

“Public Interest Litigation and Judicial Activism”

Pragya Sahu
B.A.L.L.B.
Indore Institute of law

INTRODUCTION

The concept of Public interest litigation can be traced in the system of *actio popularis* of Roman law which permitted anyone in the society to initiate an action for a public delict in the court of law to bring an action of restitution or injunction for the protection of public property or a religious charitable property¹.

Thus, this system can be out lined as an ancient foundation of the current form of public interest litigation. The best example of roman *actio popularis* in the contemporary times can be seen through The Bhopal Gas Disaster Act, 1985 which made union government to file a suit for damages in the interest of gas victims.

The power of judicial review is exercised by the courts concerned with the protest of the poor, women, children, depraved, handicapped, unorganized labours, and other oppressed that have either no access to justice or have been denied justice. When there has been the insensitive abandonment in state policies, lack of integrity in public life, misuse of power in the control and demolition of environment the courts intervened *pro bono* proceedings.

In Black’s law Dictionary, “Public Interest” is defined as follows:

Public Interest –

Something in which the public, the community at large has something pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question. Interest shared by the citizens generally in affair of local, State or national government²...”

¹ Dr.UPD Kesari, Administrative Law, Page no. 429, twenty first edition, 2016

² Mohd Haris Usmani, public interest litigation, <http://www.legalserviceindia.com/article/1273-Public-Interest-Litigation.html>

The council for public interest law set up the Ford Foundation in U.S.A. defined the Public interest Litigation as follows:

“Public interest litigation is the name that has recently been given efforts to provide for legal representation to previously unrepresented groups and interest. Such efforts have been taken in the recognition that the ordinary market place for legal services fails to provide for such services to significant segments of the population and to significant interests. Such groups or interests include the poor environmentalists, consumers, racial ethnic minorities and others³.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. **In Hussainara Khatoon v. State of Bihar**, the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of under trial prisoners languishing in various jails in Bihar. These proceeding led to the release of more than 40,000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

In Indian Law

The meaning of public interest litigation is the protection of public interest. It is the power given by the courts through judicial activism to the public.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and precede suo motu or cases can commence on the petition of any public-spirited individual⁴

Judicial Activism

It is a legal term refers to courts proceedings which are partially or fully based on the judge’s personal considerations rather than existing laws. In the words of Justice J.S. Verma: “Judicial activism must necessarily mean the active process of implementation of the rule of law essential for the preservation of a functional democracy⁵.”

Example of judicial activism

Invention of the ‘basic structure doctrine’ in the ‘Keshavanad Bharati case’ (1973) by which Supreme Court further extended the scope of Judicial Review, incorporation of due process of

³ Supra 1

⁴ Vineet Kothari and Shreshtha Gupta, jurisprudence, <http://www.manupatrafast.com>

⁵ Quoted in Manika, “Judicial Activism: A means for Attaining Good Governance”, Nyaya Deep, NALSA, Vol. VII, Issue 3

law instead of procedure established by law, collegiums system, institutionalization of PIL, banning smoking in public places based on PIL, the order by Supreme Court in 2001 to provide mid-day meals to schoolchildren, the order passed by the National Green Tribunal (NGT) banning diesel trucks older than 10 years in Delhi etc⁶.

Relation between Public Interest litigation and judicial activism

Public interest litigation is of great importance in current scenario. The rule of locus standi that a person alone can file a petition whose right is infringed has been relaxed by Supreme Court in its recent judgments. Now the court permits public interest litigation in account of public at large for the enforcement of constitutional legal rights. Now any citizen can file a petition and approach the court for public cause under:

1. Art.32 of the Constitution, in Supreme Court
2. Art.226 of the Constitution, in High Court
3. Sec.133, Cr. P.C. in the Court of Magistrate

Justice Krishna layer fertilizer Corporation Kamgar Union vs. Union of India, (1981) enumerated the following reasons for liberalization⁷ of the rule of Locus Standi:-

1. Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights.
2. Social justice wants liberal judicial review administrative action.
3. Restrictive rules of standing are antithesis to a healthy system of administrative action.
4. "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.

