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IMPACT OF PUBLIC INTEREST LITIGATION IN INDIA: TRANSFORMING CONSTITUTIONAL JUSTICE AND ACCESS TO RIGHTS

~ Deepika Tayal

ABSTRACT

The evolution of India's jurisprudence following the emergency is best epitomized by Public Interest Litigation. Though the emergency destroyed the constitutional order and led to the aggressive consolidation of the executive and passive withdrawal of the judiciary, it also resulted in innovation of Public Interest Litigations. PILs transformed the doctrine of locus standi from a restrictor of access to legal remedies to a tool for mass access to constitutional justice. From its primitive form in the late 1970s when judges like Justice V.R. Krishna Iyer and Justice P.N. Bhagwati began to consider letters from prisoners as writ petitions, this paper traces the development of Public Interest Litigations to the modern form of judicial governance, made possible by the supervision of the judiciary. Starting with the landmark cases of Hussainara Khatoon v. State of Bihar and S.P. Gupta v. Union of India, PILs provided and expanded the guarantee of the constitutional rights codified in Articles 14, 19, 21, 32 and 226 of the Constitution to bonded labourers, undertrials and slum dwellers. Courts also engaged in active justice by issuing continuing mandamus and setting up oversight committees to monitor compliance with their orders.

While the constant evolution of Public Interest Litigations transformed the Hon'ble Supreme Court from a passive Court to an active one, facilitating its function as the guardian of the Constitution and enabling its function to articulate the rights of the citizens.

INTRODUCTION

In common-law procedures, disputes refer to the conflicts between a plaintiff and a defendant. The plaintiff must have a cause of action while the defendant must have notice. After

independence, courts maintained that a person must have a specific legal injury to them in order to make a complaint to the courts, no matter how serious the infringement of the constitution was or how widespread the injury was. This made it incredibly difficult to enforce the constitution and the rights the constitution guarantees, especially for those without the social and economic means to uphold them. Inherited from the English law, the doctrine of *locus standi* maintained that only people with specific legal injuries had the right to bring a case to the court.

Public Interest Litigation was a major challenge to this system. It permitted bona fide petitions to be made on behalf of people who could not address the courts, even if those petitioners did not suffer direct legal injuries. The liberalization of the Public Interest Litigation was made by the judicial branch, particularly the Hon'ble Supreme Court, in the 1970s, when the Supreme Court began to admit petitions in the form of epistolary petitions. Articles 14¹, 19², 21³, 32⁴ and 226⁵ of the Constitution of India provided the constitutional justification for this major extension of the scope of judicial protection.

JUDICIARY AND PRE- PUBLIC INTEREST LITIGATION ERA

Prior to the emergence of the Public Interest Litigation, the established rules regarding doctrine of *locus standi* were dominant. In the Hon'ble Supreme Court's earliest pronouncements on the constitutional jurisprudence, petitioners were required to prove that their fundamental rights had been violated. The courts showed great reluctance to deal with representative petitions or suits filed by persons who had not established the direct and the personal interest in the outcome of the case. This approach was not only procedural formalism; rather it reflected and represented an idea about the role of the Judiciary operating in the country, as an arbiter of the specific and the concrete controversies and not as a defender of general rights and constitutional values.

The Emergency (1975-77) and its after-effects fundamentally modified this situation or precisely the judicial outlook. The failure of the courts to defend and safeguard the personal liberties of the citizens during the Emergency, in particular, the majority decision in *Additional District Magistrate, Jabalpur v. Shivkant Shukla* 1976, which upheld the suspension of the

¹ Constitution of India, Article 14.

² Constitution of India, Article 19.

³ Constitution of India, Article 21.

⁴ Constitution of India, Article 32.

⁵ Constitution of India, Article 226.

right to seek the habeas corpus, created an enduring institutional injury. The Hon'ble Supreme Court's standing as the protector of the Constitution required a restoration. Public Interest Litigation was the instrument for that purpose. Public Interest Litigation emerged as the principal judicial instrument through which the Court expanded access to justice, strengthened constitutional protections, and renewed public confidence in the judiciary.

