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## “PIL-A FACET OF CONSTITUTIONAL LAW MAKING”

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### Abstract

*PIL is a vital tool to enforce the human rights of those people who do not have access to them due to poverty or such other reasons. The concept of Public Interest Litigation (PIL) originated and developed in the USA in the 1960s. The concept of Public Interest Litigation (PIL) was introduced in India in the early 1980s. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were the pioneers of the concept of PIL in India. The present status of PIL highlights its dual nature as a catalyst for constitutional law development and a potential source of systemic strain on the judiciary. Public Interest Litigation (PIL) is a significant facet of constitutional law-making in India. It empowers courts, under Articles 32 and 226, to address issues affecting public welfare by interpreting and expanding the scope of Fundamental Rights. Through PILs, the judiciary has shaped policies and legal norms, such as guidelines. The use of Public Interest Litigation (PIL) as a tool for constitutional law-making raises issues regarding judicial overreach and its effect on the separation of powers in India's governance structure. Public Interest Litigation (PIL) serves as a significant tool for constitutional law-making in India, influencing legal interpretations, policy frameworks, and the balance of power between the judiciary and legislature. Establish stricter guidelines to differentiate genuine PILs from frivolous or personal interest petitions to prevent misuse. This research will contribute to understanding how PIL affects the development of constitutional principles, the rule of law, and democratic balance.*

**Key Words** – *PIL, Facet, Constitution, Law, Human rights, Article 32, Fundamental rights.*

### 1. Introduction –

Public Interest Litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is “Public Interest” there are various areas where a Public Interest Litigation can be filed. In normal cases, it is seen that the aggrieved party i.e. the victim, who is affected has to file his case in a court of law.

That person should have an interest in the dispute. But in filing of Public Interest Litigation there is no such condition. Any person can file a Public Interest Litigation. The only condition being that the same has to be filed in Public Interest. Public Interest Litigation is litigation introduced in a court of law, not by the

aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the courts jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts to protect interest of public at large. 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 individual.<sup>1129</sup>

Public Interest Litigation (PIL) has emerged as a crucial instrument in ensuring justice for marginalized and disadvantaged groups who may not have the means to access their rights. By allowing individuals or groups to file petitions on behalf of those unable to represent themselves, PIL has played a transformative role in the Indian judicial system.

According to the Supreme Court (in *Janata Dal v. H.S. Chaudhary*, 1993) Public Interest Litigation (PIL) means a legal action started in a court of law for the enforcement of public/general interest where the public or a particular class of the public have some interest (including pecuniary interest) that affects their legal rights or liabilities. Public Interest is the interest belonging to a particular class of the community that affects their legal rights or liabilities. The concept of PIL has its origin in the USA in the 1960s.

## **2. Meaning of PIL -**

A Public Interest Litigation PIL is not defined in any law, Statute or act. It is filed before the courts under the Constitution of India to protect public rights and promote general welfare. The concept of PIL originated in India from the power of judicial review. A PIL is filed in a court not by the aggrieved person but by a private person interested in public welfare and betterment of society.

Anyone can file a PIL for any matter affecting the interest of the public, such as road safety, pollution, construction hazardous, terrorism, neglected children, atrocities on women, exploitation of casual workers, food adulteration, disturbance of ecological balance, maintenance of heritage and culture, etc.

## **3. History of Public Interest Litigation (PIL) in India -**

In 1979, Kapila Hingorani filed a petition and secured the release of almost 40000 undertrials from Patna's jails in the famous 'Hussainara Khatoon' case. Hingorani was a lawyer. This case was filed in the SC before a Bench led by Justice P N Bhagwati. Hingorani is called the 'Mother of PILs' as a result of this successful case. The court permitted Hingorani to pursue a case in which she had no personal locus standi making PILs a permanent fixture in Indian jurisprudence.

Justice Bhagwati did a lot to ensure that the concept of PILs was enunciated. He did not insist on the observance of procedural technicalities and even treated ordinary letters from public-minded individuals as writ petitions. Justice Bhagwati and Justice V R Krishna Iyer were among the first judges in the country to admit PILs.<sup>1130</sup>

## **4. Significance of PIL in India-**

Some of the key significance of PIL in India are:

- **Widening the scope of Article 32:** PIL has widened the scope of Article 32 of the Constitution (right to constitutional remedies) and has allowed public-spirited citizens to file litigation in the interest of the public at large.
- **Access to justice:** PIL has provided access to justice for marginalized or underrepresented communities who might otherwise not have had a voice.
- **Strengthening the judiciary:** PIL has helped to strengthen the Indian judiciary by allowing the court to take suo motu action to address issues of public importance.
- **Social and political change:** PIL has played a critical role in bringing about social and political change in India and has been instrumental in exposing and addressing various issues that affect the public at large.

