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GUIDELINES GOVERNING PUBLIC INTEREST LITIGATION IN INDIA

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ABSTRACT

India Public Interest Litigation (PIL) was a strong judicial invention to democratise the availability of justice and the victims of violation to the masses and those who could not approach the courts because of socio-economic disabilities. Originating in the early 1980s, the Supreme Court gradually loosened traditional locus standi requirements and introduced flexible procedures, so that even a letter or even an affidavit by a concerned citizen may be treated as a writ petition under Articles 32 and 226 of the Constitution. The judiciary also developed special PIL principles to restrict the number of frivolous petitions and abuse of the PIL process: these are bona fide intent requirement, factual verification, showing substantial public interest, elimination of personal or political interests, and prioress Nevertheless, these measures have not taken away criticisms on the effectiveness of judicial checks. Critics also note that because there is no statutory regulation of it, and because it is guided by case law, there is inconsistency in the application across benches and jurisdictions, and that despite its care to avoid misuse, there is some level of judicial discretion and activism in its application exceeding what the law is intended to do.

The paper will analyse the development of the PIL guidelines, discuss the judicial protection of these norms against misuse, its practical feasibility, and conclude on the idea that although the existing framework includes some important protective norms, judicial protection needs more codification and uniformity to balance the right to access justice and the prevention of procedural and substantive misuse.

KEYWORDS

Public Interest Litigation (PIL); Judicial Safeguards; Locus Standi; Judicial Activism; Abuse of Process.

INTRODUCTION

In India, Public Interest Litigation (PIL) is one of the most vibrant and transformative aspects of constitutional adjudication during the post Emergency period. PIL was developed in the late 1970s in the context of political unrest, executive profligacy and mass deprivation and it was designed to be an instrument to fulfill the constitutional promise of social justice of the Preamble and Part III and Part IV of the Constitution of India. As opposed to the traditional common law litigation, which was adversarial and individualistic in nature, PIL was intended to operate as a participatory and remedial process where those excluded in the legal system were able to seek access to justice.¹

The classical locus standi doctrine imposed the requirement that only a person who had suffered an immediate injury to the law could go to court,² which frequently left bonded labourers, undertrial prisoners, pavement dwellers, and other at risk communities, unable to approach the court because of a lack of financial capacity, legal knowledge or institutional assistance. This conscious reinterpretation of procedural norms by the judiciary (especially through the leadership of Justices P.N. Bhagwati and V.R. Krishna Iyer) to permit the representative standing of the form of litigation has caused a paradigmatic shift in terms of distributive and social justice as an aligning force between judicial remedies and broader goals.³

The constitutional basis of PIL is principally found in Articles 32 and 226 that have granted the Supreme Court and High Courts the power to grant writs to promote the enforcement of fundamental and other legal rights⁴ Articles 32, which B.R. Ambedkar has described as the heart and soul of the Constitution, was broadly construed in order to authorize procedural innovation when fundamental rights as well as other legal rights were on the line.⁵ In *S.P. Gupta v. Union of India*, the Supreme Court officially stated the liberalization of standing in Union of India and that any citizen acting in good faith and with enough interest could find his or her path to the Court in case a legal wrong was being inflicted on those against whom a remedy could not be sought.⁶

The initial period of PIL jurisprudence has seen the judiciary meddling in issues relating to bonded labour (*Bandhua Mukti Morcha v. Union of India*), The prison conditions (*Hussainara Khatoon v. State of Bihar*), conditions of union. Custodial violence, environmental depreciation and the rights of the pavement dwellers (*Olga Tellis v. Bombay Municipal*

Corporation).⁷ The Court in such instances did not only ease procedural burdens but also embraced new innovative measures in the form of epistolary jurisdiction, appointment of expert committees and continuing mandamus as part of ensuring that the realisation of substantive constitutional rights.⁸

