

**ROLE OF JUDICIARY TO END MISUSE OF PUBLIC INTEREST LITIGATION****Ms. Neha Singh**

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**ABSTRACT**

*The rationale behind the introduction of PIL in the Indian judicial system is to accomplish objectives that cannot be met by conventional means. In India, very less people can access the judiciary because of the complicated legal processes, hence PILs serve as a window for people who cannot enter through it. In India, the PIL's journey has gone through numerous stages. PIL is an important instrument in the hands of Indian people who have been granted the right to petition the court over any issue that directly impacts the public. PIL is an important tool which gives the right to file petition in the court over any matter that directly affects the public.*

*It can be said, this is the method accessible to the courts for redress and upholding a community's rights is known as public interest litigation. Sometimes filing of frivolous litigation in the name of Public Interest Litigation considered to be a contempt of the court. With time, the higher judiciary has occasionally established several rules to prevent PIL misuse. This study is an attempt to evaluate the effectiveness of PIL and discusses several challenges because of the misuse of PIL.*

*This article aims to understand the concept of PIL in its origin and then go on to compare it with its misuse. To understand this abuse better, we will also be dealing with some case laws.*

*Keywords: PIL, Conventional, Judicial Decisions, Court Commentary, Secondary Data*

**INTRODUCTION**

"Public Interest Litigation" originates from American law. It was developed to provide legal counsel to the groups. These groups include the underprivileged class, racial minorities, unorganized consumers, concerned citizens, etc.

This Legal action is a safeguard for "Public Interest activities like prevention of pollution, terrorism, traffic accidents, construction site dangers, etc. Such a nature of interest litigation will always be brought in a court of law when the general public's interests are at stake at any issue. Its definition is not defined under any law or regulation. The very concept of PIL has to be understood always while taking the general public's intent into account. Judges also have to give their observations depending on the given situation.

This is the power granted to the general public by courts through judicial activism. This is the duty of the petitioner to demonstrate that petition submitted to the court is in the public interest. It is not on any pointless issues which waste time of court. The court may initiate case on the petition & may also take cognizance by suo motu if the matter is related to public interest.

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It includes various issues like:



"Public Interest" refers to larger interests of the public welfare & interest of the masses. "Litigation" refers to a legal action. It includes all proceedings initiated in a court of law to enforce a right or seek a remedy<sup>1</sup>. As a result, "any litigation performed for the benefit of the public or to remove some public grievance" is what is meant by public interest litigation. Any civic-minded person may move to court for the public cause by submitting a petition to Supreme Court under Article 32 of the Constitution, High Court under Article 226 of the Constitution, or the Court of Magistrate under Section 32 of the Constitution and Sec 133 of the civil procedure code, 1973.

"An action brought in a court to uphold a public interest, in which the general public has a financial interest by which their legal rights or liabilities are affected" as described in Black's Law Dictionary.

### **RESEARCH METHODOLOGY**

The study undertaken constitutes doctrinal research. The theoretical study that underpins the current work examines several beliefs and presumptions. As a result, the majority of the data used in the analysis came from secondary sources like research papers, news articles, legal articles, etc., while legal provisions were obtained from primary sources like statutes and other legal documents. The researcher has attempted to discover any potential contradictions or shortcomings in legal thinking and practices and has offered solutions by dissecting legal ideas and theories into their component elements and looking at their links.

#### **i. RESEARCH ISSUE**

The issues that have been scrutinized pertain to be:

- a. The importance of PIL for the welfare of society.
- b. The concept of PIL is misused nowadays.

#### **ii. RESEARCH QUESTION**

This study is a concerted step to stop misuse of PIL. As the research conducted, the researcher will address the following questions throughout the paper:

- a. What is the role of the judiciary to stop the misuse of PIL?
- b. How the courts have interpreted the use of PIL in different cases?

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<sup>1</sup> Oxford English Dictionary 2nd Edn.Vol.XII

## PUBLIC INTEREST LITIGATION

Before the 1980s, no one who was not directly affected by the injustice, could personally knock on the doors of justice, to seek redress on behalf of the victim or the aggrieved party. Only the party who had been wronged could do this. In other words, only the people who were impacted have the locus standi (legal standing) to file a claim and pursue legal action. This is the rationale behind the introduction of the PIL idea. If anyone is suffering directly or indirectly do have the right, they can go to a court of law to fight for their rights. With the change in the circumstances and situation and there is a need in the judiciary also to broaden the rights of the people. As the population of our country is not so literate and they are not even knowing about the law. This concept of PIL will help them not to get exploited by any other person.