<sup>1129</sup> DILIPKUMAR M. KATHAD, Public Interest Litigation as an Instrument for Social Change, Vol. 5, Sp. Issue: 12, December: 2017 (IJRSML) ISSN: 2321 – 2853

<sup>1130</sup> <https://byjus.com/free-ias-prep/public-interest-litigation-pil/>

- **Protecting the rights of the marginalized:** PIL has been used to protect the rights of the marginalized, such as bonded laborers, prisoners, and slum dwellers, and has helped to improve their living conditions.

#### **5. Important Judgments relates to PIL-**

- **Bandhua Mukti Morcha vs. Union of India (1984):**

This case dealt with the exploitation of bonded laborers and was the first PIL filed by an NGO. In this case, The Supreme Court ordered the release of all bonded laborers and provided them with compensation.<sup>1131</sup>

- **Rural Litigation and Entitlement Kendra (RLEK) vs. State of Uttar Pradesh (1985):**

It dealt with mining activities that had led to environmental degradation, deforestation, and displacement of local communities. In this case, The Supreme Court recognized that the right to a healthy environment was an integral part of the right to life under Article 21 of the Constitution.<sup>1132</sup>

- **MC Mehta vs. Union of India (1987):**

This case dealt with the issue of environmental pollution in Delhi and was the first PIL to be filed on an environmental issue. In this case, The Supreme Court replaced the strict liability principle with the absolute liability principle to protect citizens' rights.<sup>1133</sup>

- **People's Union for Civil Liberties vs. Union of India (1997):**

This case dealt with the issue of custodial deaths and the right to legal aid to these victims. In this case, The Supreme Court held that the right to life under Article 21 of the Constitution included the right to live with human dignity, free from torture and other forms of cruel, inhuman or degrading treatment.<sup>1134</sup>

- **Vishaka & Others v. State of Rajasthan & Others (1997):**

The Court laid down guidelines and norms to be observed to prevent sexual harassment of working women. The judgment led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.<sup>1135</sup>

#### **6. Who Can File a PIL and Against Whom?**

Any citizen can file a public case by filing a petition:

Under Art 32 of the Indian Constitution, in the Supreme Court.

Under Art 226 of the Indian Constitution, in the High Court.

Under sec. 133 of the Criminal Procedure Code, in the Court of Magistrate.

However, the court must be satisfied that the Writ petition fulfils some basic needs for PIL as the letter is addressed by the aggrieved person, public spirited individual and a social action group for the enforcement of legal or Constitutional rights to any person who are not able to approach the court for redress.

A Public Interest Litigation can be filed against a State/ Central Govt., Municipal Authorities, and not any private party. The definition of State is the same as given under Article 12 of the Constitution and this includes the Governmental and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

#### **7. Procedure to File PIL in India -**

Any Indian citizen or organisation can move the court for a public interest/cause by filing a petition:

1. In the SC under Article 32
2. In the High Courts under Article 226

<sup>1131</sup> Bandhua Mukti Morcha vs. Union of India, AIR 1984 SC 802.

<sup>1132</sup> Rural Litigation and Entitlement Kendra (RLEK) vs. State of Uttar Pradesh, AIR 1985 SC 652.

<sup>1133</sup> MC Mehta vs. Union of India, AIR 1987 SC 1086.

<sup>1134</sup> People's Union for Civil Liberties vs. Union of India, AIR 1997 SC 568.

<sup>1135</sup> Vishaka & Others v. State of Rajasthan & Others, AIR 1997 SC 3011

The court can treat a letter as a writ petition and take action on it. The court has to be satisfied that the writ petition complies with the following: the letter is addressed by the aggrieved person or a public-spirited individual or a social action group for the enforcement of legal or constitutional rights to any person who, upon poverty or disability, are not able to approach the court for redress. The court can also take action based on newspaper reports if it is satisfied with the case.