An institutional dilemma was however also brought about by the growth of PIL. Later after the remedy gained popularization, the courts started to receive petitions that did not have genuine interest of the people and instead were aimed at advancing particular vendetta, political rivalry, commercial rivalry, and publicity, leading to a threat to the constitutional legitimacy and separation of powers balance of the courts.⁹ In *Subhash Kumar v. State of Bihar*, The Supreme Court told that PIL must not be permitted to be a tool of individual malice or hidden agenda.¹⁰ In response to increasing apprehensions, the Court increasingly gave articulate judicial protection in order to control the admission and behavior of PILs. *State of Uttaranchal v. Balwant Singh Chaufal* came up with the most comprehensive formulation. The Supreme Court had interpreted the cases in whereby the court made guidelines that directed the High Courts to check on the qualification of any petitioner, establish facts, determine that there was substantial public interest, discourage the idea of partisan litigation and award exemplary costs to frivolous litigation.¹¹

However, these protections are still discretionary and judge-made and not codified. The lack of statutory uniformity creates differences in screening standards among jurisdictions, and therefore harms the concept of consistency, predictability and institutional coherence (Critics).¹² Simultaneously, the advocates argue that it should be flexible to avoid the failure of formal inflexibility to destroy the essence of PIL.¹³ Therefore, the modern argument is not regarding the relevance of PIL but regarding the sufficiency of judicial protection of it. PIL is an effective tool of implementing environmental rights, human rights and accountability in governance, although its validity arises when procedural integrity and restraint is upheld. The issue that then follows is whether existing judge-made protections are adequate to deter abuse, yet still secure access to justice through democracy or whether the institution needs to be reformed and given a statutory codification to guarantee stability in the doctrines.

This paper aims to critically analyse the principles governing Public Interest Litigation in India, review the judicial protections which have been developed by precedent, and whether they are sufficient to reasonably balance two opposing constitutional imperatives, expansive access to

justice and maintenance” of judicial discipline.

LITERATURE REVIEW

The Indian literature of Public Interest Litigation is a fertile interplay of constitutional theory, socio-legal inquiry and institutional critique. Although the early literature is gleaming with the idea that PIL is a revolutionary judicial practice, subsequent researches keep questioning its procedural efficacy and sufficiency of protective measures against abuses. The literature is further subdivided into the following categories in the following review: Books, Journal Articles, Research Studies, Reports of Law Commission and Institutional Reports, Legislative Framework, and Case Law Analysis.

I. Books

1. Constitutional Law of India, H.M. Seervai.

Seervai is rather conservative in his concept of judicial innovation. Although he recognizes the growth in the enforcement of fundamental rights, he is concerned with procedural dilution in PIL, that too much softening of standing will destroy the constitutional form and powers separation.¹⁴

1. S.P. Sathe, Judicial Activism in India.

Sathe thinks that PIL is a requirement in a developing democracy but castigates the inconsistency in judicial protection. He points out the necessity to draw the line between creative constitutionalism and judicial populism.¹⁵

2. Upendra Baxi, the Indian Supreme Court and politics.

PIL as interpretation by Baxi is considered to be a moral reaction to state inactivity and structural injustice. Nevertheless, he cautions that institutionalization of PIL can lead to courts becoming quasi-administrative in the event that no clear standards of procedure are applied.¹⁶

3. M.P. Singh V.N. Shukla Constitution of India.

Singh studies the evolution of locus standi and observes that despite the existence of judicial screening there are no specified rules, which has led to discretionary inconsistency among High Courts.¹⁷

4. C.K. Thakker, Administrative Law.

Thakker explains the judicial expansion concerning PIL and raises concerns about the judicial encroachment of administrative areas without procedural restrictions.¹⁸

II. Articles and Peer-Reviewed Journals.

6. Upendra Baxi, Taking Suffering Serious: Social Action Litigation in the Supreme Court of India, 4 Del. L.J. 57 (1985).

