

JUDICIAL INITIATIVE: THE ROLE OF PUBLIC INTEREST LITIGATION

Lalit.S.Pagare

Asst. Prof. Anjuman-I-Islam's Barrister A.R. Antulay College of law 92, Dr. D.N. Road, Opp. CSMT, Mumbai – 400001, India.

Abstract

In India **Public Interest litigation** is for the protection of public interest. It is litigation introduced in a court of law, not by the effected party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.

There are many legislative steps have been taken to give effect to right of man to live in a sound environment and their duty toward state and individuals to ensure environment protection and conservation, Hence ,Steps taken by judiciary to forward this goal. The main objective of this research is to identify the present stage and study the environment development in various environmental status through various statutes, law and convention and various issues regarding the court decisions and judicial process. This paper lead the meaning and need for environment laws. It also study in detail the judicial remedies available for environmental protection. The detail study will lead to the new emerging threat which need to be combat effectively.

Introduction

Environment is very important for life on earth like water, air, soil, etc., It determine the development and improvement of humanity Concept of ecological protection and preservation are very old from ancient civilizations. Ancient India texts highlights that it is the dharma of each individual in the society to protect nature and the term 'nature' includes land, water, trees and animals which are of great importance to us. . In the '*Atharva Veda*', the ancient Hindu Scepters according to pattern of Indian legislature to make a number of legislations as opposed to addressing the reason for failure and disappointment, and passing new bills consistently is just like 'old wine in new bottle'. Therefore, there arises a requirement for a comprehensive analysis of the protection of the environment. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection

Many of these judicial interventions have been triggered by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive agencies. Devices such as



Public Interest Litigation (PIL) have been prominently relied upon to tackle environmental problems, and this approach has its supporters as well as critics

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual.

Origin & Development

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamagar Sabha vs. Abdul Thai* (AIR 1976 SC 1455; 1976 (3) SCC 832) and was initiated in *Akhil Bharatiya Mazdoor Sangh vs. Union of India*, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances. Krishna Iyer J., enunciated

The reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar vs. Union of India* (AIR 1981 SC 149; 1981 (2) SCR 52) and the ideal of 'Public Interest Litigation' was blossomed in *S.F. Gupta and others vs. Union of India*, (AIR 1982 SC 149).

Public Interest Litigation and Judicial Activism: Public interest litigation or social interest litigation today has great significance and drew the attention of all concerned. The traditional rule of "Locus Standi" that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court in its recent decisions. Now, the court permits public interest litigation at the instance of public spirited citizens for the enforcement of constitutional or legal rights. Now, any public spirited citizen can move/approach the court for the public cause (in the interests of the public or public welfare) by filing a petition:

1. in Supreme Court under Art.32 of the Constitution;
2. in High Court under Art.226 of the Constitution; and
3. in the Court of Magistrate under Sec.133, Cr. P.C.

Justice Krishna Iyer *Fertilizer Corporation Kamgar Union vs. Union of India*, (1981) enumerated the following reasons for liberalization of the rule of Locus Standi:-

1. Exercise of State power to eradicate corruption may result in unrelated interference with individuals' rights.
2. Social justice wants liberal judicial review administrative action.



3. Restrictive rules of standing are antithesis to a healthy system of administrative action.
4. “Activism is essential for participative public justice”.

Therefore, a public minded citizen must be given an opportunity to move the court in the interests of the public.

In order to ensure that FRs did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. Provisions related to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India. The founding fathers envisaged “the judiciary as a bastion of rights and justice”. An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High Courts—the courts that have entertained all the PIL cases

Merits:

1. In Public Interest Litigation (PIL) citizens of the country can find an inexpensive legal remedy because there is only a nominal fixed court fee involved in this.
2. Further, , the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare and environment.

Demerits:

1. The genuine causes and cases of public interest have in fact receded to the background and irresponsible PIL activists all over the country have started to play a major but not a constructive role in the arena of litigation. Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous cases could be filed without investment of heavy court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs.
2. The framers of Indian constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy making and implementation of policy are conventionally regarded as the exclusive domain of the executive and the legislature. *Vishaka v State of Rajasthan* which was a PIL concerning sexual harassment of women at work place. The court declared that till the legislature enacted a law consistent with the convention on the Elimination of All Forms of Discrimination Against Women which India was a signatory, the guidelines set out by the court would be enforceable.
3. The flexibility of procedure that is a character of PIL has given rise to another set of problems. It gives an opportunity to opposite parties to ascertain the precise allegation and respond specific issues.



4. The credibility of 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 also been increasingly felt that PIL is being misused by the people agitating for private grievance in the grab of public interest and seeking publicity rather than espousing public cause.

STEPS NECESSARY:

With the view to regulate the abuse of PIL the apex court itself has framed certain guidelines (to govern the management and disposal of PILs.) The court must be careful to see that the petitioner who approaches it is acting bona fide and not for personal gain, private profit or political or other oblique considerations. The court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain political objectives. There may be cases where the PIL may affect the right of persons not before the court, and therefore in shaping the relief the court must invariably take into account its impact on those interests and the court must exercise greatest caution and adopt procedure ensuring sufficient notice to all interests likely to be affected.

At present, the court can treat a letter as a writ petition and take action upon it. But, it is not every letter which may be treated as a writ petition by the court. The court would be justified in treating the letter as a writ petition only in the following cases-

- (i) It is only where the letter is addressed by an aggrieved person or
- (ii) a public spirited individual or
- (iii) a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights. Under these circumstances the Supreme Court Of India is required to step in by incorporating safe guards provided by the civil procedure code in matters of stay orders /injunctions in the arena of PIL.

Conclusion:

Public Interest Litigants, all over the country, have not taken very kindly to such court decisions. They do fear that this will sound the death-knell of the people friendly concept of PIL. However, bona fide litigants of India have nothing to fear. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to then opposite parties. It is actually a



welcome move because no one in the country can deny that even PIL activists should be responsible and accountable. In any way, PIL now does require a complete rethink and restructuring. Anyway, overuse and abuse of PIL can only make it stale and ineffective. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints.

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