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CRITICAL EVALUATION OF PUBLIC INTEREST LITIGATIONS IN POLICY DECISION IN INDIA

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ABSTRACT

Public Interest litigation (PIL) holds a necessary position in the civil justice where it should obtain the goals which ought to infrequently be finished by traditional private litigation. PIL, for instance, provides a way to justice to deprived sections of society, gives an avenue to put into effect subtle or collective rights, and permits civil society to no longer solely unfold attention about human rights however additionally ensures their participation in authorities selection making. PIL ought to additionally make contributions to true governance through maintaining the authorities accountable

The PIL system in India suggests us that it is indispensable to make sure that PIL does not be a way to fulfill non-public interests, settle political rankings or attain handy publicity. Judiciary in a democracy has to additionally no longer use PIL as a system to run the United States of America on a daily groundwork or enter the reliable area of the government and legislature. The task for states, therefore, is to strike stability in permitting official PIL instances and discouraging frivolous ones. One way to attain this stability should be to construct in financial (dis)incentives in PIL and additionally confine it mainly to these instances the place get entry to justice is undermined by using some type of disability.

Keywords - Public Interest Litigation, Indian Constitution, Fundamental Rights, Directive Principles of State Policy and Judiciary

INTRODUCTION

What is Public Interest Litigation?

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"Public interest litigation" is a legal term that refers to the exact time period in question. Public Interest Litigation is the general term for lawsuits brought by anyone to address public concerns. Defining 'Public Interest' is critical since it no longer implies that anyone can enter the courthouse for a Public Interest lawsuit.

HISTORY AND EVOLUTION

History-Early PIL growth was influenced by American public interest lawsuits and initiatives from the 1960s. Americans call it "Public Interest Law," whereas Indians call it "Public Interest Litigation. As a result, a large number of people who were involved with Project Imagination went on to work with Project Imagination International (PIL). As a result of the well-known marketing campaign that led to the ruling in *Brown v. Board of Education*, critics often attribute the growth of public law litigation in the United States.² According to this decision, it was unconstitutional to separate public school kids based on their race. Public law litigation involved a public institution as the defendant, while the plaintiffs were a self-constituted group whose members changed over time. Relief was once prospective, looking to reform future motion by using government agents, and the judge played a management role complemented by attempts at negotiation by the events. Historically, the classical model of adjudication has been characterised as a private, dualistic conflict distinguished by character involvement and the imposition of retrospective remedy with a close match between right and remedy in this kind of litigation.³ Lawyers like Brown, who saw the law as a weapon for liberation and development for the oppressed, benefited from Brown's advise. Most of these cases occurred at the federal level, but the courts also became interested about state-level concerns such as voting rights, apportionment, contraception/abortion, employment/housing discrimination, and environmental regulations. As far as conditions for inmates are concerned, court battles over jail reform reflect how deeply the judiciary has been involved in Public Law conflicts over the years (the 50 states, the District of Columbia, Puerto Rico and the Virgin Island).

Evolution and it's importance in Judicial Activism

At the very least in India, a PIL differs from a category motion or a team litigation. The PIL, on the other hand, is motivated purely by concerns about access to justice for all members of society, as opposed to the latter. It is now constitutional litigation that is the focus of Indian

² *Brown Vs. Board of Education*, 347 U.S. 483 (1954)

³ Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353 (1978)

public interest litigation (PIL). Having a basic understanding of the Indian constitution and judiciary is necessary to comprehend the country's progress in public interest litigation. On August 15, 1947, Indians declared their independence from British rule and in November 1949, they ratified a Constitution that called for the establishment of what they called a “sovereign socialist secular democratic republic.” The Constitution's objectives include ensuring that justice (social, financial, and political) and equality (of thought, expression, religion, and worship) are inviolable for all citizens of the country (of fame and of opportunity). As a result of the founders' expectation that the Constitution would bring about a social revolution, these objectives are no longer merely idealistic.⁴For such social interchange, the most effective tools have been the fundamental rights clauses and the Directive Principles of State Policy (DPs). As Austin put it, it's "the constitution's conscience."

There are several FRs in Part III of the Constitution, as well as restrictions on these rights. Despite the fact that it no longer has much substance, the right to seek the Supreme Court quickly for the enforcement of any of the Pt III rights has also been proclaimed a FR. Only the FR owner has the authority to waive the FRs.⁵ A constitutional amendment that alters the Constitution's primary form will have no effect on the FRs.

