

PUBLIC INTEREST LITIGATION OR SOCIAL ACTION LITIGATION:

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INTRODUCTION: The term “Public Interest Litigation” was first used by Prof. Abram Chayes in 1976 to refer to cases seeking social change through court directives, which articulated public norms of governance and also enforced the public norms. It is not an “Adjudication” in the real sense of the term, but a collaborative effort to bring a socio-economic change in society to make it more equal, just and inclusive. It is not a battle to be won but a disease to be cured. The PIL may thus be described as a litigation in the interest of the “voiceless voices” to secure their legal rights and entitlements. The term PIL comes from the US jurisdiction where it was designed to provide legal representation to previously unrepresented groups and interests. The necessity for this was the recognition that the ordinary market place for legal services fails to provide such services to significant segments of the US population and to significant interests. Such groups and interests include poor, environmentalists, consumers, racial and ethnic minorities, and others.¹

The idea of PIL/SAL came from the *actiopopularis* of the Roman jurisprudence, which allowed court access to every citizen in matters of public wrongs. It is the judge-led or judge-induced strategy and represents high benchmark of judicial creativity and sensitivity to the problems of the weak and the vulnerable. In India, inspiration to court for the development of this strategy came from the oath which a judge takes to defend the constitution, wherein socio-economic justice and equal court access are the prime principles. Thus PIL serves as a powerful tool in the hands of the public-spirited individuals and social action groups for combating exploitation and injustice and securing for the underprivileged segment of society, their social and economic entitlements.²

Thus SAL is not so much for the individual as it is for the class. It is largely preventive not punitive, corrective not compensatory and, hence involves the court and the petitioner on a long-term basis, as justice is done through directions. Such litigation involves wider questions of law and policy and provides opportunity to the petitioner to determine the course of litigation. Thus it is collaborative effort between the petitioner, the court and the government and its instrumentalists to make socio-economic rescuer programmes for the disadvantaged and deprived meaningful for them. Any attempt to undermine this movement would be destructive of the rule of law. Thus the PIL/SAL movement strives to create a rule of law society in India.

1. “Balancing the Scales of Justice- Financing Public Interest Law in America”, Prof.S.K.Agarwal.

2. *State of H.P V. Parent of a Student of Medical college*, (1985) 3 SCC 169: AIR 1985 SC 910.

CONSTITUTIONAL HABITAT: It may be pointed out that in SAL/PIL the court is not exercising any extra-constitutional jurisdiction as this strategy is now firmly rooted in Article 14³ and Article 21⁴ of the Constitution of India.

LOCUS STANDI: PIL/SAL strategy has been developed by the court by lowering the threshold level of locus standi. The traditional view of locus standi was that only an “aggrieved person”, who has personally suffered a legal injury by reason of violation of his interest or legally protected interest, can file a suit for the redress of his grievance.⁵The phrase has now been liberally interpreted in the field of SAL/PIL to allow standing to any *pro bono publico*.⁶ Thus the locus standi allows access to justice through “class actions”, “representative actions” and “public or social action litigation” so that justice may become easily available to the lowly and lost.⁷ For this purpose the courts have allowed “letter petitions” and at times have acted *suomoto* where the situation is such that it shocks the conscience of the court.

PROCEDURE: The technical rules of procedure applicable to the private litigation are applied to PIL also, it would be counter-productive. Hence the courts have developed new procedural norms to suit the requirements of this strategy. A SAL/PIL can be initiated by any public-spirited person or group on behalf of any person or persons who, because of any socio-economic handicap, cannot come before the court, where the right which is violated is a “diffused” right. Drafting of petition should be done by persons having expert knowledge in the field after making proper research, especially, when the petition is concerned with the issues of constitutional law.⁸It is also necessary that in PIL petition, public interest must be prominent. The PILs are heard on the priority basis, therefore, unless the petitioner has a genuine public interest, he will not be allowed to jump the queue, otherwise it would risk others waiting in the long queue for justice. The court does not insist on a regular writ petition and sworn affidavits. Evidences are generally taken on commission at the state expense.

3. Article 14 provides protection against all arbitrariness and lawlessness in administrative actions.

4. Article 21 provides for protection of “life” which embodies everything that goes for a dignified living, including rightful concerns for others.

5. *S.P.Gupta V. Union of India*, 1981 Supp SCC 87: AIR 1982 SC 149.

6. *Ibid*.

7. *PerBhagwati J in People’s Union for Democratic Rights V. Union of India*. (1982) 3 SCC 235: AIR 1982 SC 1473.

8. *S.P. Anand V. H.D. DeveDowda*,(1996) 6 SCC 734: AIR 1997 SC 272.