The outstanding efforts of Justices P N Bhagwati and V R Krishna Iyer were crucial to the legal revolution of the 1980s, which transformed the whole perspective towards the provisions of PIL. As a result, in any condition, where the general public's interests are at issue, any Indian citizen, as well as any social action groups, may knock the door of court to seek legal remedies. Additionally, public interest cases might be brought without having to pay the high court costs associated with a private civil action.

In *S. P. Gupta v. Union of India*<sup>2</sup>, Justice P. N. Bhagwati described the of PIL in the following way:

*"Where a legal wrong or a legal injury is caused to a person or a determinate class of persons because of a violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision, or without the authority of law, or any such legal wrong or legal injury, or any illegal burden seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons; they can approach for the remedy under Article 226( High Court )& Article32 (Supreme court )".*

The idea of "Constitutional Remedy" is used to describe the significance of Article 32 for the enforcement of fundamental rights. Article 32 was referred to as the "heart and soul" of the Constitution as said by Dr. B.R. Ambedkar.

### ➤ How To File A PIL:

#### (a) Filing:

Public Interest Litigation petitions are submitted in the same way as writ petitions are submitted. Two copies of the petition must be filed with a PIL in a High Court; for the Supreme Court, 5 sets must be filed.

Additionally, the petition must be served in advance on every respondent, or opposing party, and the proof of service must be attached to the petition.

Only the affected/aggrieved person may file a writ petition, and it must concern a subject that affects the public at large or a group of individuals, not just one person. There should be a specific plea, asking the court to direct the state authorities to take notice of the complaint or accusation, has to be included .

Under Article 32 of the Constitution and Article 226 of the Constitution, the Supreme Court and the High Court of, respectively, are the Writ Jurisdictions where a Public Interest Litigation may be brought. There are primarily five different sorts of Writs: Habeas Corpus, Mandamus, Quo Warranto, Prohibition, and Certiorari.

#### ➤ Habeas Corpus

This writ means that "You have the Body" and is considered to be one of the important writs. This is used to get a remedy for unlawful detention. This writ is available to the individual to save himself from the arbitrary action of the administrative system as well as the state (in case of violating fundamental rights 19,21& 22). It provides instant relief from unlawful action.

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<sup>2</sup> (1982) 2 S.C.R. 365

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*In ADM Jabalpur v. Shivakant Shukla*<sup>3</sup>, this case is famous as a Habeas Corpus case & it was stated that during an emergency this writ will not be suspended (Article 359).

### ➤ **Mandamus (We Command)**

This writ is important to correct the governmental duties. This is issued by a superior court to a lower court or government officer.

The nature of the writ is to make sure that powers are not misused by the administration and executives. Both performed their duty duly. It also protects the public from administrative bodies if they are misusing their authority.

*In Rashid Ahmad v. Municipal Board*<sup>4</sup>, It was stated in the case that the accessibility of another remedies is not an absolute bar in the case of fundamental rights to issue writs however the fact may be considered.

### ➤ **Certiorari**

Be certified is what it means. This writ is issued when the decision in the case is based on an improper exercise of jurisdiction. The parties involved may appeal based on this writ to the Supreme Court and high court.

*In Naresh S. Mirajkar v. State of Maharashtra*<sup>5</sup>, with the help of this writ high courts, and judicial orders are open to being corrected. Against the high Court, this writ is not admissible.

### ➤ **Prohibition**

This can be issued to direct lower court to prohibit a person from doing an action that is not allowed by the Law. The basic objective of this writ is not to act contrary to the rules of natural justice as well as it prevents an inferior court not to exceed its jurisdiction.

In the case of *Bengal Immunity Co. Ltd*<sup>6</sup>, If an inferior court jurisdiction is shown to be seized that does not belong to it, it will be considered irrelevant and this writ can be issued appropriately. The Supreme Court of India has pointed it out.

### ➤ **Quo Warranto**

This writ can be used against public offices. The main motive of this writ is to stop the person working in offices where they are not entitled to work. This writ means "By what means"

*In H.S. Verma v. T.N. Singh*<sup>7</sup>, According to Article 164(4), which permits such appointments for a period of six months, the non-member of the legislature's appointment as CM was legitimate. The writ was rejected in such circumstances.