It depends on the FR whether it's just accessible by inhabitants or whether it's open to both citizens and non-citizens. Human or community-based organizations are explicitly given FRs. There are FRs that are explicitly guaranteed against non-state bodies, and there are FRs that are clearly guaranteed against the nation. Art. 12 of the Constitution broadly defines "country" to include "the government and parliament of India and each state," "all neighboring or distinct authorities within India's territory or under the administration of the government of India."

Any corporate venture or government instrument is now included in the definition of "different authorities."⁶Part IV is where the DPs find a piece of the Constitution. DPs continue to play an important role in governance even without the capacity to sue, and it is the nation's duty to put these values into practise when drafting new legislation.

⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966), page 27

⁵ *Bheshwar Nath v CIT* AIR 1959 SC 149; *Nar Singh Pal v Union of India* AIR 2000 SC 140

⁶ *Ajay Hasia v Khalid Mujib* AIR 1981 SC 487

After initial deviation,⁷There is no longer any gold standard for DPs because they are not justiciable according to the Supreme Court. Rater FRs and DPs complement one another, and the former can fulfil the latter's desires. In *Minerva Mills Ltd v Union of India*, the Supreme Court concluded that the Constitution's essential structure assures harmony and stability between critical rights and directive necessities, putting an end to the debate.⁸

Importance in Judicial Activism-

With the liberalisation of access to justice and the provision of assistance to marginalised groups and the destitute through public interest cases, Indian judicial activism took on a humanitarian appearance (PIL). A postal letter or even a postcard addressed to the courtroom can commence a prerogative writ, and judges ignore technicalities. The Indian Supreme Court relaxed the traditional notion of locus by allowing civic-minded persons to take public concerns to court. Since 1977, PIL movements have become more diversified. During the emergency rule period from 1975 to 1977, major incidents occurred that were attributed for a surge in the publication of PILs in 1977. Prior to the implementation of emergency rule in 1977, India had a very different legal policy. Because of altering circumstances and desires, people began swapping ways. Several grave violations of fundamental human rights occurred during the emergency period, but the judiciary's response remained conservative.

In *ADM Jabalpur*⁹Detainees held in preventive custody no longer have frequent regulation proper to achieve their release from an unlawful and arbitrarily preventive detention order, the Supreme Court stated even when it was exceeded save by the power of law. The inherent rights granted by the charter, according to the court, had been put on hold because of the emergency. After the emergency rule was abolished, many states altered their legal systems.

How the PIL Regime proves to be a Heyday of Judicial Activism?

A number of prominent judges, including the late V.R. Krishna Iyer, the late P.N. Bhagawati, Chinappa Reddy, and D.A. Desai, have promoted judicial activism. Judicial activism was claimed to have begun as a result of the advent of public activity litigation and the ensuing relaxation of the locus standi rule. To empower oppressed and underprivileged people and those in need prior to PIL meant using locus standi to ensure their rights were upheld in court. When

⁷ *State of Madras v. Champakam Dorirajan* AIR 1951 SC 226

⁸ *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789, 1806

⁹ *ADM Jabalpur v Shukla* (1976) 2 SCC 521

the Supreme Court first considered an application in *Hussainara Khatoon v State of Bihar* on behalf of inmates serving sentences that exceeded the maximum punishment for their crimes, it was in 1979. As a result, the court issued particular instructions to ensure that the inmates were treated with respect and dignity at all times. Supreme Court of India gave important instructions in *Sunil Batra Vs. Delhi Admin* (1980) and *Sheela Barse Vs. Union of India* (1983) relating to the safety of accused and convicts (both male and female) in terms of their protective and security measures, as well as higher prison requirements and separate women's prisons. After that, it was pointless to search the lower back for PIL.

An increase in the level of judicial activism is also beneficial in the fight against corrupt practises. Cases like *Commonwealth and 2G Spectrum*, coal block allocation, and the *Chopper rip-off* make it clear that corruption is a problem. A lawsuit filed on behalf of the general public resulted in some of these incidents being made public. For the first time in its history, India's Supreme Court cancelled in 2012 122 2G licences awarded by Indian authorities to various telecoms firms in 2008. Judges used to be ridiculed by politicians for their government overreach, but judges are still needed to keep the government from acting against the interests of citizens when doing so would be detrimental. Following the Supreme Court's announcement that it has a duty to invalidate insurance policies that violate constitutional ideas or are against the public interest, 122 licences for 2G spectrum were revoked.

