



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE EVOLUTION OF LOCUS STANDI: ANALYSING THE EMERGENCE OF PIL IN INDIA

~ *Riya Kumari & Shashank Sinha*

ABSTRACT

The term “Public Interest Litigation” isn't Indian in origin. It was borrowed from American legal practice, where it served a fairly narrow purpose: giving legal voice to groups the system had effectively, i.e. for the poor, racial minorities, consumers with no organised representation, and citizens worried about environmental damage. What happened to the idea once it reached India, though, is really the more interesting story, and that's what this paper sets out to trace.

Justice Krishna Iyer is usually credited with planting the seed, in the 1976 case *Mumbai Kamagar Sabha v. Abdul Thai*. Since, the doctrine didn't really prove itself until *Hussainara Khatoon v. State of Bihar* in 1979. That, this reformative case led to provide the rights to the undertrial prisoners into public view and, on the strength of a right to speedy trial the Court more or less carved out on the spot, led to over 40,000 of them being released. Later cases built on this. In *Bandhua Mukti Morcha*, for instance, the Court flipped the usual burden of proof on the employer now had to prove labour wasn't bonded, rather than the worker proving it was. Around the same period, in the *Asiad Workers* case, Justice P.N. Bhagwati ruled that a worker paid below minimum wage didn't need to wade through the labour commissioner or lower courts first, they could go straight to the Supreme Court.

There are, of course, procedural boundaries to all this. A PIL can be filed under Article 32 (Supreme Court) or Article 226 (High Court) of the Constitution, or under Section 133 of the Criminal Procedure Code before a Magistrate. But it can only be filed against the State “meaning government bodies, municipal authorities, and other entities falling within the Article 12 definition of “State” and never against a private party.

What ties all of this together is a quieter, more structural shift: the old, rigid rule of locus standi, which kept people from approaching a court on someone else's behalf, gradually broke down. In its place emerged a judiciary willing to act as more than a neutral referee, that took an active role in questions of social justice, whether the issue at hand was custodial abuse, environmental harm, or administrative failure.

Keywords: Public Interest Litigation (PIL), Locus Standi, Judicial Activism, Article 32, Article 226, Section 133 CrPC, State (Article 12), Undertrial Prisoners, Bonded Labour, Social Justice, Justice Krishna Iyer, Justice P.N. Bhagwati

Introduction

The idea of the Public Interest Litigation has been taken from Locus Standi that means “Right to stand in Court” also in legal terms any person can reach the court and seek for legal right or liabilities for his infringement of right. As per the Black's Law Dictionary (11th Edition) as under: The principle of Locus Standi traditionally required the petitioner to have suffered a direct legal injury.¹ The term “Locus Standi” in ancient time required the petitioner to have suffered a direct legal injury.² Courts during that time was rigid regarding not to entertain cases filed by third parties i.e. the persons who were not directly affected. This concept later on changed to find out the real problem. Therefore, in the case of Janata Dal v. H.S Choudhary³ the Hon’ble Supreme Court of India has observed the question related to the what does the Public Interest Litigation explain and also what is the application in different countries also by lawyers, scholars, jurist with vast knowledge. However, in India, the applicability of the concept has evolved, and the modern interpretation has been liberal allowing the public at large to approach the judiciary when the matter is related to public interest this change has resulted in social justice system.

Evolution of “Locus Standi”

The term Public Interest Litigation commonly known as PIL originated in the United States in mid-1980. The term public law litigation ‘was firstly used by American academic, Abram Chayes. The first legal aid office was established in New York City in 1876. This allowed all the lawyers and the public and persons to take the cases regarding the people who are unable to go the court due to fear or threat from the society under the different circumstances consists

¹ BLACK’S LAW DICTIONARY 1084 (11th ed. 2019).

² B.N. Srikrishna, Access to Justice and Locus Standi, 5 SCC J 1 (1984).

³ Janata Dal v. H.S Choudhary (1992) 4 SCC 305.

of the following- environment and public health and the exploitation of consumers and the weaker sections of the society.

