***M.C. Mehta v. Union of India***<sup>38</sup>: In this case a PIL has been filed to control the pollution in Delhi caused by industries. The supreme court ordered to close the industries or relocate them to any other places. The court also formulated certain guidelines for the industries in Delhi.
2. ***People's Union for Democratic Rights v. Union of India***<sup>39</sup>: In this case a PIL was filed to the Supreme court related to bonded labor. The Supreme court by its order in this case abolished bonded labor in India and also directed the state to take measures to prevent the same.
3. ***Vishal Jeet v. Union of India***<sup>40</sup>: This PIL was filed in the Supreme court to disclose the contents of soft drinks. The Supreme Court ordered that the manufacturers must disclose the contents of their products.
4. ***Olga Tellis v. Bombay Municipal Corporation***<sup>41</sup>: This PIL was filed for the protection from the eviction of slum dwellers in Mumbai. The Supreme Court ordered that the eviction of slum dwellers be stopped and also held that the right to livelihood is a fundamental right.

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<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> *M.C. Mehta v. Union of India*, AIR 1987 SC1086

<sup>39</sup> *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473

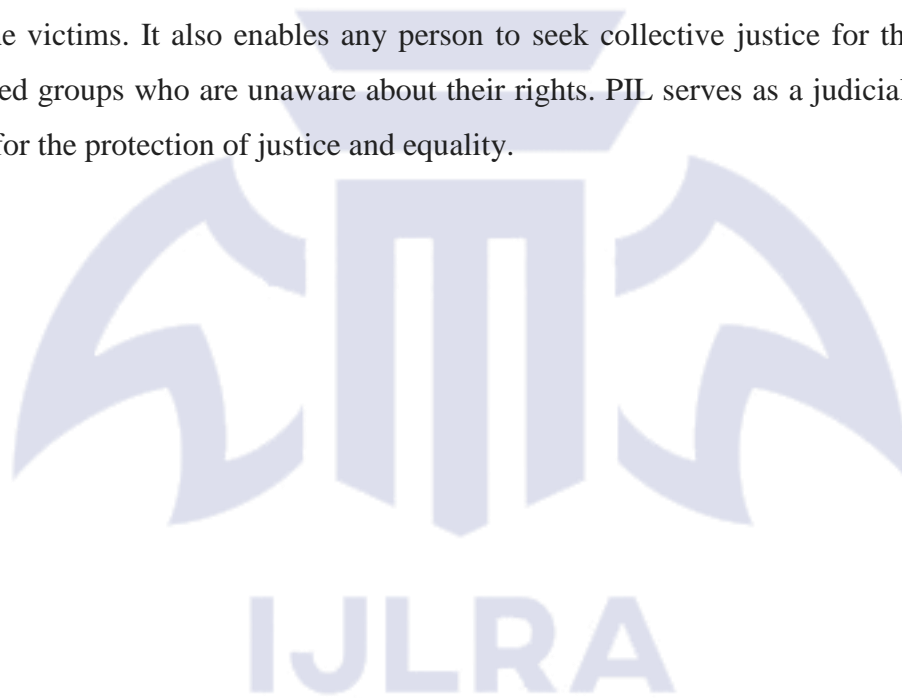
<sup>40</sup> *Vishal Jeet v. Union of India*, AIR 1990 SC 1412

<sup>41</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

5. *BandhuaMuktiMorcha v. Union of India*<sup>42</sup>: This PIL was filed to Supreme Court to abolish bonded labor in the mining industry. The Apex Court ordered to abolish bonded labor in the mining industries and directed the government to take preventive measure and actions

## CONCLUSION

Public interest litigation is an important tool for the judiciary to implement the fundamental rights of the citizens. It empowers the judiciary to take cognizance of those cases where the victims are unable to seek justice because of their pathetic conditions. PIL is an exception to the principle of *locus standi* as it enables the third party having sufficient interest to file a case in favor of the victims. It also enables any person to seek collective justice for the interest of marginalized groups who are unaware about their rights. PIL serves as a judicial mechanism to society for the protection of justice and equality.



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<sup>42</sup> *BandhuaMuktiMorcha v. Union of India*, AIR 1984 SC 802