In order to make sure that the fundamental rights did not remain void proclamations, the founders made various provisions in the constitution for the establishment of independent judiciary.

Provisions regarding fundamental rights, directive principles and independent judiciary together came up with a rigid constitutional foundation that is the evolution of PIL in India. The founders predicted the judiciary as a defender of rights and justice. In order to achieve the objective an

⁶ <https://www.clearias.com/judicial-review-vs-judicial-activism-vs-judicial-overreach/>

⁷ Supra note 4

independent judiciary was armed with the power of judicial review used as a constitutional device.

Reasons for the growth of PIL and Judicial Activism

The courts have provided benches for collecting information and submitting it before the bench in cases where the petitioner is unable to provide all the necessary evidences either because it is ample or because the party is weak socially and economically.

India has a written constitution which gives a frame work for regulating the state and its citizens under part III and part IV i.e. fundamental rights and directive principles of state policy respectively.

The social and economic rights guaranteed by the constitution of India in part IV are not legally enforceable courts have read them into fundamental rights and made them judicially enforceable. **For example-** Article 21 Right to life has been extended right to live with dignity, right to free legal aid, right to work, right to education, freedom from torture etc.

India has the most developing social legislation difficult to found anywhere in the world for example, child labor, bonded labor, environmental protection, minimum wages etc. which enables the courts to pull up the executive when it abstains from its duties in securing the rights of the poor as per the law of the land.

Sensitive judges have constantly innovated on the side of the poor. for instance, in the **Bandhua Mukti Morcha** case in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer. Similarly in the Asiad Workers judgment case, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts⁸.

PIL- An Aid

The observant citizens of the country can find public interest litigation as an affordable legal aid due to the fixed nominal court fee involved in this.

Through public interest litigation the litigants can concentrate towards achievement of result relating to larger public issues mainly in the field of consumer welfare, environment and human rights.

⁸ Supra note 2

Drawbacks

The court fee in PIL is very less as compared to private litigations due to which many people have started handling PIL as a tool for harassment.

The character of PIL is flexible due to which the opposite party gets an opportunity to ascertain the specific claim and respond to particular issue.

The judiciary has been criticized as it is unable to implement its orders efficiently due to overstepping of its jurisdiction.

PIL is misused by the public at great extent provoked for private grudges files petition for publicity rather than supporting public issues.

Problems regarding the exercise of judicial activism through PIL

It seems that the misuse of PIL in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the PIL project⁹.

1. Inefficient use of limited judicial resources- PIL has the ability to promote an efficient disposal of people's grievances. But the no. of per capita judges in India is much lower than other countries due to which the supreme court and high court is facing a huge heap of cases, it is puzzling why the courts have not worked enough to stop non genuine PIL cases. The courts are taking long term process in disposing even PIL cases.

2. Judicial populism- The fear of judicial populism is not merely academic and this is clear from the observation of **Dwivedi J. in Kesavananda Bharati v. State of Kerala** "the court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority.

If it can shift the focus of judicial review from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people¹⁰."

3. Symbolic justice- There are two facets of this problem. Firstly, judiciary is not able to file guidelines or directions for PIL cases. For example Vishakha and D.K. Basu case. To investigate in accordance with Supreme Court more practical research is needed.

The second instance of symbolic justice is provided by the futility of over conversion of DPSPs into FRs and thus making them justifiable. Not much is gained by recognizing rights which

⁹ Pritam Kumar Ghosh, judicial activism and PIL in India, <http://law.galgotiasuniversity.edu.in/pdf/issue6.pdf>

¹⁰ Supra note 9

cannot be enforced or fulfilled. It is arguable that creating rights which cannot be enforced devalues the very notion of rights as trump. Singh aptly notes that, “a judge may talk of right to life as including right to food, education, health, shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced¹¹,”

4. Disturbing the constitutional balance of power- Although the constitution of India does not includes any strict separation of power still it incorporates the system of checks and balances which judiciary should respect. However the judiciary on various occasions does not exercise self restrained and move on for legislation, settling policy questions, monitoring executive agencies etc.