As a result of this decision, the majority of Indians are refraining themselves from participating in the distribution of national property, despite the fact that TRAI has been defined by the TRAI Act of 1997 as a professional body with considerable obligations. The government now owns the spectrum and herbal supplies that were once considered natural resources because of the widespread belief in the indigenous people's name. A moral obligation to the kingdom requires that herbal sources be used for the United States' advantage, not for non-public interests.¹⁰

Land acquisition by U.P. government had been cancelled in the *Noida land acquisition case* because it had been received for industrial purposes, but had been given to developers for the construction of apartments. As a result of the ruling, the land has been returned to the farmers who originally owned it. Several cases having public interest are routinely skipped by the

¹⁰*Dr. Subramanian Swamy v. Union of India and others*, Writ Petition (Civil) No. 10 of 2011

Supreme Court and unique, excessive courts. In addition, the Supreme Court played a significant role in the Gujarat Rebel case in 2002 in order to provide compensation for victims .¹¹

It was determined by the Supreme Court in the Coal Block Allocation Scam that coal block assignments made from 1993 to 2011 were unconstitutional and random. Government coal blocks were awarded haphazardly, according to India's Comptroller and Auditor General, costing the economy 1.86 lakh billion. Augusta Westland paid politicians and military officers to clear a deal to give India 12 of its AW101 heavy-lift helicopters, according to the 2013 Chopper Scam. A Public Interest Litigation (PIL) was filed by the Italian court in connection with the VVIP chopper case, and the Supreme Court wanted to know what Centre and CBI had to say about it.

Justice was a theoretical concept for the majority of illiterate, underprivileged, and exploited people in the country until the Supreme Court formed a Public Interest Litigation. This is important for those who criticise judicial activism. At a time when social and financial development is crucial, the judicial process can play an important role as a catalyst for change. The problem raised by PIL is critical in terms of Indians' overall quality of life. These qualities are passed down down the generations in this way.

ROLE OF PIL

a) In Judiciary and related judgements

Following an intriguing PIL filed on the 19th of April 2004 regarding the first ever strike by Punjab and Haryana judges over their overwhelming court docket, the Supreme Court took an oddly contradicting position. Before, the petition was submitted on the same day and asked the judges to return to public service right away. In *Vikas Vashisht v. Punjab and Haryana High Court*¹²R.C. Lahoti CJ and G.P. Mathur J, sitting as a division bench of the Supreme Court, dismissed a Public Interest Litigation (PIL) in July 2004 because it was based on a newspaper report and not anything more than a publicity hobby litigation. In this case, it was alleged that 25 judges going on a mass informal leave constituted a "strike" by the judges. In September 2004 in *S.S. Dahiya v. Punjab and Haryana High Court*¹³ a bench of S.N. Vairava and H.K. Sema JJ held

¹¹Judicial Activism in India, 23 February 2012, Available at: <http://lawthing.blogspot.in/2012/02/judicial-activism-in-india.html>

¹² *Vikas Vashisht v. Punjab and Haryana High Court*, 2004(8) SCALE 233

¹³ *S.S. Dahiya v. Punjab and Haryana High Court*, 2004(8) SCALE 235

that the petitioner's allegations were not based on newspaper documents, but on the petitioner's private knowledge, and that the PIL was authentic, and that there was a need to lay down recommendations on judicial propriety, and that this was therefore a rely on public interest.. held that The equal bench dismissed the PIL as "infructuous" on December 3, 2004. Most of the concerns raised by PILs are normative in nature, and they are grounded in the idea that judges and courts play a crucial role in Indian democracy. Such a mission raises problems about judicial potential critic costs that courts can't screen and monitor difficult "polycentric disputes," for example.¹⁴, whereas others reply that they can, or at least as nicely as parliaments can.

➤ **Is judiciary overreaching?**

Since PIL is being used by Indian Courts, most criticism has focused on the structure's antiquatedness in comparison to countries like the United States, where people's desires are so vast that it's difficult to say that civil and political priorities take a backseat to societal and financial concerns. The vast majority of PILs are viewed by critics as "judicial activism" or "adventurism." It has been claimed that the various branches of government should be left in charge of social and monetary policy formulation and implementation since they are better qualified to handle these tasks.

b) Policy decision in India

What is policy decisions?In order to fulfil our duties and goals, we need to know how to make picks. It has an impact on our day-to-day, split-second decisions. People who will be affected by a policy's decisions consent to it being made. As long as everyone gives their approval, the group will be handled fairly. All of the members' reservations regarding a policy must be addressed before it can be enacted.

What it includes?Decisions about financial, physical, and human resources are all part of policymaking.

Contribution of PIL towards Policy Decision-Section III of the Indian Constitution guarantees the right to equality, existence, and personality, and public interest litigation describes these rights in greater detail. It also serves as an effective tool for social change and welfare reform.

