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THE EVOLUTION OF PUBLIC INTEREST LITIGATION IN INDIA

~ Goral Chavda

INTRODUCTION

Public interest litigation, often known as social action litigation, was first introduced by Justice VR Krishna Iyer and Justice PN Bhagwati back in the late 1970s. This PIL movement was initiated under Article 32 and Article 226 of the Indian Constitution which mandates writ jurisdiction of the Hon'ble Supreme Court ("SC") and High courts. This is coupled with Article 142 empowering the judiciary to impart complete justice.

PIL is pouring new wine into an old bottle. Through PILs, the SC judges tried to bring structural changes in an otherwise adversarial system of litigation. They became extremely proactive in bringing changes and justice to the downtrodden masses of society.

Over ten lakh PILs have been filed in the Supreme Court between 1985 till now, which is an average of 26,379 PILs per year¹. The first PIL was the case of Hussainara Khatoun vs. State of Bihar in 1979. Mostly letter petitions and writ petitions were accepted as PILs. In 2020, 54,812 PILs were letter petitions, 361 were civil writ petitions and 33 were criminal civil writ petitions converted into PILs. Other than this, there have been PILs initiated as Suo moto petitions by the Supreme Court itself².

The Supreme Court of India has issued guidelines that are to be followed for considering any petition as a PIL. The letters dealing with the cases of bonded labour migrants, neglected children, non-payment of minimum wages to workers, petitions from jails regarding ill-treatment, against police officials for not registering a case or harassing the complainants,

¹ Saraogi, A. and Kashyap, G. (2023) On an average, the court receives over 25,000 pils a year, Supreme Court Observer. Available at: <https://www.scoobserver.in/journal/on-an-average-the-court-receives-over-25000-pils-a-year/> (Accessed: 06 June 2024).

² *Ibid.*

harassment against women, bride-burning, honour killing, harassment to villagers belonging to Scheduled Cast and Scheduled Tribes, petitions against environmental degradation, or petitions about family pension³. Matters that are not considered fit for PILs include Landlord-tenant matters, matters of pension and gratuity, complaints against central or state departments, and admissions to educational institutions⁴.

When a petition is received in the PIL Cell, it is first scrutinized based on the above-laid grounds, and if it falls under any of the categories specified for PILs then it is placed before a judge for directions, followed by listing it before the concerned Bench.

HISTORY

The PIL movement began with the judiciary realizing how it has become an elitist institution and that justice is not reachable to the common man. The executive has time and again tried to gain supremacy over the judiciary by erratic appointments, transfer, and disqualification of judges. The Supreme Court was not able to serve the section of the society stricken by poverty, hunger, unemployment, etc. Another reason they wanted to regain their tarnished image as an elitist and dependent institution was the case of ADM Jabalpur during the emergency where the SC ruled that they couldn't provide any constitutional remedy for the people who were unlawfully restrained.

Justice VR Krishna Iyer and Justice PN Bhagwati would go to the remotest of the villages to figure out the problems the people were facing and come up with solutions with the help of the legal aid committee of which Justice PN Bhagwati was the head of⁵. They organized legal aid camps in these villages and mobilized many High Court judges to perform Padayatras (marches) through chains of villages to solve people's grievances, they urged to organize lok-adalats to de-professionalize justice⁶. The PIL movement was primarily a judge-led or judge-induced movement and connected itself to judicial activism by the higher benches⁷.

Because the press and public media actively integrated with social action organizations, they significantly contributed to the inception and expansion of the PIL movement. Realizing that the people owned the press and that the people were accountable to them caused the media to

³ Public Interest Litigation (PIL) guidelines. Supreme Court of India. Available at: <https://main.sci.gov.in/pdf/Guidelines/pilguidelines.pdf> (Accessed: 07 June 2024).

⁴ *Id.*

⁵ Baxi, Upendra (1985) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," Third World Legal Studies: Vol. 4, Article 6.

⁶ *Id.*

⁷ *Id.*

shift its attention to high-calibre investigative journalism as a means of exposing social injustice and political illegality.

PN Bhagwati and VR Krishna Iyer played a pivotal role in turning the constitutional lawsuit into SAL and bringing fresh interpretations to several constitutional clauses.