The beginning of PIL

The PIL emerge in the late 1970s and continued through the 1980s, the Public Interest Litigation cases were generally filed by altruistic i.e. by the lawyers, journalists, social activists or academics. In which mainly the cases concerns were related to the rights of weaker sections of society such as child labourers, bonded labourers, prisoners, mentally challenged person, pavement dwellers, and women in the society. The reformation was necessary as the executive persons were violating the Fundamental Rights under the Indian Constitution. Therefore, the era of PIL lead to respond the judiciary by recognizing the rights of the weaker section and by informing the government regarding the gross violation of rights of the people.

THE Second era of PIL

During this phase of the Public Interest Litigation in the 1990s during which several changes took place in PIL. By observing the first phase, the filing of the PIL cases became more regulated. For instance, NGOs and lawyers were seen bringing the matters in the court related to the public interest litigation. This era expanded the judiciary to set the limitation on state to check and regulate the functioning the other sub-ordinate. Further it highlighted the concept of the separation of the power. The court started to address the issues and resolve with the policy making and monitoring, often stepped in different domains of executive. The active role of judiciary led to expansion as compared to the beginning of the PIL phase as aforesaid. The court emphasised and took step to punish the civil servants for failing to obey their decisions. PIL led to the address the issues of human rights as mentioned in the case of the Hussainara Khatoon vs. State of Bihar⁴. By these cases judiciary played a vital role for the reforms in the judicial system. In landmark cases for safeguarding the environmental principles which held the in case of M.C. Mehta v. Union of India⁵, where the Hon'ble Supreme Court develop the doctrine of absolute liability for all the hazardous industries, this ruling lead to chain of judgments on pollution control, safety in industry, and balancing of the ecosystem. In the similar case of Subhash Kumar v. State of Bihar (1991), the Hon'ble Court held that the right to pollution-free water and air is a fundamental right mentioned under Article 21 of the Indian Constitution

⁴ Hussainara Khatoon v. State of Bihar, (1979) 3 SCR 532 (India).

⁵ M.C. Mehta v. Union of India, AIR 1987 SC 1086.

The post emergency period

The post-Emergency period (1977–1980) led to shift in the judiciary, to recover the public trust after the executive dominance in the society, this enforces the social justice system. The doctrine of Public Interest Litigation, also called as Social Action Litigation (SAL), has been taken out to bring the morality awareness. In a landmark case of *S. P. Gupta v. Union of India* (1981)⁶ also known as “Judges’ Transfer Case,” officially recognised the concept of PIL. Justice P. N. Bhagwati expanded the concept of locus standi, by “any person having a bona fide intention can approach the court for addressing the legal injury or legal wrong or any infringement of any right or violations such type of people are unable to go to the court.” This ruling held the PIL to act as a constitutional tool.

The 21st century of the PIL

This is the ongoing phase, which started in the 21st century, where anyone can file the Public Interest Litigation for the matters affecting public at large and for the public interest. It is further observed that the active issues of PIL could be raised.

As per the judiciary’s perspective, people can say that this time the judicial body has self-analysed for the main purpose to PIL. By comparing to the second era of PIL, the judiciary has actively participated in issuing guidelines for the government and also majority showing passing the continuing mandamus between the ongoing cases so the active participations can be directly observed.

The locus standi has transformed in the year 1976 when the division bench comprising of the Hon’ble Justice VR Krishna Iyer along with the Honourable Justice NL Untwalia held in the case of *Mumbai Kamgar Sabha, Bombay vs M/S Abdulbhai Faizullabhai & Ors*⁷ on 10 March, 1976, that procedural laws or defects should not obstruct the substantive justice from being heard. The court in this case held that the collective representation method should be adopted in codification of legal system. Any person from the union despite not been directly affected can file the suit and become parties to the matter issued for the same and can represent the vulnerable sections of the society and can represent the people who were affected. When the matter affecting public at large with the same issues, then the Public Interest Litigation came into the effect. The court finally concluded and vanished the rigid and hardcore

⁶ *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.

