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PUBLIC INTEREST LITIGATION IN INDIA

1.1 Origin of PIL in India

Public Interest Litigation (PIL) is one of the most important facets of the administrative law and administrative justice. It is significant that the Supreme Court of India has been showing an increasing concern on the issues of human rights, which so far did not engage the attention of the judicial system in such a prominent a manner. The court has made itself accessible to the poor, who suffer from denial of basic human rights, constitutional as well as legal, on a large scale. The court has facilitated access to those who are in a socially, and economically disadvantageous position and for whom the rule of law in effect was unknown. This has been achieved largely through public interest litigation.

The seeds of the concept of PIL were initially sown in India by Justice V.R. Krishna Iyer, in 1976 (without assigning the terminology) in Mumbai Kamgar Sabha V. Abdulbhai. He, while disposing off an industrial dispute in regard to the payment of bonus, has observed (Para 7 of AIR):

“Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a part. Where foul play is absent and fairness is not faulted latitude is a grace of processual justice. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to
those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. Even Art. 226, viewed on wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, backed by precedents, has opted for the narrower alternative. Public interest is promoted by a spacious construction of *locus standi* in our socio economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where a considerable number shares the remedy, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law.”

In *Fertilizer Corporation Kamgar Union V. Union of India*, the terminology “Public interest litigation” was used. In that decision Justice Krishna Iyer, delivering his opinion for Justice Bhagwati, and himself used the expression ‘epistolary’ jurisdiction. However, this rule on gaining momentum day by day, burgeoned more and more expanding its branches in the cosmos of PIL and took its root firmly in the Indian Judiciary and fully blossomed with fragrant smell in *S.P. Gupta V. Union of India*. The Supreme Court held that where a person or class of persons to whom legal injury is caused or legal wrong is done, by reason of poverty, disability or socially or economically disadvantageous position, is not able to approach the court for judicial redress, any member of the public, acting bonafide and not out of any extraneous motivation, may move the court for judicial redress of the legal injury or wrong suffered by such person or a class of persons. Such a broad recognition of a right enabled public-spirited individuals and institutions to go to the court on behalf of the affected individual.
1.2 Meaning of PIL

Public Interest means an act beneficial to general public. It means action necessarily taken for public purpose. Requirements of public interest vary from case to case.5

In Strouds Judicial Dictionary, Public Interest is defined thus: “Public Interest – A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”6

In Black’s Law Dictionary, public interest is defined as follows: “Public interest—something in which the public, the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question may affect. Interest shared by citizens generally in affairs of local, State or National Government……...”7

PIL means, “a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.” (from the Supreme Court judgement in Janata Dal V. H.S. Chowdhary, 1982).

Public interest litigation is a new type of litigation, initiated by the judiciary to enable the poor and vulnerable sections of the society to approach the court for enforcement of their fundamental rights. In the opinion of Justice P.N.
Bhagwati, “PIL is essentially a cooperative effort on the part of the petitioner, the public authority and the court to secure the observance of the constitutional and legal rights and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.”

A broader definition has been propounded by the American Council for Public Interest Law by laying down that the:

“Public Interest Law is the name that has recently been given to efforts to provide legal representation to previously un-represented groups and interests. Such efforts have been undertaken in recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalist, consumers, racial and ethnic minorities and others.”

1.3 Public Interest Litigation and Locus Standi

_Evolution of the Concept:_ Locus standi is a vintage doctrine. Its genesis is in the common law of the _laissez faire_ dominated England. The king ruled the country, collected taxes, waged wars, and maintained a general order in society. The subjects were left free in all their activities, provided they obeyed the laws. In individual disputes alone conflicting parties sought justice. The nature of litigation in courts in the early days was essentially contractual. The rule of ‘privity of contract’ governed the field. The _laissez faire_ philosophy left the individual absolutely free and, freedom of contract was regarded as inviolable and sacrosanct. The sovereign did not interfere with that freedom except in very few cases opposed to public policy.
With the advent of democracy, the centre of power shifted from the king to the representatives of the people elected and assembled in parliament. They had to face elections periodically. To ensure their re-election, it was imperative for them to serve public interest. In their endeavour to promote a welfare state, the representative institutions assumed more and more powers and welfare legislations proliferated. This involved more and more regulation of the citizen’s freedom and conduct. Thus, the man in the street began to come into contact with the state in his everyday life. With its spawning laws and increased power, the state frequently infringed the rights of the individuals. This threw up a new type of litigation with the citizen pitted against the state.