JURISDICTION: The jurisdiction of the Supreme Court is confined to the violation of fundamental rights, but if there is breach of the social legislation, or a matter of serious public concern is involved, the court has allowed access.⁹ Even in the cases where the court is called upon to give effect to the directive principles or fundamental duties under the Constitution, it will not shrug its shoulders and say that these are not enforceable rights and it will issue directions.¹⁰

WITHDRAWAL: Regarding the withdrawal of the petitions, the court developed a unique procedural norm when it held the petitioner can withdraw but the petition would stay, and the court will ask any other person to represent the case.¹¹ however, the court may grant permission to withdraw keeping in view the consideration of public interest and to check abuse of process of the court.¹² In the area of PIL, justice is done mostly through court's directives. The supplement procedure should conform at all stages to the principles of natural justice.¹³

NOTICE: Where the number persons affected by the PIL is large and indeterminate, public notices issued in large number of newspapers in English and the Local language about the pendency of the litigation and the date of next hearing will be considered as sufficient notice to all those who would be affected by the decision of the court and, in such cases, principles on Order 1, Rule 8 of the Civil Procedure Code are not invocable and no one can say to have received no notice.¹⁴The Supreme Court held that while exercising the power under Article 32 of the Constitution of India for the enforcement of fundamental rights under a PIL, it can issue guidelines and norms to fill up the vacuum in an existing legislation.¹⁵

MISUSE OF PIL: It is necessary that any busybody or meddling interloper who masquerades as a crusader for justice should not be allowed to abuse the process of the court for improper motives. Thus the courts will not allow that its process be obstructed or polluted by unscrupulous litigants for oblique reasons under the grab of PIL.¹⁶

9. *SheonandanPaswan V. State of Bihar*, (1987) I SCC 288: AIR 1987 SC 877.

10. *Sachidanand Pandey V. State of West Bengal*, (1978) 2 SCC 295: AIR 1987 SC 1109.

11. *SheelaBarse V. Union of India*, (1986) 3 SCC 632.

12. *S.P. Anand V. H.D. DeveGowda*, (1996) 6 SCC 734: AIR 1997 SC 272.

13. *BandhuaMuktiMorcha V. Union of India*, (1984) 3 SCC 161, 230-31.

14. *Gopi Aqua Farms V. Union of India*, (1997) 6 SCC 577. See also *S. Jagannath V. Union of India*, (1997) 2 SCC 87: AIR 1997 SC 811.

15. *Vishaka V. State of Rajasthan*, (1997) 6 SCC 241: AIR 1997 SC 3011.J

16. *JanataLal V. H.S. Chowdhary*, (1992) 4 SCC 305: AIR 1993 SC 892.

Locus standi in PIL, thus, will not be lightly allowed to anyone to litigate in the name of public interest to cause damages to others. In recent times the public interest litigation has become private or publicity litigation. So the Supreme Court thought to re-emphasise the parameters within which a PIL could be resorted to by the petitioner and entertained by the court.

SUPREME COURT EMPHASISING PIL:

- The court said that PIL cannot be used to challenge the financial or economic decisions taken by the government. No doubt a person who is personally aggrieved by such decisions can himself come before the court, but a PIL at the behest of the stranger ought not to be entertained.¹⁷

- The court said that the PIL is available if there is any inquiry to public because of dereliction of constitutional or statutory obligation on the part of government. That court restated that every matter of public interest or curiosity cannot be a subject of PIL, because courts are not expected to conduct the administration of the country.¹⁸
- The Supreme Court held that after giving notice to the parties, the court may enter issues wider than those raised in the PIL. Technicalities do not deter the court in wielding its power to do justice, enforcing the law, and balancing equities.¹⁹
- The court is obliged to see, while scrutinising the conduct and activities of a public body, that its activities bear no colour, except being transparent, and are guided with public good, and are within the four corners of the law.²⁰
- While hearing a PIL, the constitutional court acts as custodian of constitutional morality, ethics and code of conduct.²¹
- The Supreme Court also recommended that the PIL should be disposed of as early as possible, as delay may cause injury to the public.²²
- The principle of res judicata shall apply to PIL in the same manner as applied to other writs.²³

17. *BALCO Employees' Union V. Union of India*, (2002) 2 SCC 333.

18. *Ibid.*

19. *Padma V. Hiralal Motilal Desarda*, (2002) 7 SCC 564: AIR 2002 SC 3252.

20. *Ibid.*

21. *Balco Employees' Union V. Union of India*, (2002) 2 SCC 333.

22. *Ibid.*

23. *Joydeep Mukharjee V. State of West Bengal*, (2011) 2 SCC 706.