⁷ *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*, (1976) 3 SCC 832.

mechanism of naming every individual person or worker in the legal mechanism, which is now more flexible as we can approach that allows a collective representation.

CONSTITUTIONAL FRAMEWORK GOVERNING THE PIL:

The Indian Constitution provides the citizens to approach the court as per following articles:

1. Article 32: As per the Article 32 it gave direct power to approach the supreme court, if the fundamental rights are violated.⁸
2. Article 226: As 226 per the article 226 it empowers the high court to issue for the enforcement of fundamental rights and other legal rights, if the rights are violated.⁹

These articles guarantee the power to High Court and Supreme Court for enforcement of fundamental and legal rights. to issue the writs such as the:

- Mandamus
- *certiorari*
- *prohibition*
- *quo warranto*
- *habeas corpus*

These provisions expanded the scope of the judicial interpretation and scope of the “locus standi”.

Landmark cases of PIL that reforms the society:

1. Hussainara Khatoon vs. State of Bihar (1979)¹⁰:

In this landmark case of Hussainara Khatoon vs. State of Bihar the first Public Interest Litigation case has been filed through, a habeas corpus petition before the hon’ble Supreme Court, regarding the serious violation and along with the denial of the prisoners’ fundamental rights also speedy trials and it led to the incarceration without the bail even their expiry period was ended, i.e. their lawful detention period ended. The main issue raised in this case was that the right to speedy trial falls within the ambit of Article 21 of the Indian Constitution also the

⁸ INDIA CONST. art. 32.

⁹ INDIA CONST. art. 226.

¹⁰ Hussainara Khatoon v. State of Bihar, (1979) 3 SCR 532 (India).

Article 39A of the Constitution provide the provision of free legal aid in India is a part of the Directive Principles of State Policy?

The Judgement was pronounced by the division bench comprising the Hon'ble Justice P.N Bhagwati along with the Justice D.A. Desai , where the division bench ruled in the favour of petitioner as the non-appearance state ,i.e. respondent despite being the notice served, the court further issued all the individual names in the petition being released on the bail immediate basis , also the court ordered the State Government along with the High Court to submit the report regarding the pending cases by December 31, 1978 with immediate effect.

The Supreme Court condemned the judicial body for its failure to safeguard the rights of the underprivileged and weaker section of the society. It recognises the importance of the Article 21, i.e. the right to life and personal liberty guaranteed under Article 21.

Further the court ordered in this regrading Free Legal Aid Case Article 39A i.e. to undertrial prisoners that were charged with bailable offences.

2. People's Union for Democratic Rights v. Union of India (1982)¹¹

This historical case, popularly known as also known as Asiatic workers case, it evolved the Public Interest Litigation in India. The case came before the Hon'ble Supreme Court by the People's Union for Democratic Rights (PUDR), i.e. a group of people who are perturbed for the exploitation of workers. This case was filed under Article 32¹² of the Indian Constitution, which grants the fundamental right to approach directly to the Supreme Court for violation of fundamental rights. This case emphasized on severe violations of workers at the Asian games which was held in Delhi, 1982 the violation was related to labour law, where the rights of larger section of society has affected even after the infringement of the rights they cannot go to the court. The main concern was related to the non-payment of minimum wages, substandard working conditions, and deprivation of basic human rights which includes larger number of workers. Therefore, PUDR submitted the petition before the Hon'ble Court on behalf of all the aggrieved workers also to highlight the main concern regarding the violation of labour laws along with the fundamental rights.

The main issue before the Hon'ble Court was related to not giving the minimum wages to the worker's lead to serious violation of Fundamental Rights, also the second issue concerning the

¹¹ People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 (India)

¹² INDIA CONST. art 32.

groups or individual acting in bona fide can file the PIL and have the locus standi to go to the court on behalf of all the exploited workers.