EMERGENCE OF PIL: JUSTICE IYER AND JUSTICE P.N. BHAGWATI

Justice V.R. Krishna Iyer, while deciding the case of *Fertilizer Corporation Kamgar Union v. Union of India*⁶, significantly expanded the scope of the standing to include the trade unions. He envisioned and advocated a socially oriented approach to constitutional adjudication, which recognized the issues of social inequalities, injustices and was flexible regarding the strict application of the procedural rules.

The case of *Hussainara Khatoon v. State of Bihar*⁷ formalized Public Interest Litigation and laid the foundations for its recognition as a distinct constitutional doctrine. The Hon'ble Supreme Court of India, considering a letter as a writ petition, after the publication of a letter by a lawyer in the newspaper regarding the inhumane treatment of the undertrials in Bihar, some of whom had spent more time in the prison than their sentence, directed the state to release the undertrial prisoners. The court was clear in its opinion and unequivocally held that the right to a speedy trial was the part and parcel of the right to personal liberty guaranteed under Article 21 of the Indian Constitution. To allow the state to detain persons without a trial, would amount to condoning a gross violation of the fundamental rights guaranteed in the Constitution of India. The consolidation of the doctrine of Public Interest Litigation took place in the case of *S.P. Gupta v. Union of India*⁸. Justice P.N. Bhagwati, in this case, explained the doctrine of Public Interest Litigation in India in detail. He rejected the narrow and limited view of *locus standi* and stated that any public-spirited person from the public acting bona fide could file a petition for the violation of the Constitutional rights, particularly in cases involving the rights of the poor and socially or economically disadvantaged people who could not file petitions themselves and therefore, were unable to seek judicial remedies themselves. This judgment firmly established liberalized standing as a defining feature of Indian constitutional jurisprudence and significantly expanded access to justice.

⁶ *Fertilizer Corporation Kamgar Union v. Union of India*, AIR 1981 SC 344.

⁷ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

⁸ *S.P. Gupta v. Union of India* AIR 1982 SC 149.

CONSTITUTIONAL FRAMEWORK OF PUBLIC INTEREST LITIGATION

Most prominently, Articles 32 and 226 of the Constitution of India exemplify the cluster of provisions from which Public Interest Litigation derives its constitutional legitimacy. These provisions empower the Supreme Court and High Courts to issue prerogative writs. The Hon'ble Supreme Court, has to a large extent, reinforced the view that Article 32 is a fundamental right of the people. In fact, Dr. Ambedkar described Article 32 as the “*heart and soul*” of the Constitution of India. As judicial activism gained momentum, the provisions of broad language and the assertion that Courts will issue writs 'for the enforcement of any of the rights' in Part III provided the textual foundation for such activism.⁹

Article 21 has proven the most fertile ground for the expansion of rights through Public Interest Litigation. In the landmark decision of *Maneka Gandhi v. Union of India*¹⁰, the Hon'ble Supreme Court of India held that the “procedure established by law” under Article 21 of Constitution has to be reasonable, fair and just. Following this decision, the right to livelihood, the right to health, the right to education and the right to a clean environment and the broad range of unenumerated rights were derived from the residual content of personal liberty.

In Public Interest Litigation, Article 14 of the Constitution has been used to challenge unlawful executive acts, discrimination against marginalized groups and the failure to implement the welfare legislations. Likewise, Article 19 has been invoked in Public Interest Litigations to protect and safeguard the freedom of the speech and expression, press freedom, the right to information and the emerging digital rights.

What Public Interest Litigation did constitutionally was not merely the creation of the new rights. Rather, it constitutionally rendered the existing rights more accessible.

ROLE OF PUBLIC INTEREST LITIGATION IN PROTECTION OF FUNDAMENTAL RIGHTS

1. PROTECTION OF PRISONERS' RIGHTS:

The first groups in India to really start benefiting from Public Interest Litigation were the prisoners. In *Sunil Batra v. Delhi Administration*¹¹ The courts opened the doors to receive mail, letters, and correspondence from prisoners and treated it as a writ petition. Justice Iyer's opinion

⁹ M.P. Jain, Indian Constitutional Law (8th edition., LexisNexis 2018) 1345.