## **REVIEW OF LITERATURE**

Litigation is defined as "a legal action, including all proceedings therein, commenced in a court of law to enforce a right or seek a remedy" and "public interest" is defined as the greater interests of the public, general welfare, and interest of the masses.<sup>8</sup>

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<sup>3</sup> (1976) 2 SCC 521

<sup>4</sup> AIR 1952 Orissa 344

<sup>5</sup> AIR 1967 SC 1

<sup>6</sup> AIR 1945 Cal 308

<sup>7</sup> 1971 AIR 1331

<sup>8</sup> Mr. Rakesh Kumar B.A.LL.B. (Hons.), LL.M., Advocate Distt. & Session Court, Jind-126102, Haryana (India)

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“*Public Interest Litigation in India as a Paradigm for Developing Nations (Holladay)*”: Public interest litigation (PIL) is vital to the survival of democracy in India and can be used as a means of establishing and upholding rights.<sup>9</sup>

“*Public interest litigation: A Critical Review (Deva)*”: This essay briefly cites constitutional clauses as the basis for PIL before going on to explore the development and various stages of public interest litigation. It also analyses critically the benefits & drawbacks of PIL in stages.<sup>10</sup>

“*Public interest litigation: Access to Justice (Bohra)*”: It also shows how PIL has changed over time in India, citing court rulings to highlight the driving forces behind this development. Additionally, it describes how it is meeting the needs of the underprivileged sector of the society.<sup>11</sup>

“*Judicial Activism and Public Interest Litigation in India (Ghosh)*”: He emphasized several PIL benefits and drawbacks by tracing its progression phase-wise in light of significant rulings.<sup>12</sup>

“*Public Interest Litigation in India: pros and Cons (Sadual)*”: The Author describes the beginnings & development of PIL concerning important rulings. It emphasized the numerous benefits and drawbacks of PIL as well as how PIL is bringing about societal change in Indian society.<sup>13</sup>

“*A Study on the Advantages and Disadvantages of Public Interest Litigation (Sundaram)*”: This essay gives the background of PIL's development in India over time. Additionally, it covers the PIL filing process. In a subsequent stage, this paper includes judicial rules intended to prevent PIL abuse.<sup>14</sup>

### REASONS FOR MISUSE

#### 1. Pils Become Private Interest

PIL is being abused by those who, rather than supporting public concerns, seek publicity and alleviation from their sufferings under the pretext of public interest. The PIL has the potential to resolve people's complaints efficiently. The plaintiffs are wasting the courts' time and effort by hearing flimsy PILs.

#### 2. Tool for Harassment

PIL is now frequently used by individuals to file fictitious cases to harass others. This has become simple because bringing a PIL rather than a private lawsuit is less expensive. People have started abusing the PIL to settle personal grudges and further their own political or commercial agendas. PILs should be handled as "public interest litigation" and not "private interest litigation," the court has cautioned.

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<sup>9</sup> Zachary Holladay, Public Interest Litigation in India as a, Paradigm for Developing Nations ,*Indiana Journal of Global Legal Studies* Vol. 19 #2 (Summer 2012)

<sup>10</sup> Deva, Surya, Public Interest Litigation in India: A Critical Review, *Civil Justice Quarterly*, Vol. 28, pp. 19-40, 2009

<sup>11</sup> Bohra, Saroj. "Public interest litigation: Access to justice." *Manupatra* (2012).

<sup>12</sup> Ghosh, Pritam Kumar. "Judicial activism and Public Interest Litigation in India." *Galgotias Journal of Legal Studies* (2013).

<sup>13</sup> Sadual, Manoj Kumar. "Public Interest litigation in India: pros and cons." *International Journal of Humanities and Social Sciences* (2015): 30-39.

<sup>14</sup> International Journal of Pure and Applied Mathematics *A study on the advantages and disadvantages of Public Interest Litigation* ,Volume 120 No. 5 2018, 4469-4479

### 3. Publicity

Nowadays everyone is filing PILs to get publicity. In some cases, the court has even referred to these as "publicity interest litigation." The court emphasized how these petitions harm the public interest rather than achieving the goal of PILs.

#### Landmark Cases Related To Pil

PILs are thought to be the most effective judicial tool for defending the rights and interests of the people at large. PILs can only be brought before the Supreme and High Courts by Articles 32 and 226.

- Important Judgement on Pils:

#### 1. Mc Mehta V. Union of India<sup>15</sup>

In this case, PIL was filed in response to the sacred river Ganga's water pollution. The petitioner, M.C. Mehta, took this legal action to stop further pollution of the Ganga. The apex court's ruling noted that even if the petitioner was not the river's owner, the petitioner was still entitled to continue the lawsuit because this action of polluting the Ganga River was very harmful to the public at large. This is because the petitioner wants the statutory provisions to be enforced. He wished to preserve the lives of those who relied on the Ganga River's water for their livelihood.

#### 2. Hussainara Khatoon V. Home Secretary, State of Bihar<sup>16</sup>

This case centered on the horrible jail circumstances and how the inmates who were being tried were treated there. More than 40,000 inmates who were being tried at the time were released after this ruling & were handed down, making this case a historic PIL case.