¹⁴ Fuller & Winston, 1978, The forms and limits of adjudication, Harvard Law Review, p. 304
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Policy Decisions of the State are not to be disturbed/interfered with unless they are found to be grossly arbitrary or irrational-

While putting aside the Telangana High Court's Orders fixing the Fee Structure of Unaided Minority and Non-minority Institutions for Engineering Courses for the 2016-17 and 2018-19 academic years, courts cannot usurp the jurisdiction of Decision Makers under the guise of Judicial Review¹⁵.

It's well-established law that the State's coverage decisions can't be challenged unless they're found to be wildly arbitrary or illogical in some other way. In this context reference may additionally be had to the judgment of the Supreme Court in the case of Federation of Railway Officers Association & Ors. Vs. Union of India¹⁶, where the court held as follows: The judicial review of a government policy is limited when dealing with a subject of this nature. If the scope of coverage or rationale for exercising discretion is specified in the statute, it is not an unrestrained discretion.

In cases where coverage is at stake and technical expertise is required, the Court will defer to those who are qualified to address the matter. Except in cases where the coverage or motion is inconsistent with constitutional and legal norms, arbitrary, irrational, or an abuse of power, the Court will no longer get involved.

Reference might also additionally be had to the judgment of the Supreme Court in the case of Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors.¹⁷, where the Court held as follows:

Now that judicial scrutiny of government actions has been correctly defined, it is time to move forward. As Appellate Authorities, courts cannot and will not investigate a policy to determine if it is proper, suitable, and appropriate; nor are courts advisors to the government on policy matters that the government is allowed to develop.

If an authority's coverage infringes a resident's essential rights, or is in conflict with the Constitution, or is against a statutory law, or is plainly arbitrary, the scope of judicial review is to determine. If the coverage is inadequate or if a better, fairer, or wiser option is available, courts

¹⁵Vasavi Engineering College Parents Association Vs State of Telangana & Ors. Civil Appeal Nos 5133-35 of 2019 (arising out of SLP (C) No. 30090 of 2018)

¹⁶Federation of Railway Officers Association & Ors. Vs. Union of India, (2003) 4 SCC 289

¹⁷Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors., (2007) 4 SCC 737

have no right to intrude. Rather than knowing or soundness of policy, judicial scrutiny is challenged by legality.

DRAWBACKS /DARK SIDE OF PIL

Public interest litigation is being exploited by those who are using it to advance their own personal agendas while claiming to be acting in the public interest. Additionally, courts must ensure that the word "public" in a PIL cannot be replaced with the words "private" or "publicity," as doing so would compromise the proceedings' integrity.

A. Inefficient use of confined judicial resources

The PIL has the ability to help resolve concerns in an environmentally responsible manner if properly administered. Although India has fewer judges per capita than many other countries, it's surprising that courts haven't done more to toss out bogus PILs. Both the Indian Supreme Court and the High Court have a large backlog of cases. If the judiciary allows frivolous PIL petitioners to waste the time and power of the courts, it may be infringing on their right to a quick trial in regular adversarial litigation.

B. Judicial populism

If you want to serve as a citizen judge in a democracy, you can't refuse cases that have a strong public interest but will be unpopular. As Dwivedi J said in *Kesavnanda Bharathi V Union of India*, judicial populism's interest has expanded from merely educational to include:

*Unlike the House of People, which is elected by the people, the court is not answerable to them. As long as the focus of judicial review is not on the numerical concept of minority protection, it will increase its moral authority and win a permanent position in the hearts and minds of people.*¹⁸

In other words, courts should stop seeing themselves as crusaders tasked with correcting all of democracy's ills. This is the argument put forth by the government. In any case, they lack the authority or desire to reap the benefits.

¹⁸ *Kesavnanda Bharathi v Union of India* (1973) 4 S.C.C. 225

C. Symbolic justice

Many PIL lawsuits in India have simply provided symbolic justice, and this is one of the primary difficulties with the process there. This problem can be broken down into two pieces. For example, in cases involving sexual harassment in the workplace (Vishaka) or the process by which an arrest is performed with police help, the judiciary often has trouble ensuring that its directions are carried out in PIL cases (D.K. Basu case). It appears that judicial involvement has made little headway in curbing sexual harassment and decreasing police brutality.

By making DPs and FRs justiciable, we can use symbolic justice in two different ways. Recognizing rights that cannot be enforced devalues the very notion of rights as trump because of the little that is received.¹⁹ Singh aptly notes that,

In other words, "a court may discuss the right to life in terms of the right to access food, health care, education, shelter, and a slew of other social rights without precisely identifying who has the obligation and how such a duty to give positive social benefits could be enforced."