Baxi imagines PIL to be conceptualized as social action litigation, which is based on compassion jurisprudence. Nevertheless, he points out that such activism can be made sustainable through institutional discipline.¹⁹

7. Rajeev Dhavan, The Supreme Court as a Social Auditor, 22 JILI 1 (1980).

Dhavan is a critical review of the self-declared status of the Court as a social reformer. He indicates that the safeguards should be developed with judicial activism to avert arbitrariness.²⁰

8. Marc Galanter/ Jayanth Krishnan, Bread for the Poor: Access to Justice and PIL, 55 J. Indian L. Inst. 101 (2013).

The authors examine the trends of PIL filings empirically and note that most modern PILs focus on the city and corporate governance as opposed to an underserved population, which indicates a change of purpose.²¹

9. Anuj Bhunia, Courting the People: Public Interest litigation in the Post-Emergency India 3244 34 EPW (1999).

Bhunian is critical of the informality of PIL, which he says undermines impartiality at times, and allows the judiciary to be overly expansive in its use of its authority at times.²²

10. R. Sudarshan, Public Interest Litigation and Democratic Governance, 40 Economic and Political Weekly 2112 (2005).

Sudarshan examines the democratic concept of PIL and brings out the contradiction between participatory justice and judicial supremacy.²³

III. Empirical Studies and Research Papers.

11. Surya Deva, PIL and the Quest of Judicial Consistency, Research Paper, City University of Hong Kong, 2012.

Deva examines the pattern of environmental PIL and finds that the results differ greatly depending on judicial philosophy suggesting that there are not enough standard protective mechanisms.²⁴

12. Aparna Chandra, The Procedural Architecture of PIL, NLU Delhi Working Paper (2014). The procedural innovations that Chandra discusses include continuing mandamus and amicus curiae appointments, which he evaluates in terms of their strengths and possible misuse.²⁵

13. Lavanya Rajamani, Environmental Justice by means of PIL, CPR Research Report (2011).

Rajamani analyzes the environmental litigation and concludes that PIL has enhanced environmental control but enforcement is still not even because of discretionary remedies.²⁶

14. PIL Trends Report (2015) by National Judicial Academy.

This report has detected the increase in frivolous PILs and suggests that a systematic examination must be conducted at the admission phase.²⁷

IV. Law Commission & Institutional Reports

15. Commission of India 126 th Report on Government and Public Sector Litigation (1988) Law Commission.

The Commission focused on minimizing unwarranted court cases but recognized the beneficial effect of PIL in holding inmates accountable.²⁸

16. Law Commission of India, 230 th report on reforms in the judiciary (2009)

The Report addresses the issue of backlog and non-use of PIL, suggesting heavier screening measures and imposing costs.²⁹

17. Order XLVIII, Supreme Court Rules, 2013.

These regulations indirectly govern the procedure of filing PILs, but not completely.³⁰

V. Legislative Framework

Despite the fact that there is no law that specifically regulates PIL, it is based on constitutional provisions:

18. Article 32 -Constitutional Remedies, Constitution of India.³¹

19. Article 226 the constitution of India, High Court Writ Jurisdiction.³²

It is repeatedly noted by scholars that since PIL legislation is not codified, there is interpretative latitude, which although flexible, makes it uncertain.

VI. Landmark and Regulatory Case Laws.

20. S.P. Gupta v. Union of India- Liberalization of locus standi. ³³

21. People's Union to Democratic Rights v. Union of India, (1982) 3 SCC 235 -Where social action litigation is recognised in relation to labour rights.³⁴

22. Subhash Kumar v. State of Bihar - Notice of against misuse, to satisfy personal interest.³⁵

23. Ashok Kumar Pandey v. State of West Bengal, (2004) 3 SCC 349 -Exemplary costs on frivolous PILs.³⁶

24. State of Uttaranchal v. Balwant Singh Chauhan - Unification of the admission policy. ³⁷

All these rulings are steps towards the development of judicial protections that should strike the right balance between transparency” and restraint.

