

PROTECTION OF CITIZENS / PUBLIC INTEREST

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11.0 OBJECTIVES

After studying the unit you will be able,

To know the meaning of Public Interest Litigation

To understand the concept of —Public Interest||

Process to file Public Interest Litigation

Need for Public Interest Litigation.

11.1 INTRODUCTION

Public Interest Litigation is an important instrument of social change. It is working for the welfare of every section of society. It is an institutional initiative towards the welfare of the needy of the society. The term has become common currency panacea for all ills-be it human rights violation, consumer protection, personal liberty, environmental degradation, right to life. It has now become the characteristic feature of higher judiciary in India. The PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interest of the weaker elements in the community.

11.2 WHAT IS PIL?

According to Black's Law Dictionary, — Public Interest Litigation means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected||

PIL in simple words means, litigation filed in a Court of law, for the protection of Public Interest such as pollution, road safety, protection of ecology, human rights, violence etc.

In India, PIL is not defined in any statute or in any act. It has been interpreted by judges to consider the interest of public at large. PIL was introduced in the 1980s under the aegis of Justice P.N.Bhagwati. PIL in India has been initiated by some judges of Supreme Court themselves. According to Prof. UpendraBaxi, PIL movement is primarily judge-led and even judge-induced in India. The movement began in the aftermath of the emergency in aid of the dispossessed and deprived and came to be known as judicial populism.

PIL is a group oriented action. It involves the questions of injustice pertaining to a group. It is litigation which vindicated a right of a large number of people, perhaps millions, or, redresses a wrong done to them.

11.3 WHAT IS PUBLIC INTEREST?

The expression 'public interest' indicated something which the general public or the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. The word 'litigation' means a legal action, including all legal proceedings initiated in a court of law with the purpose of enforcing a right or seeking a remedy.

11.4 NEED FOR PUBLIC INTEREST LITIGATION:

The traditional conventional judicial process in India is described as colonial legacy unsuited to our conditions. After independence, the poverty, social and educational backwardness, financial constraints and other obstacles prevented the citizens from approaching the courts. Earlier in Indian law citizen whose fundamental rights had been infringed had the right to approach the Supreme Court under Art 32 of the Constitution, but PIL has relaxed the rule and now NGOs, public spirited citizens or any other organisation can approach the court on behalf of the people who belong to class of poor, deprived, women or children for the protection of their rights. It is in harmony with the objectives enshrined in 39A of the Constitution of India to protect and deliver prompt social justice with the help of law. It is working as an important instrument of social change. It is working for the welfare of every section of society. It is used as a strategy to combat the atrocities prevailing in society. It is an institutional initiative towards the welfare of the needy class of the society. It has helped the people who are poor, ignorant or in socially, economically disadvantaged positions to protect their fundamental rights. It is a device which enables the citizens to participate in judicial administration and makes judicial process democratic. PIL has enabled the individuals, social groups, NGOs to approach the Courts of country seeking legal remedies and justice in all cases where the public interest is at stake. PIL is people friendly procedure. The intent of the PIL is to ensure redressal to those who are otherwise poor to move to Courts and are unaware of legal procedure.

The PIL was created to empower ordinary citizens to write letter and draw attention of the apex court. Judicial action initiated through such petition has brought relief to a wide variety of cases and has taken action against the political corruption and accountability.

It seeks to draw the attention of authorities to their constitutional and legal obligations. The greatest contribution of the PIL has been the accountability of government towards human rights of underprivileged.

PIL enables the civil society to not only spread the awareness about human rights but also allows them to participate in decision making process.

In *BandhuMuktiMorcha v/s Union of India*, Justice Bhagwati explained the nature of PIL as, —PIL is not in the nature of adversary

litigation, but it is a challenge and opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the significant tune of our Constitution.||

Justice Bhagwati further observed that the primary focus of PIL in India is state repression, governmental lawlessness, administrative deviance and exploitation of disadvantaged groups and denial to them of their rights and entitlements.

11.5 WHO CAN FILE PIL?

Any public spirited person, NGO or any other organisation can file the Public Interest Litigation in Supreme Court or High Court in India.

Any public spirited person even a foreigner can file a PIL on behalf of others but this is necessary that only the person who is filing a PIL should not get benefit. Meaning there by any PIL whoever is filing should be only and only in for the benefit of peoples. If only one person is getting affected by any act then that is not a ground of filing PIL.

11.6 HOW TO FILE PIL?

A PIL may be filed like a writ petition. However in the past the Supreme Court has treated even letters addressed to the Court as PIL. In the early 90's courts had treated a complaining post card as PIL.

It is different from ordinary litigation, in that it is not filed by one private person against another for the enforcement of a personal justice. A PIL can be filed when there must be a public injury and public wrong caused by the wrongful act or omission wrongful act or omission of the State or public authority. This is just

like a writ petition while it is file in Supreme Court under Art 32 and High Courts under Art 226.

PIL can be filed against Central/State government, Municipal authorities and not any private party. There is a fee for filing the PIL and its hearing proceeds are also just like other cases.