PIL: MARKING THE PHASE OF JUDICIAL INNOVATION

Public interest litigation introduced various innovations in the traditional judicial proceedings. The most prominent was the liberalization of the rule of Locus standi. Initially, only the person who was directly affected by the cause could file a petition to the Supreme Court, but after the introduction of PIL, people who represented or were empathetic to the plight of the aggrieved could also file a petition for the greater good. This was done mainly due to the following reasons: (1) allow the Court to reach the underprivileged and impoverished segments of society that are deprived of their rights and benefits; (2) allow individuals or groups to bring up issues of shared concern resulting from corrupt or ineffective government; and (3) boost public involvement in the process of constitutional adjudication⁸.

Another innovation that is still highly used is the boost in epistolary jurisdiction. Epistolary jurisdiction is when the letters from the aggrieved are treated and converted to writ petitions and seen as PILs to serve justice. This motivated the masses to write letters about their griefs without expending huge amounts on litigation. About 75 PILs were filed under epistolary jurisdiction between 1980 and 1982 by social activists, NGOs, and social action groups. Much of them were written to Justice PN Bhagwati (as he was a SC Judge and the Chairperson of the National Committee for the Implementation of the Legal Aid Scheme). Justice PN Bhagwati is often called the father of epistolary jurisdiction in India⁹. Justice PN Bhagwati usually listed the matters of epistolary jurisdiction on his bench, Court No. 2 to hear them himself. Hence, court no. 2 dealt with the largest number of PILs. But this step had its costs: (1) Takes away the CJI's responsibility for managing the docket and assigning tasks to the companion justices. This might also lead to a rise in factionalism within the legal system. (2) Because epistolary jurisdiction prevented many justices from receiving critical exposure to PIL, the Court's

⁸ Sathe, S.P. (2007) *Judicial activism in India*. Second. Oxford: Oxford Univ. Press.

⁹ Abeyratne, R. (no date) *PN Bhagwati and the transformation of India's judiciary* (Chapter 10) - towering judges, Cambridge Core. Available at: <https://www.cambridge.org/core/books/abs/towering-judges/pn-bhagwati-and-the-transformation-of-indias-judiciary/EBCC9C680DF14F199B16549660788000> (Accessed: 06 June 2024).

institutional learning potential was limited. (3) Court No. 2's overworked staff created issues that took precedence while managing the cases¹⁰.

This was followed by relaxation in what can be considered evidence. Earlier the rules for accepting evidence in the cases were rigid, but due to PILs even newspaper reports and clippings were considered as evidence of a cause. Apart from this, the judiciary also appointed commissions to conduct investigations and report on veracity to the higher benches.

PHASES OF PUBLIC INTEREST LITIGATION MOVEMENT

- *First phase: focus on custodial violence, bonded labourers, and women's rights*

The first phase was characterized by more public-spirited individuals like social workers, advocates, and judges of the judiciary. They took independent actions to bring justice to the various sections of the society.

CUSTODIAL VIOLENCE. The undertrial inmates were the first category. The prisoners themselves had written letters to the CJI stating their conditions in prisons and the call for help.

1. *Hussainara Khatoon v State of Bihar*-Filed by SC advocate Ms. Kapila Hingorani, who filed a writ based on a series of articles in a national daily, The Indian Express related to the plight of Bihar undertrial prisoners, most of whom had served long pre-trial detentions¹¹. In adversarial litigation, newspaper articles as the basic evidence would have been dismissed. But in PIL this was admitted. The court held that every prisoner has a fundamental right to a speedy trial under Article 21 of the const. The prisoners have a right to dignified living. After this, around 40,000 prisoners from across the nation were released as they were kept in illegal detention. The Court held that detention shall be based on *reasonable, fair, and just*¹².
2. *Anil Yadav v. State of Bihar*- The police authorities while investigating poured acid in the eyes of the prisoners. The prisoners were not answering questions and were persisting on a single narrative that contradicted that of the police authorities. This action blinded these prisoners. All the blinded men were brought to Delhi for medical

¹⁰ *Id.*

¹¹ *Hussainara Khatoon v State of Bihar* 1979 SCR (3) 532

¹² *Id.*

treatment and the court also ordered speedy prosecution of the guilty policemen¹³. The state was liable and incurred all the expenses of their treatment in AIIMS Delhi and their stay during the treatment.