RESEARCH GAP

Although the literature on Public Interest Litigation (PIL) has been extensively developed in India, there is still a gap in assessing the sufficiency and consistency of the judicial protection of PIL admission and adjudication. Literature mostly emphasizes the transformative and emancipatory provision of PIL as a social justice, environmental protection, and human rights. Although a number of scholars appreciate the issues of abuse and judicial overreach, the majority of analyses are doctrinal or descriptive but not empirically based. Limited systematic investigation is made in the regularity of the safeguards that are established in the case of *State of Uttaranchal v. Balwant Singh Chaufal* are applied in both the High Courts and the Supreme Court especially in the area of screening criteria, imposing cost, and checking the bona fide motive.

Second, the existing literature has insufficiently tackled the implications of discretionary safeguard enforcement to the institution. Although commentators criticize the failure to codify legally, little research is carried out to determine whether codification will enhance accountability or otherwise, chances are high that codification will lead to procedural inflexibility that nullifies the original intent of PIL. The argument tends to be hypothetical and does not involve comparing institutional studies or statistical analysis of results in cases where safeguards were implemented strictly and laxly. This omission leaves the fundamental issue of whether self-regulation by the judiciary is adequate to prevent misuse without undermining access to justice still unanswered.

Lastly, it is evident that there is a dearth of interdisciplinary studies incorporating constitutional theory, studies on judicial behaviour and empirical case mapping to determine the long-term legitimacy of PIL as an institution. Much of the literature glorifies or criticizes PIL on general normative grounds, but little is said about admission patterns, socio-economic identity of petitioners or statistical tendencies in dismissals on the basis of frivolity. Therefore, to close this gap in analysis, a critical analysis of the development and the application of judicial protection should be conducted to offer a balanced evaluation of the current framework of PIL.

RESEARCH METHODOLOGY

This study uses a mainly doctrinal and analytic approach enhanced by a small amount of qualitative study of judicial trends. The subject matters, which are guidelines regarding Public Interest Litigation (PIL) and the sufficiency of judicial protections, are based on the interpretation of the Constitution and judicial precedents, so the study will be heavily based on legal materials, the acts of parliament, and case law. The methodology is organized into Primary Sources and Secondary Sources, which makes the coverage of normative and critical scholarship complete.

I. Nature of Research

The study is descriptive, analytical and evaluative in character. It follows the history of the development of PIL, studies the constitutional framework of Articles 32 and 226, evaluates those protections developed by judges, and considers their suitability in avoiding abuse. The paper is not just a reproduction of summaries of cases; however, it critically evaluates the judicial reasoning, consistency in its application, and institutional inferences.

II. Primary Sources

This research is based on primary sources, constituting provisions of the Constitution, statutory tools and famous judicial announcements.

1. Constitutional Provisions

Articles 32 and 226 of the Constitution of India, which form the basis of jurisdiction of PIL, are analyzed in the study. These are discussed within the constitutional discussion and judicial interpretation.

2. Legal System and Procedure.

Even though PIL is not regulated by a separate statute, the rules of procedure under the Supreme Court Rules, 2013 and High Court Rules are also explored in order to know the requirements of filing and admissibility procedures.

3. Judicial Precedents

The study conducted is a doctrinal analysis of major PIL decisions, such as:

- S.P. Gupta v. Union of India (liberalization of locus standi);
- *People's Union for Democratic Rights v. Union of India* (social action litigation);
- Subhash Kumar v. State of Bihar (against abuse);
- Ashok Kumar Pandey v. State of West Bengal (costs in frivolous PILs);

- State of Uttaranchal v. Balwant Singh Chauhal (guidelines on comprehensive safeguard).

The trends in judicial practice are relatively assessed in order to reveal consistency in the admission standards and protection application.

III. Secondary Sources

Judicial developments are interpreted, criticized, and put into context using secondary sources.

1. Books and Commentaries

The philosophical and doctrinal premises of PIL are learnt by referring to authoritative sources like M.P. Jain in his Indian Constitutional Law and S.P. Sathe in his book Judicial Activism in India; Upendra Baxi in his socio-legal writings.

2. Peer-Reviewed Journal Articles.

The scholarly commentary on judicial activism, the misuse of the PIL, and the flaws of the safeguard is found in research articles of such journals as the Journal of the Indian Law Institute (JILI), Economic & Political Weekly and other peer-reviewed publications.