Hon'ble Supreme Court held in this case as per Article 21¹³ i.e. Right to Life with dignity and livelihood and as per the Article 23¹⁴ i.e. Prohibition of Forced Labour is in the current case is failing to pay the basic/ minimum wages is the violation of fundamental rights under the same. The court further expanded the concept of traditional form of litigation of "Locus Standi" by allowing to file the PIL by groups, individuals, any organization, NGO, or any group which represent the vulnerable sections. The court also focuses on the rights for the violation of fundamental rights under Articles 39(e)¹⁵, 41¹⁶, and 42¹⁷ of the Directive Principles, as there was no proper protection of the workers therefore by granting the enforcement of fundamental rights are guaranteed under the Constitution of India.

3. Pt. Parmanand Katara v. Union of India & Ors¹⁸

In this case a social activist filed the petition on behalf of the person who went through the accident and died due to the nearest hospital deny to admit the person and further referred him to another hospital that was approx. 20 km distance, which has the legal authority to see the medical legal cases. The hon'ble court observed that it was the duty if the state under the Article 21 to save and protect the life of a person so that person can live with the dignity. The written laws or any state action cannot deny the treatment of the person on the hospital and further allow such doctors to carry on with the treatment and they should not be in trouble or any issue for their part performance. The law should not abide the doctors to perform their duties; the main focus should be to save the life of the person. So, this is the instance of justice where all the bodies should work for the welfare of the public and cooperate with them so that the main goal should be achieve.

4. Vishaka v. State of Rajasthan¹⁹

In this landmark case law also known as Vishakha guidelines that led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In this case the facts of the case are when, an NGO worker named Bhanwari devi, went to the

¹³ INDIA CONST. art. 21.

¹⁴ INDIA CONST. art. 23

¹⁵ INDIA CONST. art. 39(e).

¹⁶ INDIA CONST. art. 41.

¹⁷ INDIA CONST. art. 42.

¹⁸ Pt. Parmanand Katara v. Union of India & Ors [1989 AIR 2039]

¹⁹ Vishaka & Ors. v. State of Rajasthan & Ors (1997) 6 SCC 241.

village of Rajasthan in the protest of the child marriage she was sexually harassed at the village, that can be also known as her workplace on the 22nd September 1992, where she was raped by five men of the village. She faced many issues when she went to seek the justice against the offence that occurred with her. Then, to restore the dignity of her the lawyer named Naina Kapoor file the petition, the petition is also known as the Vishakha writ petition, filed in the name of the five NGOs of the Rajasthan.

The judgement recognised the Sexual harassment at a workplace a threat to constitutional rights, discriminatory rights, for the place where a woman carry out an occupation. This judgement directed all the employers to maintain dignity of a woman at a workplace securing the rights of the woman, so that she can sustain her life with dignity, due to these the enforcement of the gender equality can also be witnessed. It has promoted and witnessed a greater right of the women enforcement rights. The PIL has played a major role in filling the gaps of the legislative by implementing the 12 guidelines in the POSH act, 2013.

5. Bandhua Mukti Morcha v. Union of India²⁰

In this case Justice P.N Bhagwati elucidate the nature and meaning of PIL as “PIL is not only the litigation but its main focus and challenging for the government how they will help the vulnerable section of the society to make sure their basic human rights are not violated also to ensure them with the benefits of social, economic rights which is the main goal and focus as per our constitution.” The Hon’ble Supreme Court in this case ordered to release all the bonded labourers along with the state to provide them with compensation.

Liberalisation of the Rule of “Locus Standi”

It is the legal maxim that means that in traditional means that only aggrieved party can approach the court and have a right to go to the court, the rule of locus standi have been liberalised through the Pil, now any member or people, having Bonafide intention can file the PIL, under article 32²¹ and the Article 226²² of the Indian constitution.

The Hon’ble Justice Krishna Iyer, emphasises the liberalisation of the Pil in the case of Fertiliser Corporation Kamgar Union vs. Union of India and Others²³, in this case the Justice opinion for the Pil was, it was a process to participate in legal, justice and standing in the court.

²⁰ Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802: (1984) 3 SCC 161.

²¹ The Constitution of India 1950, art 32.

²² The Constitution of India 1950, art 226.