Rule of law required that law should support every executive action. Therefore unlawful acts of the state were questioned in courts. The question arose as to who could question such illegal state acts. The courts answered that only a person adversely affected could challenge their legality. Under the circumstances, this was the only way in which the executive powers of the court could be accommodated. It was thus that the concept of locus standi was evolved. This concept prescribes that unless a person has suffered a direct injury or is aggrieved by the act he proposes to challenge, his action is not maintainable in a court of law. Thus, when an environmentalist approaches a court with an environmental problem, instead of considering the larger public interest, the objects of environmental law, the need for distributive justice and participative democracy, the court focuses its attention on the identity of a person who brings the actions. The questions asked are: Who is he, is he personally affected? Has he sufficient personal interest in the matter in issue?

The Traditional Doctrine of Locus Standi

The traditional concept of locus standi was restrictedly enforced and consistently insisted upon by the courts in India, England, and the U.S.A. for a long time.
The Latin term *locus standi* signifies the legal right to file a suit or conduct litigation in a court of law. It means a place of standing in court, a right of appearance in a court of justice or before a legislative body, on a given question. *Locus standi* means right of a person to seek judicial remedy that has suffered or is being made to suffer a legal injury. The rule of *locus standi* insists that a person who approaches the court for redressal of any grievance should have a legal right. Thus access to courts was restricted and was available only for persons holding a legal right.

The traditional rule in regard to *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the state or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind, or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and arose during an era when private law dominated the legal scene and public law had not yet been born. The leading case in which this rule was enunciated is *Ex Parte Sidebotham* where the court was concerned with the question whether the appellant could be said to be a person aggrieved so as to be entitled to maintain an appeal. The court in a unanimous view held that the appellant was not entitled to maintain the appeal because he was not a person aggrieved by the decision of the lower court. L.J. James gave a definition of person aggrieved as “who has suffered a legal grievance, a man against whom a decision has been pronounced which wrongfully deprived him of something or wrongfully affected his title to something”.

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Two principles have been held to underlie the concept locus standi:

1. The petitioner (litigant) himself must have a grievance. He cannot base his claim or the grievance of another person. But this is not necessary in writs of habeas corpus or quo warranto because personal liberty and usurpation of public office are accepted to be of general public concern.

2. No one can bring to court a purely academic dispute. Some legal right or interest of the petitioner must be infringed, threatened or clouded so that the controversy which he raised in court should be focused on his individual grievance and interest, on which the court can pronounce.

The Change in the Principle of Locus Standi

Why did the judiciary feel the need to liberalize the doctrine of locus standi? The principle of locus standi is based on the theory that remedies and rights are correlative and therefore only that person whose right is in jeopardy is entitled to seek a remedy. The Supreme Court has vastly expanded the base of "standing" entitling any member of the public to petition the court on behalf of those who are unable to have access to justice by reason of economic disability or backwardness. It is the enlargement of the maxim Ubi Jus Ibi remedium by embracing all interests of public minded citizens so as to promote justice if there is a violation of constitutional right or legal right of a large number of people, who are poor, ignorant or in a socially or economically disadvantaged position. Today even a letter or telegram addressed to judges on the basis of newspaper reports is accepted by courts and treated as regular writ petition. This shift marks an era of judicial activism generating what is called PIL.

Liberalisation of the Rule of Locus Standi

With the advent of the welfare state, drastic changes are taking place in the constitutional process. Traditionally, the courts of law were considered a haven for rich persons to vindicate their personal and proprietary rights but for poor
masses justice was a far off dream. The higher courts in the land are now remedying this unhappy situation by liberalizing the technical rules of procedure and evolving a new mechanism of PIL. The downtrodden masses in India now have a hope in the form PIL. The prisoners are getting out of their woes, the bonded labour is becoming free, the worker is receiving more for the sweat of his labour, protective homes getting new light, and pavement dwellers achieving more rights. As the custodian of public interest and individual liberties and dispenser of justice in supervising the functions of the state and state agencies, the higher judiciary has widened its jurisdiction. Adaptability to the changing circumstances and values is necessary for the sustenance of the legal system. The insistence on *locus standi* in cases involving public interest or interest of the weaker sections would amount to restricting access to justice. It becomes imperative to discard conventional procedures to meet the new challenges posed by societal changes, participatory democracy, distributive justice and compulsions of human rights.