3. *Nilabati Behra v State of Orissa*- The son of the petitioner died in police custody and the mother wrote a letter to the CJI. Her letter was treated as a writ petition. The Supreme Court directed the state of Odisha to pay compensation of Rs 1 lakh 50 thousand to the petitioner¹⁴. In this case, Justice Verma observed that “the award of compensation in a proceeding under article 32 by this court or by the high court under 226 of the constitution is a remedy available in public law is based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply”¹⁵.
4. *Sunil Batra v. Delhi Administration & Ors*- The petitioner was a convict on death row in Bihar Central Jail. He wrote a letter about the torture and abuse. SC treated his letter as a habeas corpus proceeding and appointed an amicus curia. The Supreme Court held that it had the authority to intervene to protect prisoners’ FRs, ruling against the arbitrary use of powers by jail authorities¹⁶. It declared that solitary confinement and certain provisions of the Prison Act violated FR under Article 21.

BONDED/MIGRANT LABOURERS.

1. *Bandhua Mukti morcha vs. Union of India*- Bonded laborers were kept in poor conditions with no minimum wages, they belonged to the stone quarries of Faridabad district. When the letter was written to the Supreme Court, they sent officials of a commission and ordered to pay minimum wages to the migrant laborers and the commission to visit the quarries unannounced for inspections¹⁷.
2. *People’s Union for Democratic Rights v UOI (Asiad case)*- Commonwealth Games were held in Delhi. Some migrant labourers were appointed by independent contractors. They were kept in slum areas with poor living conditions and bare minimum wages. The SC sent a commission to the site and recognized the unhygienic conditions where the labourers were kept. The SC held the state responsible for the acts of these

¹³ Anil Yadav v. State of Bihar 1982 SCR (3) 533

¹⁴ Nilabati Behra v State of Orissa 1993 SCR (2) 581

¹⁵ Ibid.

¹⁶ Sunil Batra v. Delhi Administration & Ors. 1979 SCR (1) 392

¹⁷ Bandhua Mukti morcha vs. Union of India 1984 SCR (2) 67

independent contractors vicariously and the state was made to pay compensations to these workers¹⁸.

WOMEN RIGHTS

1. *Vishakha v State of Rajasthan*- Bhawari Devi was gang raped. This case was taken to SC under the banner of Vishakha by various NGOs and political groups as there was no legislation for the protection of women from sexual harassment in the workplace. The SC even laid down guidelines for this and directed the parliament to make laws¹⁹. The parliament then came up with POSH after 13 years.

- *Second phase: enviro-legal litigation*

The second phase was more institutionalized than the last, where NGOs and Social action groups took the initiative and brought matters of public interest to the courts. Compared to the first phase, the judiciary's response during the second phase was often significantly bolder and unusual²⁰. The actions in this phase largely revolved around environmental degradation and seeking justice for it.

Cases like *MC Mehta vs. Union of India*²¹, *Kanpur tanneries case*²², *Rural litigation and entitlement Kendra v State of UP*²³, *Indian Enviro legal counsel v UOI*, and *Subhash Kumar v State of Bihar*²⁴ surfaced. The Supreme Court came up with principles like the polluter pays principle, public trust doctrine, and precautionary principle to make the polluters liable and guilty. Factories that dumped untreated waste in rivers were relocated or guidelines were issued to regulate them, and the polluters were made to pay compensation to the people who were grievously affected by their acts:

- *Third phase: misuse of PILs and judicial overreach*

This phase began in the 21st century, a window of time within which anybody might submit a PIL for nearly anything. There appear to be more concerns that may be brought up in a PIL, such as bringing the Indian cricket team back from their tour of Australia and stopping an

¹⁸ *People's Union for Democratic Rights v UOI* 1983 SCR (1) 456

¹⁹ *Vishakha v State of Rajasthan* AIR 1997 SUPREME COURT 3011

²⁰ Usmani, H. (no date) Public Interest Litigation, Legal Service India. Available at: <https://www.legalserviceindia.com/article/1273-Public-Interest-Litigation.html> (Accessed: 06 June 2024).