11.7 SUBJECTS OF PIL OR JURISDICTION OF PIL

Prof. S.B. Sathe, has summarized the extent of the jurisdiction which is being exercised by the Courts in the area of PIL in the following words—

1. Where the concerns underlying a petition are not individualistic but are shared widely by a large number of people (bonded labour, under trial prisoners, prison inmates.)
2. Where the affected persons belong to the disadvantaged sections of society (women, children, and bonded labour, unorganized labour etc.)
3. Where the judicial law making is necessary to avoid exploitation (inter country adoption, the education of the children of prostitute)
4. Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of judiciary, existence of grievances Redressal forums)
5. Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water.)

There are various areas or subjects where PIL can be filed-

1. Violation of Human Rights of poor, deprived, women and children
2. Compel Municipal authorities to perform a public duty.
3. Content of conduct of government policy.
4. Violation of religious rights or other basic fundamental rights.
5. Matters of harassment or torture of persons belonging to SC,ST and EBC either by villagers or by public.
Matters relating to environmental pollution, disturbances of
6. ecological balance, drugs, food adulteration, Maintenance of culture, forests and wildlife.
7. Bonded labour matters.
8. Exploitation of casual labourers and non-payment of wages
9. to them.

10. Petitions from riot victims.
11. Matters of neglected children.
12. Sexual harassment of women at work place.
13. For maintaining roads, sewer in good condition.
14. Protection of public places like garden and playgrounds.
15. Banquet Hall playing a loud music in night causing noise pollution.

SOME CASES

- a) Missing children of India :

Advocate Sarwa Mitra filed an PIL in Supreme Court demanding the direction to the Centre and all the State governments for tracing the 55,000 missing children in country. Agreeing to hear the PIL a bench headed by Justice Aftab Alam sought response from the Centre and States on the issue of missing children. The petitioner Sarwa Mitra claimed that almost all the States have failed to solve the kidnapping of 55,000 children by organised gangs. The state has failed to investigate the cases of kidnapping and had failed to trace the missing children, which is total denial of right to life and liberty of these innocent children.

- b) Installation of unauthorised mobile towers:

Ashish Kumar Singh, an advocate in high court of Jharkhand filed PIL against the installation of more than 400 unauthorised cell phone towers in the city of Ranchi without the permission of proper authorities. Children staying close to such towers, which receive and emit electromagnetic waves, were bound to lose power of retention and result in memory loss. The petitioner demand immediate action against the telecom companies and also direction from the court to remove such towers installed without proper

authorisation. Acting upon the directives issued by the Court on the PIL, the Ranchi Municipal Corporation decided to act against companies that have installed mobile phone towers atop buildings and other places without seeking the mandatory no objection certificate.

c) Fast track courts:

In January 2013, in the aftermath of Delhi gang rape case of para medical student, retired IAS officer PromillaShanker pleaded in her PIL with the Supreme Court to direct the government to set up fast track courts in all states for expeditious trial of rape cases. The bench headed by Chief Justice AlltamasKabir agreed to hear the PIL seeking direction to the government to ensure safety of women and for fast track courts proceedings in all rape cases. She also submitted that cases of rape and crime against the women and children be investigated by lady police officials and trial be conducted by lady judges. Acting upon the PIL the Court has issued the directive the government to consider the system fast track courts to ensure speedy justice to victims of rape cases.

PIL as it has developed in recent years marks a significant departure from traditional judicial proceedings. It is now venturing in to formulation of policy which the state must follow. People now expect the courts to issue directions to the legislature and executive through PIL on matters which are functions of the legislature and outside the ambit of Judiciary.

11.9 ABUSE OF PIL

PIL today has largely become ‘publicity Interest Litigation’, ‘Private Interest Litigation’ and ‘Political Interest Litigation’. People are approaching the courts through PIL on matters which are outside the domain of the courts. It has become tool in the hands of the powerful and the influential. Number of frivolous cases has been filed in the courts through PIL. It has been noticed that such as important jurisdiction is blatantly abused by filing some petitions with oblique motives. The abuse of PIL has become more rampant than its use in genuine cases and causes. PIL has become a tool of harassment in some cases as cases could be filed without paying heavy court fees.

The credibility of the PIL process is now adversely affected by the criticism that the judiciary is overstepping the boundaries of its jurisdiction and that it is unable to supervise the effective implementation of its orders. It has been also increasingly felt that PIL is being misused by the people for their private interest and for seeking publicity.

11.10 SUMMARY

Public Interest Litigation is for any public interest. The expression ‘public interest’ indicated something which the general public or the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It is an instrument of social change. It has certainly help in drawing the attention of the courts, government authorities and society towards the problems of poor, deprived classes in India. PIL has proved a boon for the common men in our society.

But some cases of abuse of PIL have been reported. There are various cases in which PIL is misused. There must be screening process while filing the PIL. Heavy fines must be imposed on frivolous PILs. The courts must refrain from passing orders that cannot be enforced. Unless a suitable mechanism is formulated to

prevent the filing of frivolous PIL, the entire object Public Interest Litigation and Judicial activism will be eroded.