Justice V.S. Deshpande in an illuminating article has compared the traditional approach with the modern trend relating to *locus standi* as early as in 1971 and has also admirably brought out the distinction between standing and justiciability. He observed that "standing is needed to get an entry for hearing by a court; justiciability is required if the petition is not to be thrown out as not suitable for adjudication." This distinction has been recognised by the Supreme Court in several cases. M.P. Jain has reviewed the law of standing in the U.S.A., England, Canada, Australia, New Zealand, Malaysia and India, and has commented that the
view advocated by the Supreme Court of India is very much ahead of the position reached so far in other common law countries. For the vindication of public rights, promotion of interests of disabled groups, protection of personal liberty and in certain other matters the Supreme Court has granted standing to third parties.¹⁹

1.4 The Growth of PIL in India

Although the fundamental rights applicable to every Indian citizen could be enforced in the Supreme Court under Article 32 of the Constitution, and all other legal rights could be enforced in the High Courts under Article 226 of the Constitution, the procedures governing the use of these provisions were determined by the rules of each court and by accepted practice. Acknowledging that the application of procedures was limiting access to justice, some judges began to disregard the restrictions that had become established. It was justice V.R.Krishna Iyer, during his tenure as a judge of the Supreme Court, who first noticed the possibilities:

A new class of litigation – public interest litigation–where a section or whole of the community is involved (such as consumers organization or NAACP–National Association for the Advancement of Coloured People in America) emerges. In a developing country like ours, this pattern of public oriented litigation better fulfils the rule of law if it is to run close to the rule of life. The Bar Council clearly comes within the category of organizations when a lawyer is involved.²⁰

He described law:

Procedural prescriptions are handmaidens, not mistresses, of justice. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man.²¹
Certain legal developments of the 1970s fostered the growth of PIL. Legal aid was first discussed at a national level. Fundamental Duties were included in the constitution by the Forty Second Amendment Act 1976 in part and a number of enactments like the Bonded Labour (System) Abolition Act, 1976 were passed aiming to ensure that social justice was realized.

During the period of internal emergency declared by Prime Minister Indira Gandhi in 1975 the Supreme Court’s function as a forum for political battles became more overt. Judicial appointments became contingent on the support to the ruling party, and the Supreme Court was unable to uphold basic civil liberties such as the right to life. By 1979, when political circumstances had changed the Supreme Court found a new focus in prisoners’ rights cases and concentrated on the procedural impediments to access to justice, with the support of subsequent constitutional amendments. Implicit was a recognition that few people had the resources or knowledge to approach the courts on their own accord. An advocate was allowed to approach the Supreme Court on behalf of the prisoners, and this relaxation of the rules governing habeas corpus petitions was soon extended to other petitions, as the courts began to allow anyone acting in the ‘public interest’ to petition on behalf of the disadvantaged and deprived, or to bring an issue of public importance to the court. In Fertilizer Corporation Kamgar Union (Regd.) Sindri and others, the Supreme Court held that the procedures had to be relaxed to meet the ends of justice. In People’s Union for Democratic Rights and others, the Supreme Court liberalized the procedural rule of locus standi to allow a petition to be filed on behalf of the workmen on the Asiad Games Project. Letters were registered as writ petitions, and attempts were made to foster a more conciliatory form of justice. In S.P. Gupta V. Union of India, also known as the Judges Transfer Case, the Supreme Court enunciated a
general need to relax procedures and in *Bandhua Mukti Morcha V. Union of India*, the importance of social action groups in furthering the cause of social justice was stressed. By 1981, Justice Bhagwati articulated the basis upon which a PIL could be filed:

"Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal position 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 is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art.226, and in case of any breach of fundamental right of such persons or determinate class of persons, in this court under Art.32 seeking judicial redress for the legal wrong or injury caused to such persons or determinate class of persons."

Judges, lawyers’ social activists, and media persons formed an informal nexus, exposing injustices and petitioning the Supreme Court and High Court that were to become the bases for many PILs. As many members of the political opposition had been imprisoned during the 1975–1977 emergency, this contributed to the focus on the penal system, which was to become one of the first major sites of struggle in PIL.