#### 3. Vishaka Vs the State of Rajasthan<sup>17</sup>

This was the most powerful PIL case that brought in revolution and introduced Vishaka guidelines for the safety of women in the workplace. Under Article 141 of the Indian Constitution, the Vishaka Guidelines were eventually regarded as legislation. It held sexual harassment abrogated the fundamental constitutional rights of life, liberty, equality, non-discrimination, etc. It laid the foundation for The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. In this instance, it was accepted that there was a dearth of legislation to guard against sexual harassment of women and to provide a secure workplace. On August 13, a division bench made up of the Chief Justice, Sujata V. Manohar, and B.N. Kripal rendered a decision in this matter.

#### 4. S.P Gupta Vs Union of India<sup>18</sup>

Some lawyers believed that the independence of the judiciary had been compromised which is why they filed this PIL. It was a crucial PIL that was used as a tool to enforce public duties. The constitution's primary goal was to defend the rule of law and administer pure justice, therefore it was established that any member of the public with a strong enough interest could pursue legal action against any violation of a duty owed to the public or harm to the public.

#### 5.) Parmanand Katara Vs Union of India<sup>19</sup>-

In this PIL case it was determined that the right to life is important and that, in cases of crises, medical and legal procedures may be waived because once life is lost, it cannot be recovered. Doctors' top priority should be to save

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<sup>15</sup> 1987 4 S.C.C. 463

<sup>16</sup> 1979 AIR 1369

<sup>17</sup> AIR1997 SC 3011

<sup>18</sup> AIR 1982, SC 149

<sup>19</sup> 1989 AIR 2039

patients' lives. Every medical practitioner must expand their services with the appropriate skills for preserving life. A doctor in the medical field should not be unduly brought in for questioning or to fulfill formalities by the police or attorneys, it was further held.

#### **SUGGESTIONS: HOW ABUSE OF PIL CAN BE STOPPED**

##### **❖ Not to Hear Uncertain PILs:**

In case the judiciary thinks that the PIL which was filed is uncertain then it must be rejected by them at the beginning only.

##### **❖ To Impose High Costs on Them If The Pil is Doubtful:**

The judiciary must impose a high cost upon the individuals who bring doubtful PIL in the court. It will be a clear message to society not to do so. It also acts as a deterrent in the future for the society.

##### **❖ Pil Assurance:**

The Practitioner should be asked to take responsibility towards the court that they would recover the damages, in case the PIL is dismissed.

##### **❖ Role of Media**

Media has to play a very important role by highlighting the cases of abuse of PIL. It will create awareness among the people also regarding the appropriate nature & use of PIL in a good way.

##### **❖ Awareness Programs**

From time to time, the judiciary must conduct awareness programs regarding not misusing the PIL. It creates problems in getting access to justice.

##### **❖ To Punish Petitioners:**

Not only have to impose costs there had to be provisions in the law where the petitioners should be punished for doing so. It will also create a deterrent effect on others.

##### **❖ Lawyers Should Refuse:**

This is one of the major responsibilities of the lawyer also not to take such cases if they know that the petitioners are malicious.

##### **❖ Discipline And Ethics Are Strongly Emphasized**

In the legal profession, lawyers should not take up defending such causes which abuse the PIL.

##### **❖ Bonafide Cause:**

PIL can be filed only for bona fide reasons. It will not be backed by private interest.

#### **CONCLUSION**

PIL has made a significant contribution to social engineering. It has made an effort to close the gap left by the executive. PIL has actively worked to hold the government responsible. It gives civil society a clear route to contribute to bringing about social change through the judiciary. PIL has a greater impact than private lawsuits. It has given those who are less fortunate in society a way to quickly access justice. It has succeeded in achieving goals that conventional private litigation has not been able to. Despite all of these efforts, it still had a lot of problems.

The court is creeping into the executive's domain, which is bad news for Indian democracy. Although the Supreme Court issued certain recommendations to prevent the abuse of PIL. It has done a lot for the underprivileged group in society and can do more provided it operates within a specific framework. PIL can play a significant part in the civil justice system, which offers disadvantaged members of society who may not even be aware of their rights. PIL can improve governance by holding the government responsible. Finally, PILs assist in raising social consciousness among the populace, educating, and defending their human rights, and giving voice

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to the weaker and more vulnerable members of society who would otherwise be. The Indian judiciary has also played a significant role in upholding and recognizing citizens' rights by directing the government and its bodies to refrain from misusing their power and safeguard the people's constitutional rights. However, it must be guaranteed that the PIL is not abused by individuals for their publicity or any other nefarious purposes in the interest of justice.