¹⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹¹ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

in this case was the first to elevate the importance of the position of the dignity of the prisoner, suggesting that a sentenced prisoner was not someone who had lost all rights and that the State remains obligated to recognize and respect their dignity, humane treatment, and due process remained applicable within prison walls.

These initiatives were here to stay, endured, and limited the immediate relief sought by the petitioners, while establishing benchmark goals to follow in order to honour the Constitution regarding the treatment of prisoners in India.

2. ENVIRONMENTAL PROTECTION:

In the early 1980s, *MC Mehta v Union of India*¹² represented some of the most significant, important, and effective environmental litigation in the world. These matters addressed pollution of the Ganga and the contamination and hazardous operations of industries in Delhi, as well as the protection of the Taj Mahal¹³ and the pollution caused by the operation of the vehicles in the capital.

In these cases, the court did not just fulfil its normal role. Instead, it adopted an almost regulatory function. It issued continuing directions to the various governments and industry, actively monitored compliance through court-appointed committees, and implemented (enforced) its orders through contempt of court proceedings.

In *Vellore Citizens Welfare Forum v Union of India*¹⁴, the court integrated and incorporated the precautionary principle and the polluter-pays principle into Indian environmental law and the court traced them to international law and recognized them as part of customary international law. The principle was an important extension and advancement for the protection of the environment within the Indian legal system.

In the case of *Indian Council for Enviro-Legal Action v Union of India*¹⁵, the court recognized the doctrine of absolute liability for hazardous industries and imposed on such industries the duty to remediate the soil contamination.

3. RIGHTS OF MARGINALISED COMMUNITIES:

¹² M.C. Mehta v. Union of India, AIR 1987 SC 1086.

¹³ M.C. Mehta v. Union of India (Taj Trapezium Case), (1997) 2 SCC 353.

¹⁴ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

¹⁵ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

The involvement of Public Interest Litigation in the case of *Bandhua Mukti Morcha v. Union of India*¹⁶ demonstrated how Public Interest Litigation has advanced the cause of bonded labourers, construction workers, and other marginalized groups. In this case, the Hon'ble Supreme Court ordered the release of bonded labourers and their rehabilitation at the expense of the State.

Justice P.N. Bhagwati reasoned that the bonded labourers' right to a dignified life, flowing from Article 21 of the Constitution, read in conjunction with the Directive Principles of State Policy (DPSPs), was a right the State had to actively and positively provide and the Courts could compel the State to provide.

Also of seminal importance is the case of *People's Union for Democratic Rights v. Union of India*¹⁷, where the Court held that construction workers' engagement in the Asian Games construction and non-payment of minimum wages amounted to forced labour in violation of Article 23¹⁸ of the Constitution and also breached Article 21 of the Indian Constitution. This case is also an instance of the Public Interest Litigation power to bring to the court's attention systemic and pervasive violations of the Constitution affecting thousands of faceless workers. The Court's intervention in the case of *Vishaka v. State of Rajasthan*¹⁹ addressed a Parliamentary and legislative deficit and provided formulated guidelines to prevent sexual harassment at the workplace. The Vishaka guidelines remained unchallenged in law until the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013²⁰ was enacted.

4. TRANSPARENCY AND GOVERNANCE:

In the case of *Vineet Narain v. Union of India*²¹, the Hon'ble Supreme Court monitored and exercised its continuing supervisory jurisdiction over the investigation conducted by the Central Bureau of Investigation (CBI) into the Jain Hawala scandal, a scandal involving allegations of illegal payments to several prominent politicians across party lines. The court's supervisory jurisdiction over a law enforcement agency's investigation of sitting politicians was constitutionally unprecedented and remains one of the most assertive exercises of judicial power in independent India.

¹⁶ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

¹⁷ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

¹⁸ Constitution of India, Article 23.