### 1.5 Objectives of PIL

According to Justice V.R. Krishna Iyer, “PIL is a process of obtaining justice for the people, of voicing people’s grievances through the legal process.”
The object of PIL is to ensure public interest and protection of legal or Constitutional rights of disadvantaged and oppressed groups or individuals and to render social and economic justice to them; there cannot be any reason why in a fit and proper case the court would hesitate to entertain a public interest action against any non-governmental institution or any person invested with statutory or public duties or public obligations when their omissions or commissions affect the rights of disadvantaged groups or individuals who are unable to approach the court and legal injury or legal wrong is caused to them.31

In State of Himachal Pradesh V. A Parent of a Student of Medical College, the Supreme Court said about the public interest litigation thus:

“This is an innovative strategy which has been evolved by the supreme court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under privileged segments of society their social and economic entitlements. It is a highly effective weapon in the armoury of the law for reaching social justice to the common man.”32

1.6 Factors Responsible for the Emergence of PIL in India

It was due to the collective efforts on the part of various institutions including people, social activists, press, professors, lawyers, judiciary, and the state, that PIL sprouted in India, and once sprouted it got nourishment for its growth from multiple sources and factors existing at various levels.

In India, the Press played a very significant role in giving voice to the victims of injustice. Investigative journalism has played a vital role in exposing
the inequitable treatment, oppression, unsympathetic degradation of human beings and more tenuous violation of human rights of poor and unorganized masses which were earlier closed under the guise of formal civil, social and political freedoms. There is oppression, repression and exploitation of unorganized weaker sections of Indian society due to numerous legislations, which are so complex that a poor, illiterate man cannot understand it, and which in turn gives a wider possibility for manipulation to the prejudice of ignorant masses.

Consequently, citizens are mobilizing to act collectively to contest meta-individual interests in courts of law. The idea behind this collective action is the fact that when one person’s rights are violated, it indirectly affects everyone’s. Besides, when the press exposed the plight of the poor, unorganized weaker sections of the society it prompted certain public-spirited individuals to seek judicial redress on their behalf. And more so when judiciary also showed positive sympathetic and receptive attitude towards their cause, the initiative taken by ‘one individual for many in a class’ gained further pace.

1.7 The Factors Responsible for Initiation of PIL at Public Level

Firstly, there is increasing awareness of their rights in the common man owing to widespread press coverage and information received about worldwide human rights movement. Secondly in the post emergency era, which lasted for eighteen months, due to deprivation of even basic rights during that era, that there is ever increasing democratic consciousness in the people. Thirdly today people have incessant desire to get justice cutting across the barriers of technical and procedural niceties. Fourthly, there is a germination of a new middle class political elite outside party politics. Besides, lately social or democratic organizations have gained a growing acceptance by the people and the judiciary and are recognised as legitimate representatives of the interests of the people. For instance there is Trade
Union Movement, Dalit Movement, Agrarian Reform Movement, Civil Liberties Movement, etc. Most of these organisations have lawyers as its members who convinced the people about its legitimacy and magnitude. Thus people started approaching these social organizations straight away to seek judicial redressal of their grievances.

The Human Rights Movements all over the world, more so in the developing nations, pose a challenge to judiciary, legislature and executive to evolve new strategies and methods to meet the hopes, aspirations, rights and freedoms of the people, who are denied their legitimate rights on account of their poverty and other disabilities. PIL is one such approach that gave new dimensions to the interpretation of human rights.

1.8 Features of PIL in India

Both in the United States and India, eight identifying features of PIL distinguish it from traditional litigation. In other words these eight features are nothing but eight ways in which this new kind of litigation differs so radically from traditional private law litigation.33

1. In PIL, the scope of the law suit is consciously shaped by the court and parties, rather than being limited by a specific past event, such as the breach of contract or personal injury.

2. The party structure is sprawling and amorphous, rather than limited to individual adversaries.

3. The fact-inquiry resembles the kind of injury taken into current problems by legislative bodies, rather than a simple investigation of past historical events.
4. ‘Relief’ is often prospective, flexible and remedial having a broad impact on many persons, rather than limited to compensation for a past wrong given only to the party to the law suit.