3. Institutional Studies and Law Commission Reports.

The relevant law commission reports and judicial administrative reports are read to review policy viewpoints concerning procedural reform and judicial backlog.

4. Theses and Research papers in academics.

Empirical analysis of PIL trends, judicial discretion, and patterns of safeguard enforcement are review of the empirical material using the selected LL.M. dissertations and research papers.

IV. Method of Analysis

The research employs:

1. Doctrinal Analysis: Strict analysis of the provisions and case laws of the constitution.
2. Comparative Court Evaluation: Comparing various cases of the High Court and Supreme Court to spot differences in dealing with the safeguards.
3. Critical Evaluation: Determining whether safeguards by judges are adequate to prevent abuse without interfering with access to justice.

The current study does not include a field survey or any quantitative statistical data; nevertheless, the studies involving empirical research are incorporated where appropriate on a qualitative basis.

V. Limitations

The research is limited to the Indian constitutional jurisprudence and mainly relying on reported cases and scholarly literature. The analysis does not appear to be statistically exhaustive because of the lack of centralized empirical databases of PIL filings” across High Courts.

RESEARCH QUESTIONS

1. Whether the judicial principles that were established by the case of State of Uttaranchal v. Balwant Singh Chaufal always receive use in courts in admission and control of Public Interest Litigations?
2. Are there sufficient safeguards in place against frivolous, partisan or self-serving PILs by existing judge-made safeguards?
3. Has a lack of statutory codification of PIL procedures also led to discretionary lack of uniformity over judicial review?
4. What can be done to enhance judicial protection to balance the freedom to access justice with the prevention of the abuse” of process?

RESEARCH OBJECTIVES

1. To analyze the constitutional underpinning and development of Public Interest Litigation in India.
2. In order to examine the judicial principles that underlie the admission and regulating of PILs, especially those contained in State of Uttaranchal v. Balwant Singh Chaufal.
3. To examine the efficacy of the current judicial protection against the abuse and wasteful litigation.
4. To determine whether the Supreme Court and High Courts are consistent in the application of PIL guidelines.
5. To propose reforms to enhance the procedural protection whilst maintaining access to justice.

HYPOTHESIS OF THE STUDY

1. The current judicial protection of Public Interest Litigation is not consistent across the courts, and so the admission criteria vary.
2. Guidelines made by judges on their own are not adequate to prevent frivolous and politically

minded PILs.

3. Statutory codification has no effect on statutory codification of PIL procedures, and it enhances judicial discretion and procedural uncertainty.
4. Enhancing and institutionalizing protective measures can enhance accountability without jeopardizing access to justice.

RESULTS AND FINDINGS

1. There are Judicial Safeguards that are discretionary in nature.

The paper concludes that there are far-reaching measures that should be taken as guidelines on Public Interest Litigation (PIL), especially those provided in the State of Uttaranchal v. Balwant Singh Chauhan, give a systematic pattern of screening petitions. Yet, their application is largely based on judicial discretion instead of the enforcement of the procedures through standardization, which makes their application different in practice.

2. Lack of Consistency in Courts.

Analysis of Supreme Court and High Court cases shows that there is inconsistency in the use of safeguard principles. Whereas certain benches rigidly examine the qualifications of petitioners and charge frivolous PILs, others are relatively liberal, and judicial protection is not applied in an even manner.

3. Growth in Frivolous and private interest PILs.

Observations by the judiciary in cases e.g. Subhash Kumar v. Bihar and Ashok Kumar Pandey v. state of Bihar. State of West Bengal express anxieties over abuse of PIL in all cases of individual publicity, political rivalry, or personal quarrels. Even though in some cases exemplary costs have been imposed by the courts, the same cannot be said of the consistency of such deterrence.

4. Lack of Statutory Codification adds to the Uncertainty.

Lack of a specific statutory provision that regulates PIL creates interpretative flexibility. Although flexibility may help the courts to meet the needs of the immediate society, it also adds to the ambiguity in the procedural aspect and the inability to predict the certainty of admission criteria.