¹⁹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

²⁰ Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013

²¹ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

Similarly, the popularly known case called as the 2G Spectrum case, *Centre for Public Interest Litigation v. Union of India*²², resulted in the Hon'ble Supreme Court cancelling and quashing 122 telecommunications licences granted through a corrupt and an arbitrary process, affirming the court's willingness to set aside the executive decisions with far-reaching economic consequences when those decisions violated constitutional standards of fairness and transparency. The case stood as a landmark example of the judiciary's use of PIL for promoting accountability and combat corruption.

PUBLIC INTEREST LITIGATION AND JUDICIAL ACTIVISM

There is no simple way to examine and characterize the relationship between Public Interest Litigation and Judicial Activism. Public Interest Litigation has achieved and secured outcomes that both the legislature and the executive have sometimes failed to achieve. It has also created a model of adjudication which is in conflict with the constitutional doctrine of the separation of powers.

The separation of powers doctrine is most often cited in opposition to Public Interest Litigation driven judicial activism. The argument in its simplest form is that the courts lack the institutional, informational and democratic capacity to supervise the executive, shape governance or carry out policy, let alone deal with the myriads of functions which the executive and legislature are constitutionally called upon to carry out.

In issuing a series of continuing mandamus to the executive, courts are performing the functions which, in a constitutional democracy, belong to the executive and the legislature.

In the case of *State of Uttaranchal v. Balwant Singh Chaufal*²³ case, the Hon'ble Supreme Court elaborated a number of guidelines intended to curb the misuse of Public Interest Litigation. The guidelines also stated that Public Interest Litigation should not be confused with 'private interest litigations' or 'publicity interest litigations.' The court emphasised and clarified that Public Interest Litigation should not be pursued for questionable or ulterior motives. The court further noted that judicial review of administrative decisions is limited by the Constitution and it should not be used to further the court's policy goals.

At the same time, other branches of government have not achieved these outcomes, such as preventing environmental destruction, alleviating bonded labor or liberating prisoners. As Granville Austin mentioned and observed, the Constitution of India is a social document.

²² Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1.

²³ State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402.

MISUSE AND CHALLENGES OF PIL: A DOUBLE-EDGED SWORD

The democratization of standing through and with the introduction of Public Interest Litigation has opened the legal system not only to just advocates for the marginalized but also to the troublesome petitioners looking to settle personal grievances and grudges, pushing and advancing the political agendas, or gain media attention, among other things.

In the case of *Janata Dal v. HS Chowdhary*²⁴, the Hon'ble Supreme Court ruled that Public Interest Litigations can only be filed by those who act in good faith (also called bona fide faith) with the intention of serving the public. The Hon'ble Supreme Court noted that PILs have been filed to get even with an individual, annoy a political opponent or to disrupt the lawful functions of the government. It noted that a 'busybody' or 'meddlesome interloper' cannot invoke the jurisdiction of Public Interest Litigation and that the courts should be on the lookout for petitions that are filed with ulterior motives.

In *Ashok Kumar Pandey v. State of West Bengal*²⁵, the Court was even more concerned when it ruled that the petitioner would have to bear the cost of filing a politically motivated petition that was masquerading as a Public Interest Petition. Since then, the imposition of costs on frivolous PILs has been used as a deterrent, though this practice risks deterring genuine public-interest petitioners as well.

PIL challenges stem from both the structural issues and individuals as well. The Hon'ble Supreme Court is often overwhelmed and overburdened because Public Interest Litigation petitions require more monitoring, multiple hearings and even compliance reporting. Since PIL hearings focus on issues that can be addressed by regulatory agencies or tribunals, genuine and ordinary litigants sometimes wait longer for adjudication of their disputes. The cost of PIL governance is borne by these litigants who may wait years to have their disputes heard.

Another further concern is the governance through Public Interest Litigation is less democratic. This is because it involves an unelected judiciary addressing and resolving the policy issues. The Hon'ble Supreme Court made a major decision regarding environmental policy when it instructed the Delhi Government to change to CNG-fuel public transport. This decision may have been appropriate, but since the decision was made through an un-elected judicial process rather than the deliberative legislative process route, it challenges the democratic process, which is justifiable.

²⁴ *Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305.

²⁵ *Ashok Kumar Pandey v. State of West Bengal*, (2004) 3 SCC 349.