If the PIL enterprise succeeds, it could fool marginalised groups into believing that justice has been served, but it will do nothing to improve their lives.

D. Disturbing the constitutional stability of power

Use of the PIL as a weapon should be done with extreme caution. The court system wants to make sure the PIL does not intrude on the constitutionally reserved domain of government and the legislature while claiming to address public grievances.

Another problem is that the Supreme Court has lacked cohesion, since in some cases it was unafraid to weigh in on coverage issues while hiding behind the defence of coverage issues in others. Rather than making government and legislative institutions more accountable, the judiciary's seizure of these functions may have the reverse effect: it may make them even more unaccountable.

E. Overuse-induced non-seriousness

¹⁹ Ronald Dworkin, Taking Rights Seriously, 2nd Indian Reprint (New Delhi: Universal Law Publishing, 1999), page 11

There may be a risk that over-use of PIL will erode the genuine commitment to using this approach strictly for achieving the human rights of marginalised and disadvantaged groups. A death knell would be sounded for PIL if civil society and disadvantaged enterprises lost faith in its effectiveness.

HOW TO OVERCOME THE DRAWBACKS OF PIL?

Previously, private member's bills were proposed in India's Upper House of Parliament in an effort to rein in lawmakers who were abusing their power. Once upon a time, the Government of India was leading this charge, but that is no longer the case. Petitioners who bring frivolous PIL petitions would face prison time and a monetary fee under the legislation. However, the Bill, which raised questions about meddling with judicial independence, failed to win the backing of all of the country's political parties. When the Bill expired, this effort to sway the way people used PIL was defeated.

The judiciary, on the other hand, is fully aware of the problems associated with PIL and has responded in two ways to the shadowy side of PIL. When the PIL procedure has been abused, the Indian Supreme Court and High Courts have endeavoured to send strong signals on a case-by-case basis. Occasionally, courts have gone so far as to punish litigants who take advantage of the legal system.²⁰ On a few occasions, the Supreme Court expressed its displeasure on how the High Courts have admitted PIL cases.²¹ The Supreme Court's second and more systematic approach was to compile a list of Guidelines to be Followed for Receiving Letters/Petitions as PIL. It was the Chief Justice of India's orders/directions in 1993 and 2003 that amended the Guidelines, which had been principally based on the full-court selection on December 1, 1988. Petitions concerning landlord-tenant issues, service issues, and admittance to educational institutions shall not be accepted as PIL, according to the Guidelines.

HOW PIL IS CONTRIBUTING TOWARDS BUILDING A TRUST ON THE COVID-19 VACCINATION?

Vaccinating the overwhelming majority of the world's population will be a big task, and public belief in COVID 19 immunizations and vaccination will be just as crucial as vaccine effectiveness, despite the fact that the creation of the COVID 19 vaccine has been a huge

²⁰ Janta Dal v H.S. Chowdhary (1992) 4 S.C.C. 305

²¹ Zila Parishad Aurangabad v Mirza Mahamood 2008 Civil Appeal No.4065 of 2002

success. As well as public trust in immunisation, governments' ability to communicate and effectively provide a vaccination programme is strongly dependent on:

- immunisation procurement, distribution, prioritisation and administration procedures and strategies that give decision-makers information and allow them to make informed choices are competent and reliable organisations providing them.
- While retaining public trust in their evaluation techniques, the regulatory agencies' ability to deal with concerns and speak out when necessary.
- there is public participation and communication effectiveness in this.

Governments must collaborate with and support neighbourhood organisations to establish a high level of well-managed community involvement in order for immunisation programmes to be successful. Prior immunisation experiences, non-religious and/or political affiliations, and socioeconomic position are all taken into account.

CONCLUSION

PIL plays a crucial role in the civil justice system because it provides disadvantaged groups in society with a path to justice by informing them about their legal rights. Furthermore, it provides a mechanism to put into effect subtle rights for which finding a wrongdoer is difficult or where wrongdoers have no reason to go knocking on the doors of the courts is advantageous. As a result, PIL can help ensure effective governance by holding officials accountable for their actions. PIL enables civil society to take an active role in promoting social awareness of human rights, in giving marginalised groups in society a voice, and in allowing them to participate in the decision-making of authorities. Many different concerns about separation of powers, judicial capability, and inequity have been raised in recent years regarding PIL. The vast number of cases, as well as the variations in preferences across time and among courthouse benches, have made reaching a general judgement difficult, even when detractors point to particular cases.