²¹ *MC Mehta vs. Union of India* 1987 SCR (1) 819

²² *MC Mehta vs. Union of India* 1988 SCR (2) 530

²³ *Rural litigation and entitlement Kendra v State of UP* 1985 SCR (3) 169

²⁴ *Subhash Kumar v State of Bihar* 1991 SCR (1) 5

actress who is said to be married to a tree for astrological reasons²⁵. It is clear from this that the PIL discussion in its third phase went much beyond the stated purpose for which PIL was designed, therefore breaking new ground and exploring unexplored areas. For instance, the courts extended the protection of FRs against non-state actors, moved to defend the interests of the middle class rather than the impoverished people, used judicial legislation when necessary, and searched for ways to stop the improper use of PIL. They also did not hesitate to approach government power centers²⁶.

NEW REMEDIES

The judiciary has devised various solutions and has played an important role in addressing social injustices and holding those in power accountable. One of these is the modification of writ of mandamus into continuing mandamus. Mandamus is “employed to compel state authorities to take action which they were legally bound to”. As in *Vineeth Narain vs. Union of India*, Due to the CBI and tax officials' inadequate investigation, the court oversaw the probes into cases of corruption and foreign exchange violations. Until the charge sheet was submitted, the court kept a close eye on the investigative process and requested timely reporting to ensure that the case was moving forward²⁷. In *Sushil Kumar Modi v. Union of India*, the court also granted a continuing mandamus, directing the CBI on who to report to and how to disclose offenses being looked into in the Bihar fodder fraud case²⁸.

Another solution that largely assisted the aggrieved was the compensatory jurisprudence of the Supreme Court. Compensation is typically awarded under writ jurisdiction when: (1) Infringement of fundamental right; (2) Large number of people have been affected; (3) People are resourceless and helpless (SEBCs). In *MC Mehta vs. Union of India*, popularly called as oleum leak gas, the sufferers were awarded significant compensation by the owners on the directions of the Supreme Court²⁹. The first case where a compensation of 30,000 was awarded was *Rudal Sah vs. the State of Bihar*³⁰. In this case, the petitioner was wrongly convicted by

²⁵ Ghosh, P. (2013) ‘Judicial activism and Public Interest Litigation in India’, *Galgotias Journal of Legal Studies*, 01(01), pp. 77–97. doi:10.2139/ssrn.2285517.

²⁶ *Ibid.*

²⁷ *Vineeth Narain vs. Union of India* 1998 (1) SCC 226

²⁸ *Sushil Kumar Modi v. Union of India* (1992) 2 SCR 183

²⁹ *MC Mehta vs. Union of India* 1987 SCR (1) 819

³⁰ *Rudal Sah vs. the State of Bihar* 1983 SCR (3) 508

the police authorities and Article 21 was infringed. This case cleared the path for monetary compensation in circumstances of basic rights violations under constitutional jurisprudence.

The Supreme Court also issues directions and guidelines under Article 32 and Article 226. In the case of *Azad Rickshaw Puller's Union v. State of Punjab*, the Supreme Court directed the Punjab National Bank to advance loans to rikshaw pullers and a full-fledged scheme for repayment. They also issued guidelines so that the rikshaw pullers are not economically exploited by the owners³¹.

CONCLUSION

Public Interest Litigation has served as a transformative tool in Indian jurisprudence. It enabled the weak and poor class of society to voice their concern and seek answers along with justice. The perspective of PIL has evolved and kept changing through the decades, but the spirit of PIL should remain intact with the motive for which it was introduced.

However, the misuse of PILs in recent times has raised concerns about judicial overreach and frivolous litigation. Despite this, PILs remain a powerful mechanism for ensuring justice and accountability, demonstrating the judiciary's role in addressing social injustices and protecting fundamental rights.

Overall, PILs have marked a significant shift in judicial proceedings, promoting greater public involvement and enabling the courts to act as guardians of constitutional rights. This innovative approach continues to shape India's legal landscape, ensuring that justice is not just a privilege for the elite but a right for all.

³¹ *Azad Rickshaw Puller's Union v. State of Punjab* 1981 SCR (1) 366