5. Desire of Formatted Screening Systems.

The results imply that procedural changes, like preliminary scrutiny committees, the compulsory disclosure norms, and the more precise standards of costs imposition may help reinforce the protection measures without undermining the access to justice.

6. PIL Still a tool of constitution.

Nevertheless, in spite of the difficulties in its procedure, PIL has remained a fundamental tool in the pursuit of environmental protection, human rights, and governance accountability. It is not thus the presence of PIL but rather the sufficiency and regularity of its regulatory protections that is a problem.

DISCUSSION

The results of this paper indicate a core contradiction within the jurisprudence of Public Interest Litigation (PIL) in India; the necessity to uphold unrestricted access to justice, and at the same time, provide procedural order and curtail abuse. The judicial protection was created by precedent- the State of Uttaranchal v. Balwant Singh Chauhan - consider the conscious effort by the Supreme Court to control the growing field of PIL. These rules require checking of credentials, reviewing of good faith intent, barring of personal grievances in the guise of societal ones, and awarding of penalties on frivolous applications. On the paper, these protection measures seem all inclusive.

The success of these protections, however, depends on the uniformity of the judiciary, which is also inconsistent. Other benches are extremely selective in admission criteria and are intolerant to misuse as in the case of Ashok Kumar Pandey v. State of West Bengal, but in other cases the scrutiny has been more lenient. This difference indicates that PIL governance is still a personality-driven as opposed to being an institutionally homogenous one. Lack of codification by statute makes the determination of admission thresholds highly reliant on personal judicial philosophy, therefore supporting the hypothesis of the research that discretionary application is a source of procedural uncertainty.

A structural paradox is also brought up in the discussion. Too much strictness in regulating PIL can undermine its own rationale, which is to make sure that the marginalized groups have access to justice, whereas too much leniency can further encourage litigation being driven by publicity goals or even political interests. The warning had been given in Subhash Kumar v. State of Bihar: the courts should not be used to thwart any genuine public interest initiative. Courts protection is therefore not like enforced procedures, but rather a guiding principle.

Additionally, comparative and institutional literature also indicates that a set of safeguards that

are made by judges, exclusively, might not be adequate in preventing systematic abuse. Such mechanisms as preliminary scrutiny committees, compulsory disclosure of petitioner credentials, and organised cost rules could make accountability more effective without limiting the real claims. This would help to institutionalize protections as opposed to discretionary assessment at the mercy of individual benches.

In the end, the discussion shows that judicial safeguards conceptual sufficiency is insufficient but operational sufficiency is conditional and inconsistent. PIL remains an essential tool of constitutional government, the validity of which lies in striking a balance between activism and restraint. Procedural uniformity, enhanced, but at the same time, without compromising flexibility, seems to be the only way to maintain the credibility and democratic usefulness of Public Interest Litigation.

CONCLUSION

The one of the most unique and radical contributions of the Indian judiciary to constitutional governance is still Public Interest Litigation (PIL). PIL has been a very important instrument in promoting human rights, environmental protection, perks of labour, and government accountability, as a mechanism of increasing access to justice among marginalized and disadvantaged groups. Article 32 and 226 were transformed by the Supreme Court and High Courts into social justice instruments through liberalized locus standi and procedural flexibility.

Concurrently, the growth of PIL has raised valid fears about the abuse, judicial activism, and the inconsistency of the procedure. The judiciary, in turn, developed the protection principles namely in *State of Uttaranchal v. Balwant Singh Chauhal*, which needs verification of the credentials of a petitioner and verification of bona fide intent and costs to be imposed in frivolous cases. These judge-imposed protections are a deliberate attempt to maintain quality in PIL without limiting legitimate claims of public interest.

This paper however concludes that the safeguards are conceptually appropriate but require a lot of correct and uniform enforcement. The lack of codification at the statutory level and use of judicial discretion introduce inconsistency in the admission standards by the courts. This would make the screening mechanisms of the procedure more robust and make clear the norms of cost-imposition to enhance accountability and remain flexible.

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