CRITICAL ANALYSIS

Public Interest Litigation has made real, significant and often, irreplaceable contributions to Indian constitutional democracy. The real question is whether those gains come at the cost of the constitutional order and if so, whether the price was justified.

On the positive side, Public Interest Litigation has expanded the constitutional rights for many. For example, the recognition of the right to a clean environment, right to health or right to dignified labour under Article 21 of the Constitution has not come merely from the interpretation of the Article but has come from the decades of Public Interest Litigation where the Courts were faced with the absence of these rights and the resultant hardships to the people. Public Interest Litigation has most often enforced these constitutional guarantees and transformed them from the pages of the Constitution into a lived reality.

Public Interest Litigation has also served an important accountability function. In a legal order where Parliamentary and oversight of the Executive is inadequate and where the regulatory bodies may be captured, Public Interest Litigation serves and provides for the much-needed accountability function. Through its supervision in cases like Vineet Narain, the Courts brought accountability to the Executive and provided oversight to the function of law enforcement.

On the negative side, Public Interest Litigation has brought a much-needed balance. The critique of Public Interest Litigation as judicial overreach is not a conservative view of restricting the courts and avoiding judicial overreach but a concern that even if well meaning, Judiciary is the least competent arm of the State. Courts function on an adversarial, episodic and reactive basis. Their inherent characteristics suggest that courts are better designed to identify and restrict actions that violate the Constitution than to articulate the parameters of how constitutional governance should operate. H. M. Seervai²⁶ said that the Constitution's division of powers does not reflect a suspicion of any particular body but rather that everybody lacks the capacity and the right to carry out every function of governance.

Public Interest Litigation reforms are long overdue. The establishment of a Public Interest Litigation Division, which has judges trained and experienced in the area of public law and the provision of superior fact finding, would greatly enhance the adjudication of Public Interest Litigation. The use of court-appointed fact-finding and monitoring committees, along with more precise definitions of the types of issues appropriate for Public Interest Litigation, would

²⁶ H.M. Seervai, Constitutional Law of India (4th edition., Universal Law Publishing 2013) Vol. 2, 1892.

significantly resolve the current gap between the goals of the court and the actual capacity of the court.

There is a need to rethink the relationship of Public Interest Litigation and democratic discourse. The most meaningful Public Interest Litigations in the Indian context are not the ones in which the courts directly countermand the legislative will, but those in which the courts compel the executives to operationalize the will of the Legislature and those in which the courts give voice to the rights which the political apparatus is actively ignoring. Public Interest Litigation is most vulnerably placed when courts enter areas where the democratic processes are functioning.

CONCLUSION

"It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich and left it the inheritance of the poor..."

These are the lines rightly quoted by Justice Krishna Iyer in the apex court decision of the case- *Fertilizer Corporation Kamgar Union (Regd.) Sindri vs Union of India and Others*.²⁷

When used properly, Public Interest Litigation enables the Constitution to convert the plight of vulnerable citizens in India from aspirational texts into legally binding covenants and rights. It has, however, come to mean judicial encroachment, an overload on the courts (beyond functional limits), and the diversion of judicial focus away from the common litigant (whose matter has been pending for years).

The evolution of Public Interest Litigation in India has not been a continuous tale of success or failure. It has been a chronicle of constitutional thinking, even if the politics of the time have left little to no choice. The goal of the current legal framework should be to preserve the purpose of the Public Interest Litigation and allow the rights of the Constitution to become a reality to its most needy. This must be done considering the fact that the courts, like every other institution in a constitutional democracy, have a role to play. The potential of the Constitution to become a reality is greatest through the ordered collaboration of institutions and not through the supremacy of a single institution.

²⁷ *Fertilizer Corporation Kamgar Union (Regd.) Sindri vs Union of India and Others*, 13 November 1980, 1981 AIR 344, <https://indiankanoon.org/doc/1171702/> (accessed 19 July 2026)

Economic disparity and the gap between the formal rights and actual access to justice persist in Indian society and will keep Public Interest Litigation an essential instrument for achieving access to Justice in India.