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THE EVOLUTION OF PUBLIC INTEREST LITIGATION IN INDIA

Sandhya Karthik

Public Interest Litigation (PIL) has become one of the distinct features of the Indian legal landscape, a stark epitome of judicial activism that has transformed the role of courts from passive arbiters of disputes into proactive guardians of rights and governance. Enshrined in Article 32 of the Indian Constitution¹; it states that the court not only has the power to enforce fundamental rights but also has a constitutional obligation to protect citizens' fundamental rights, and thus has the power to adopt new strategies and remedies to ensure that justice is accessible to all.² Such ideologies have led courts to innovate the concept of PIL, redefining who can approach the court and how remedies can be fashioned in the public interest.

The origin of PIL lies in the concept of *Locus Standi*, a Latin term which translates to the standing of a person in court or the right of a person to bring an action in court. This concept has been elucidated in Order 7, Rule 11 of the Code of Civil Procedure 1908³, which simply states that the party filing a suit must have sufficient reasons to be heard by the Court of Competent jurisdiction.

India, although a free nation, until the early 1970s still had its legal landscape inclined towards the bequeathed colonial legal heritage. Thus, owing to the Anglo-Saxon model of justice, which necessitated rigid procedural technicalities such as the earlier concept of *locus standi*, the courts became accessible only to the rich, leaving the marginalised estranged.⁴ Traditionally, only the party whose rights had been directly injured by a wrong could personally knock on the doors of justice. No other party could apart from the aggrieved, could bring

¹ INDIA CONST. art. 32

² Ansuman Rabboni & P. Kingsley Alfred Chandrasekaran, *Actio Popularis - a Perspective Analysis on Public Interest Litigation of India*, 72 THE INDIAN JOURNAL OF POLITICAL SCIENCE 463 (2011).

³ Civil Procedure Code, 1908, Order 7, Rule 11, Act No. 5 of 1908 (India)

⁴ Parmanand Singh, *Protection of Human Rights Through Public Interest Litigation in India*, 42 JOURNAL OF THE INDIAN LAW INSTITUTE 263 (2000).

action.⁵ Now, the question arises - if a certain law enacted has a question of constitutional validity or a public wrong is committed, which does not harm private interest, who should have the capacity to challenge such an act or law? The answer to this was the concept of Public Interest Litigation (PIL).

The evolution of PIL, a result of judicial activism, began in the early 1970s, with a report on legal aid published in 1971, where Justice Bhagwati observed that *judges are given greater participatory role in the trial to place the poor on the same footing of equality with the rich in administration of justice*; and another committee report of 1973 where Justice Krishna Iyer observed that there is an imperative for *an active and widespread legal aid system that enabled law to reach the people, rather than requiring people to reach the law*.⁶ But these recommendations remained as mere advice followed by the darkest hour in Indian History – EMERGENCY PERIOD OF 1975-76. During this period, having witnessed curtailment of rights and nowhere to seek justice, citizens expected the court to intervene, which bluntly failed to meet their expectations⁷, especially in the Habeas Corpus case of 1975⁸, which suspended the fundamental right to life and liberty as well. This was the turning point; with widespread Government lawlessness and thousands of innocent citizens imprisoned and deprived of basic civil rights, it was realised that the need of the hour was to disregard such hurdles of colonial procedures in providing access to the poor.⁹

Nevertheless, the two prominent judges, Justices Bhagwati and Krishna Iyer, with other such prominent personalities, further made justice accessible to all by relaxing the rigid doctrine of locus standi. This timeline of events finally led to the first reported PIL case of India filed in 1979¹⁰. Filed by an advocate based on a news report highlighting the plight of thousands of such prisoners wilting in Bihar Jails for rights of undertrial prisoners, it resulted in the release of almost 40,000 undertrial prisoners and the emergence of the right to speedy trial.¹¹ Followed by another prominent case of *S.P. Gupta v. Union of India (1981)*¹², where Justice P.N. Bhagwati elucidated the concept of PIL as “*Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or*

⁵ Zafar A. Khan, *Public Interest Litigation: A Tool for Providing Ends of Justice*, 20 ALJ 271 (2012-13)

⁶ Rabboni and Chandrasekaran, *supra* note 1.

⁷ Zachary Holladay, *Public Interest Litigation in India as a Paradigm for Developing Nations*, 19 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES 555 (2012).

⁸ ADM, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521 (Ind.)

⁹ Singh, *supra* note 2.

¹⁰ Hussainara Khatoon (1) v. State of Bihar, (1980) 1 SCC 81 (Ind.)

¹¹ *Id.*

¹² S.P. Gupta v. Union of India, (1981) Supp SCC 87 (Ind.)

legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or socially or economically disadvantaged position(sic.) unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case(sic.) any breach of fundamental rights of such persons or determinate class of persons, in this Court under Article 32, seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.”¹³

It would thus not be incorrect to say that PIL was conceptualised to protect the poor and marginalised who lacked knowledge and resources to seek what was their rightful. PIL has in the recent times as well proved to be an epitome of judicial activism and characterising democratisation of access to justice, leading to the emergence of various human rights, such as right to speedy trial, free legal aid¹⁴, dignity, means and livelihood¹⁵, education¹⁶, housing, medical care, clean environment¹⁷, right against torture, sexual harassment¹⁸, solitary confinement, bondage and servitude¹⁹, exploitation and so on.

¹³ *Id.*

¹⁴ Khatoon, *supra* note 10

¹⁵ Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (Ind.)

¹⁶ Mohini Jain (Miss) v. State of Karnataka, (1992) 3 SCC 666 (Ind.)

¹⁷ M.C. Mehta v. Union of India (Kanpur Tanneries - 22-9-87), (1987) 4 SCC 463 (Ind.)

¹⁸ Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (Ind.)

¹⁹ Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526 (Ind.)