The Supreme Court in *State of Uttaranchal v. Balwant Singh Chauhan*,²⁴ examined the law declared by it and other courts in a number of judgments and issued certain guidelines in order to preserve the purity and sanctity at the PIL. These guidelines are as follows-

1. The court encourage genuine and bona fide Public Interest Litigation and effectively discourage and curb the Public Interest Litigation filed for extraneous considerations.
2. Instead of every individual judge devising his own procedure for dealing with the PIL, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of

each High court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

3. The courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
4. The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
5. The court should be fully satisfied that substantial public interest is involved before entertaining the petition.
6. The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
7. The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
8. The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

24. AIR 2010 SC 2550.

Ordinarily, the letter or the petition falling under the following categories should be entertained as Public Interest Litigation:²⁵ Guidelines by the Supreme Court-

1. Neglected children;
2. Bonded labour matters;
3. Non-payment of minimum wages to workers and exploitation of casual workers and also complaints relating to the violation of Labour Laws;
4. Petition from prisons, complaining of harassment or for premature release, death in prison, transfer, release on personal bond, speedy trial;
5. Petitions against atrocities on women, bride-burning, rape, murder, etc;
6. Petitions against police for refusing to register a case and also for harassment by police and death in police custody;
7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to the Scheduled Castes and Scheduled Tribes and economically backward classes;
8. Petition from riot victims;
9. Petitions relating to family pension;

10. Petitions pertaining to the environmental pollution, disturbance of ecological balance, maintenance of forest and wildlife, maintenance of heritage and culture and other matters of public importance.
- Petitions for early hearing of cases pending in Courts, petitions relating to service matters, pension and gratuity, petitions pertaining to the landlord-tenant matters and petitions relating to the admission to the medical and other educational institutions will not be entertained as Public Interest Litigation.
 - The Court also insist on the affidavit of the writer and the complainant and now it is also important to specify which of his right whether legal or fundamental right has been violated.²⁶

25. Public Interest Litigation- A Study by P. Bhaskara Mohan, published in AIR 1993 Journal Section, p. 17

26. *BandhaMuktiMorcha V. Union of India*, (1984) 3 SCC 161.

COMPLEXITIES AND PROBLEMS OF PIL:

- The affected parties addressed letters directly in the name of the Judges of the Supreme Court and they used to convert the letters into the writ petitions. This practice has been criticised on the ground that there would be a danger of litigants choosing a Judge and in turn Judges choosing their litigants. To avoid this defect, the practice developed by the court is that the Judges pass the letters to the Registrar for being dealt with according to the normal practice of the court.
- The *suomoto* action by the Judges based upon the newspapers has been criticised on the ground that thereby the Judge assumes the role of Advocate as well, thus, acting against the judicial precept, 'nobody should be a Judge in his own case'.²⁷
- It is also criticised on the ground that it can be misused for private motive or political ends. To avoid this defect, the court has expressed the view that the person who moves the Court for judicial redress must be acting bona fide with a view to vindicating the causes of Justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject it.
- To avoid the danger of persons dressing up their personal grievance in public interest garb, the Court has adopted the view that it is not meant for correcting individual wrong or injury. The view of the Court has been that as far as possible it should not entertain cases of individual wrong or injury at the instance of a third party.
- It is also been criticised in the ground that it would result in the tremendous increase in the litigation, causing delay in deciding many other important cases.

- It is important to note that the interference by the Courts through PIL in the sphere of executive and the legislature is not justified as it is likely to cause conflict between the three organs of the government.
- The court has no capacity to enforce its orders and in many cases the conditions have not changed.²⁸

27. (Nemojudex in resua), *S.P. Gupta V. Union of India*, 1981 Supp SCC 87: AIR 1982 SC 149.

28. Bhagwati J., answered to these criticisms. As regards the enforcement of the orders and direction of the Court, Article 144 is very clear. Article 144 says “All authorities civil and judicial in the territory of India shall act in aid of the Supreme Court.” If authorities don’t obey it is punishable as contempt of the court.

- Indian Litigation System is a very tiresome work process, therefore, no one would like to litigate for the lark. The tribe of conscientious citizens who regularly moved social action cases is feeling discouraged because of frequent adjournments and long delays in the grant of final relief.
- Added to this is the time consumed in waiting upon lawyers, where for some of them SAL is only a cosmetic touch to their public images.²⁹ Lawyers who readily offered their services for a laudable cause are retracing their feet because of the realisation that it is not all publicity and glamour but time and money also.
- Furthermore, those who have sending letters as petitions in the past to a particular judge have found that it may not be heard by him. It is also now recognised that leading evidence is more difficult than sending the newspaper clippings to the court.

REMARKABLE GUIDELINES GIVEN BY THE COURTS THROUGH PIL:

Sheela Barse V. Union of India,³⁰ The Supreme Court directed the State to enforce the provisions of the Children’s Act effectively. The PIL has brought the issues relating to the prostitutes, fallen women and their children before the Court and the Court has issued several directions for the protection of such women and their children.