5. Overuse induced non seriousness- 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: “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 groups¹².”

Youth Bar Association of India v Union of India

In this case the SC directed that the copies of FIR’S unless the offence is sensitive in nature like sexual offence, terrorism, offences under POSCO act or other such offence should be uploaded on the police website. If there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any other person connected with the same can download the application and file appropriate application as per law for redressal of his grievances. If there is connectivity problem due to geographical area then the time will be extended upto forty eight hours which can be extended maximum upto seventy two hours.

Concept of Judicial review

The legislature has the law making power which is not outright. Judicial review is the process by which the validity of laws is checked. The power of judicial review is evoked to protect and enforce the fundamental rights guaranteed in Part III of the Constitution. Article 13 of the Constitution prohibits the Parliament and the state legislatures from making laws that “may take away or abridge the fundamental rights” guaranteed to the citizens of the country. The provisions

¹¹ Supra note 9

¹² Prof. Sathe S.P., *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press, UK, 2003

of Article 13 ensure the protection of the fundamental rights and consider any law “inconsistent with or in derogation of the fundamental rights” as void. Under Article 13, the term ‘law’ includes any “Ordinance, order, bye-law, rule, regulation, notification, custom or usage” having the force of law in India¹³.

Suggestions

With the view to direct the abuse of PIL the apex court itself has surrounded certain rules (to administer the administration and transfer of PILs.) The court must be mindful so as to see that the applicant who approaches it is acting bona fide and not for personal gain, private benefit or political or other slanted contemplations. The court should not allow its process to be abused by the political parties or other authorities to delay administrative action or to increase political targets.

There might be situations where the PIL may influence the privilege of people not under the steady gaze of the court, and along these lines in molding the alleviation the court should perpetually consider its effect on those interests and the court must exercise most noteworthy alert and receive technique guaranteeing adequate notice to all interests prone to be influenced.

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At present, the court can regard a letter as a writ appeal to and make a move upon it. In any case, it isn't each letter which might be dealt with as a writ petition to by the court. The court would be advocated in regarding the letter as a writ petition to just in the accompanying cases-

(I) It is just where the letter is tended to by an abused individual or

(ii) a public spirited individual or

¹³ Supra note 6

(iii) a social activity aggregate for authorization of the constitutional or the legal rights of a person in custody or of a class or gathering of people who by reason of neediness, inability or socially or financially hindered position think that its hard to approach the court for review.

Despite the fact that it is particularly basic to check the abuse and misuse of PIL, any move by the legislature to control the PIL brings about broad challenges from the individuals who don't know about its mishandle and compare any type of direction with disintegration of their essential rights. Under these conditions the Supreme Court of India is required to advance in by joining safe guards gave by the civil procedure code in issues of stay orders/orders in the field of PIL.

Conclusion

Public Interest Litigation is working as an imperative instrument of social change. It is working for the welfare of each segment of society. It's the sword of each one utilized just to take the equity. The advancement of this legitimate instrument demonstrated helpful for the creating nation like India. PIL has been utilized as a procedure to battle the atrocities prevailing in society. It's an institutional activity towards the welfare of the needy class of the general public. In *Bandhua Mukti Morcha v. Association of India*, Supreme Court requested for the arrival of reinforced workers.

In *Murli S. Dogra v. Association of India*, the Supreme Court restricted smoking in public places. In a historic point judgment of *Delhi Domestic Working Women's Forum v. Union of India*, Supreme Court issued rules for restoration and compensation for the sexual harassment of working women. In *Vishaka v. state of Rajasthan*, Supreme court has set down comprehensive rules for avoiding sexual harassment.