5. The parties often negotiate the ‘relief’ than imposed by the court.

6. The judgement does not end the court’s involvement but requires a continuing administrative judicial role.

7. The judges play an active role in organising and shaping the litigation, and are not passive.

8. The subject matter of the law suit is a grievance about public policy and is not a private suit.

The new public interest group of recent times, to represent ‘diffuse’ rights act as ‘public spirited’ or ‘ideological plaintiffs’. This gradual rise and growth of ideological plaintiff is a multifaceted phenomenon, and is one aspect of this new role of the judge in PIL.

1.9 Advantages and Disadvantages of PIL

In the PIL, infringement of the right of a person or persons is not the only aspect to be considered. In most of the cases the infringement is the result of an executive and administrative lapse or excess which is always open to judicial review. Judicial review of administrative action is indeed the essence of democracy. It is a silver thread running underneath the constitutional and legal rights and guarantees. PIL has many advantages beneficial to the people at large, especially the indigent, ignorant, disadvantaged and exploited sections of the masses. Through PIL the court performs its real duty to do substantial justice to those who need it the most. It also helps large sections of public and thereby avoids many individual cases on the subject. PIL acts as a strong deterrent on
public servants who have the tendency to transgress the limits of their power and authority at the cost of the people. Besides, it also encourages a sense of accountability in the public servants.

Further, PIL helps in making the executive more vigilant against the violation of people’s rights. PIL also inculcates respect for the rule of law in the government and the people. Moreover, it creates awareness and sensitivity towards the sufferings of toiling masses and activates amelioration efforts. The PIL also gives the executive and the legislature an opportunity to know the mind and attitude of the judiciary to the problems of social welfare. It undoubtedly helps in reducing social tensions and promotes social stability by minimizing the sufferings of the poor and the disadvantaged. A major gain from PIL is that the judiciary is able to come out of the ivory tower and see the ground realities as they are. It may also help in reducing the traditional conservatism and insensitivity, which still persists in a section of the judiciary.

PIL has brought about revolutionary change in the judicial thinking, created new forms and procedures, invented new remedies and gave birth to a new progressive jurisprudence. The greatest advantage of the PIL is that it is the cheapest, quickest and the most effective means of giving relief to the poor, illiterate, ignorant, disabled and disadvantaged people who are silently suffering injustice, exploitation and degradation in contravention of the constitutional provisions.

While PIL has many advantages, there are some possible disadvantages also, for which apprehensions have been expressed. The main argument advanced against PIL is that it will increase considerably the workload of courts by bringing too many cases of this nature. This apprehension does not appear to be well founded because the courts have to see that only interested persons are allowed to
bring such cases before the courts. The busybodies and meddlesome interlopers have to be weeded out.

In any case in today's busy life nobody has the time, money and energy to waste on litigation of this kind, unless a person is deeply committed to the cause, out of purely charitable motives.

References:

4. AIR 1982 SC 149 and p 189.


15. People’s Union for Democratic Rights *v.* Union of India, AIR 1982 SC, 1473.


18. V.S.Deshpande, op.cit. p156.


22. Section 304 of the Code of Criminal Procedure, (CrPC) 1973, mandated the procession of free legal aid. The Code of Criminal Procedure, 1908 was amended in 1916 to provide free legal services to indigent persons and Article 39-A of the Constitution was inserted by the 42nd Amendment Act 1976. See “Processual Justice To The Peoples,” report of the Expert Committee on Legal Aid (Dept of Legal Affairs, Ministry of Law, Justice and Company Affairs, Government of India, May 1973 and “Report on National Juridicare Equal Justice – Social Justice” Committee on Judiciary, New Delhi, August 1977). These reports, known respectively as the Krishna Iyer Committee Report and the Bhagwati Committee Report, were the first national studies of legal aid. Both the reports mentioned PIL.
23. Additional District Magistrate, Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207. When the power to suspend Art.21 of the Constitution under Emergency rule were questioned, the Supreme Court held that the petitioners did not have the standing to approach the court under Art.226 of the Constitution. This ruling denied the petitioners their right to life.

24. For example the Constitution (Forty-Fourth Amendment) Act, 1978.

25. See Sangeeta Ahuja, People Law and Justice, Vol.II, for a detailed discussion on procedural changes.


27. AIR 1982 SC 1473.

28. AIR 1982 SC 149.

29. AIR 1984 SC 802.


34. Ibid. at p1302.