Gaurav Jain V. Union of India,³¹ At the instance of PIL, the Supreme Court has issued several directions for rescue and rehabilitation of child prostitutes and children of fallen women. And to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of the major avenues in this behalf, Marriage, acceptance by the family to rekindle the faith of self-respect and self-confidence and gave directions to the government to frame schemes for separate schools for the children of the fallen women.

People’s Union for Democratic Rights V. Union of India,³² The Supreme Court entertained petition from a public-spirited organisation on behalf of labourers belonging to socially and economically weaker section and

employed in the construction work of various projects connected with the Asian Games of 1982, complaining violation of various labour laws including non-payment of minimum wages, and granted relief.

29. *Indian Express, Chandigarh*, 6-2-1983, 7.

30. (1986) 3 SCC 596.

31. AIR 1997 SC 3021.

32. (1982) 3 SCC 235: AIR 1982 SC 1473.

Vishaka V. State of Rajasthan.³³ PIL has provided the Court an opportunity to lay guidelines to prevent the sexual harassment of the working women. SC observed that it is violation of the Right to gender Equality and Right to Life and Personal Liberty, and Right to practice any profession, occupation and trade.

S.P. Gupta V. Union of India.³⁴ The SC entertained petitions by lawyers challenging the constitutionality of a Law Minister's circular regarding transfer of judges of High courts. Standing was allowed on the ground that the independence of the judiciary is a matter of grave public concern.

D.S.Nakara V. Union of India,³⁵ It was held that a registered cooperative society consisting of public-spirited citizens seeking to expose the cause of old and retired infirm pensioners, unable to seek redress through tardy and expensive judicial process, can approach the court through a SAL/PIL petition.

Bandhua Mukti Morcha V. Union of India,³⁶ A public-spirited organisation approached the court for the release of bonded labourers working in stone quarries.

People's Union for democratic Rights V. State of Bihar,³⁷ The Supreme Court entertained petition by a public-spirited organisation for compensation on behalf of persons who came victims of unjustified police atrocities.

D.C. Wadhwa V. State of Bihar,³⁸ The Supreme Court held that a professor of political science- who is deeply interested in ensuring proper implementation of the constitutional provisions-can approach the court through a PIL petition against the practice of issuing ordinances on a large scale to bypass legislature, as being a fraud on the Constitution.

Paramanandkatara V. Union of India,³⁹ In order to provide immediate relief to the Bhopal gas tragedy, on a PIL petition, the court upheld the validity of the Bhopal gas leak Disaster (processing of claims) Act, 1985 and the settlement arrived at between the Union of India and the Union Carbide Company.

33. (1997) 6 SCC 241: AIR 1997 SC 3011.

34. 1981 Supp SCC 87: AIR 1982 SC 149.

35. (1983) I SCC 305.

36. (1984) 3 SCC 161.

37. (1987) I SCC 265: AIR 1987 SC 355.

38. (1987) I SCC 378.

39. (1989) 4 SCC 286.

Vellore Citizens' Welfare Forum V. Union of India,⁴⁰ Court issued suitable directions to give relief to people against pollution of tanneries and asked the Madras High Court to establish a Green Bench to monitor further progress.

National Council for Civil Liberties V. Union of India,⁴¹ A petition had been filed alleging that Medha Patkar and others of the Narmada Bachao Andolan are involved in subversive activities in order to obstruct developmental projects of national importance. Dismissing the petition, the court observed that it appears to be a private litigation to discredit and diffuse the agitation for rehabilitation of displaced persons from a dam site.

Dattaraj Nathuji Thaware V. State of Maharashtra,⁴² Dismissing the PIL petition filed by a lawyer, who had blackmailed people and was caught red-handed accepting blackmailing money, the court expressed its anguish at the misuse of this strategy by unscrupulous litigants, and exhorted courts to be ruthless while dealing with such impostors.

Anil Kumar Pandey V. Union of India,⁴³ A PIL was filed in the Lucknow Bench of the Allahabad High Court challenging the constitutional validity of the proposed Jan Lokpal Bill, 2011, which was prepared by the Civil society and now presently under consideration of the Joint committee, consisting of members of the government and the civil society.

CONCLUSION: The pioneer of the PIL, Justice Bagwati said "No State had the right to tell its citizen that because a large number of cases of the rich are pending in our courts we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford rich lawyers is disposed of". He also said, "PIL is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful one". Though there are several criticisms, still if some deprived one is benefitting out of it, it is valid to that extent. Thus the Supreme Court is not only activating its role but also restraining itself to uphold its constitutional limits.

40. (1996) 5 SCC 647: AIR 1996 SC 2715.

41. (2007) 6 SCC 506: AIR 2007 SC 2631.

42. (2005) I SCC 590.

43. *The Hindu*, 21-4-2011,3.