### **8. Factors responsible for the increase in PIL cases in recent times-**

There are several factors that have contributed to the increase in Public Interest Litigation (PIL) in India in recent times:

- **Awareness and education:** Increased awareness about the legal system and human rights, as well as greater access to education, has led to a rise in the number of people who are able to understand and use the PIL mechanism to bring about social change.
- **Strengthening of the legal system:** The strengthening of the legal system, particularly the judiciary, has made it easier for individuals and groups to access the courts and file PIL cases.
  - The Supreme Court's formulation of guidelines for PIL cases has also made the process more transparent and streamlined.
- **Media coverage:** The growth of the media and the increased coverage of PIL cases has brought public attention to issues that would otherwise have gone unnoticed.
- **Increased activism:** The rise of activism has led to a growing number of individuals and groups taking up public interest issues and using the PIL mechanism to bring about change.
- **Political Support:** The support of political leaders for PIL cases has also helped to increase the number of cases filed.
- **The character of the Indian Constitution.** 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.

- India has some of the most **progressive social legislations** to be found anywhere in the world whether it be relating to bonded labor, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
- **The liberal interpretation of locus standi** where any person can apply to the court on behalf of those who are economically or physically unable to come before it has helped. Judges themselves have in some cases initiated suo moto action based on newspaper articles or letters received.
- Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights 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.
- **Judicial innovations to help the poor and marginalised:** For instance, in the Bandhua Mukti Morcha, 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 courts.
- In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed

commissions to collect information on facts and present it before the bench.

### **9. Certain Weaknesses of PIL-**

- PIL actions may sometimes give rise to the problem of competing rights. For instance, when a court orders the closure of a polluting industry, the interests of the workmen and their families who are deprived of their livelihood may not be taken into account by the court.
- It could lead to overburdening of courts with frivolous PILs by parties with vested interests. PILs today has been appropriated for corporate, political and personal gains. Today the PIL is no more limited to problems of the poor and the oppressed.
- Cases of Judicial Overreach by the Judiciary in the process of solving socio-economic or environmental problems can take place through the PILs.
- PIL matters concerning the exploited and disadvantaged groups are pending for many years. Inordinate delays in the disposal of PIL cases may render many leading judgments merely of academic value.<sup>1136</sup>

### **10. Supreme Court guidelines to streamline the PIL petitions -**

#### **Supreme Court guidelines on the applicability of PIL petitions**

According to Supreme Court guidelines issues in 1998 and 2003, only letters or petitions related to the following issues would typically be considered as PIL:

- Bonded labor, neglected children, exploitation of casual workers, atrocities against women, harassment of prisoners, family disputes, atrocities against Scheduled Castes and Scheduled Tribes, etc.

Petitions related to the following issues would not be considered as PIL:

- Landlord-tenant disputes, service matters, and pension and gratuity, Admission to

educational institutions, early hearing of cases pending in lower courts, etc

### **Supreme Court guidelines to prevent the misuse of PIL**

Also, the Supreme Court has established the following guidelines to prevent the misuse of PIL:

- The court must support legitimate PIL and deter those filed for other reasons.
- Each High Court should establish formal rules for supporting genuine PIL and discouraging those filed for other motives.
- The court should verify the petitioner's credentials before proceeding with the PIL.
- The court should be fully satisfied that the matter of the petition is in the public interest.
- The court should ensure that the PIL addresses real public harm or injury and that the petitioner has no personal, private, or ulterior motives.
- The court should discourage busybodies from filing frivolous petitions by imposing penalties or taking similar measures to curb frivolous PIL filed for extraneous reasons.<sup>1137</sup>

### **11. Conclusion-**

Public Interest Litigation remains a vital tool in ensuring social justice and legal accountability in India. While it has played a key role in shaping constitutional law, its unchecked expansion has led to concerns about judicial encroachment into legislative and executive domains. Striking a balance between judicial activism and restraint is essential to preserve the integrity of the judicial process while upholding the fundamental rights of citizens.

Public Interest Litigation (PIL) serves as a significant tool for constitutional law-making in India, influencing legal interpretations, policy frameworks, and the balance of power between the judiciary and legislature. This hypothesis is

<sup>1136</sup> <https://www.drishitias.com/to-the-points/Paper2/public-interest-litigation>

<sup>1137</sup> <https://vajiramandravi.com/quest-upsc-notes/public-interest-litigation/>



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proved in point 5 in various important judgment  
related to PIL.