²³ Fertilizer Corporation Kamgar Union vs Union of India and Others 1981 SCC (1) 568

Even in civil litigation the process must be liberal so that, affected person can approach the judiciary. It is easy to question and held liable to the state i.e. government for the people actions wrong that were done by the administration.

Epistolary Jurisdiction

The Epistolary jurisdiction, came into India by the case of Sunil Batra v. Delhi Administration²⁴, in this case the letter was sent to the justice of the supreme court, the informal letter was treated as a petition and courts epistolary jurisdiction were came up by treating as habeas corpus petition, and led to the birth of epistolary jurisdiction in India.

Appointments of the commissions

All the PIL, or any PIL i.e. file in the court is not well researched and had various loopholes. To fill this gap the Supreme Court and the High Court, may set up Commission under Article 32 and Article 226²⁵ of the Indian Constitution, respectively. As per the Commission of Inquiry Act, 1952, grants the power to constitute the appropriate government for the matters or cases related to Public Interest. Their duties are to find out the facts, data, do the research, investigate the matter, collect all the evidence, prepare the report and prepare the non-discriminatory document's that need to be presented before the Hon'ble Court before the Court delivers any Judgment.

Guidelines issued by the Supreme court for filing the PIL²⁶:

The Hon'ble Supreme Court issued the guideline on 1.12.1988, regarding the guidelines to be followed for the PIL petition and the letters that are to be received. The letter petition shall be entertained only as the PIL if the topics are of the following topics -:

1. Bonded Labour matters.
2. Neglected Children.
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).

²⁴ Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.

²⁵ The Constitution of India 1950, art 226.

²⁶ <https://www.sci.gov.in/guidelines-orders/>

4. Petitions from jails complaining of harassment, for (pre-mature release) and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right

(5) Petitions against police for refusing to register a case, harassment by police and death in police custody.

(6) Petitions against atrocities on women, in particular harassment of bride, bride burning, rape, murder, kidnapping etc.

(7) Petitions complaining of harassment or torture of villagers by co- villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes.

(8) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.

(9) Petitions from riot -victims.

(10) Family Pension.

The matters that cannot be dealt as PIL are as follows, the topics are

(1) Landlord-Tenant matters.

(2) Service matter and those pertaining to Pension and Gratuity.

(3) Complaints against Central/ State Government Departments and Local Bodies except those relating to item Nos. (1) to (10) above.

(4) Admission to medical and other educational institution.

The process to file the Public Interest litigation are as follows:

Step 1: Any person can file the PIL by conducting the research and speaking with all relevant parties, the person who files the petition i.e. petitioner, he must have a comprehensive understanding of the concerns affecting people in general.

Step 2: To support the PIL petition, the petitioner must gather all relevant data and supporting documents.

Step 3: He must write the PIL petition with the court's name, the petitioner's and respondent's names and addresses, the article under which the suit is filed, the case's facts (public information and facts), and the remedy the court is seeking,

Step 4: Provide the respondent a copy of the PIL petition.

Step 5: Submit the PIL petition to the High Court or Supreme Court, accompanied by documentation proving that copies of the petition were sent to each respondent.

Conclusion

The Public interest litigation can be treated as the “Golden key to Unlock the doors of injustice”. It plays a major role to secure the idea of the judicial activism, that is also a idea of the Constitution. Due to it, the principle of locus standi came to an effect, and it embraces the idea of the Epistolary jurisdiction in India, the doors are opened for the marginalised community, and to the people who cannot approach the courts due to the insufficient resources with them. It has given voice to many people, who may be unheard if the PIL was not enforced properly. The Principle of Fiat Justicia has been implemented, which means let justice be done. The PIL is different from the Traditional litigation and many legal principles such as continuing mandamus²⁷, epistolary jurisdiction has been implemented through it. It plays a major role in developing a equitable society. It is an idea adopted form the American jurisprudence. The role of the Judicial activism can be witnessed through it. As aforementioned it has brought the socioeconomic change, political and social change in the society.

²⁷ Hussainara Khatoon & Ors v. Home Secretary, State of Bihar (1979) 3 SCC 774.

