



## A CRITICAL STUDY OF PUBLIC INTEREST LITIGATION AND LEGAL & PARA-LEGAL SERVICES IN INDIA

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### Abstract:

The role of Public Interest Litigation is as a panacea in delivery of justice with respect to Para-Legal Services and Legal system in India. Public Interest Litigation is most empowered and powerful means or instruments for weaker sections and vulnerable groups of people of our society to deliver justice. The Para-Legal Services also are the most effective remedy or solution for poor and other disable persons in administration of justice. Public Interest Litigation can only be filed before hon'ble High Courts for the state under article 226<sup>3</sup> or hon'ble Supreme Court of India under article 32<sup>4</sup>, except the aforesaid Public Interest Litigation cannot be filed before any court, tribunals, authority or officer in India. Either Public Interest Litigation may be filed in the High Court or the Supreme Court but the same cannot be filed in both Courts together or simultaneously at a time. Article 32 is applied only for the enforcement of Fundamental Rights and article 226 is invoked for the enforcement of Fundamental Rights and also for other rights. Article 32 is also one of organs of basic structure of Constitution of India which cannot be destructed by the amendment under article 368 of Constitution of India as per the case of L. Chandra Kumar v. Union of India<sup>5</sup>. Public Interest Litigation can be filed by the person whose fundamental rights, human rights, other rights as legal or statutory or constitutional rights etc. have been violated or by any institution, organization, relatives, NGOs social welfare institutions, other persons etc. The Court may also take cognizance by suo-moto from newspapers, magazines and other means also. Public Interest Litigation can be filed for the enforcement, protection & preservation of fundamental rights, human rights, other rights as legal or statutory or constitutional rights etc. of poor persons, weaker sections, vulnerable group of persons or other disable people also. In Judges Transfer case the bench of 7 Justices held that such person can seek the remedy by writing a simple letter to the court only, and to comply with the technicalities of

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<sup>3</sup>The Constitution of India.

<sup>4</sup> Ibid.

<sup>5</sup>AIR 1997 SC 1125.



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the petition shall not be compulsory which is helpful for research scholars, students, Professors, teachers, institutions or organizations or establishments, commissions, governments, NGOs, trusts, Colleges, Universities, person individually or group, society and other required persons relating to conduct research and do the needful as per requirements, time & circumstances.

## **Introduction:**

In general sense “public interest” means something in which some interest of the public in general or their rights and interests are affected. According to Stroud’s judicial dictionary ‘public interest’ means “a matter in which a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected.”<sup>6</sup> Hon’ble Supreme Court of India in *Janta Dal v. H.S. Choudhary*,<sup>7</sup> interpreted the term ‘public interest litigation’ to mean “the 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.” The American Council for Public Interest Law set up by the Ford Foundation, USA in 1976, in its report on PIL observed that, “public interest law is the name that has recently been given to the efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal service fails to provide such service to significant segments of the population and to significant interests. Such groups and interests include the environmentalists, consumers, social and ethnic minorities and others.”<sup>8</sup>

The term Public Interest Litigation consists three words ‘public’, ‘interest’ and ‘litigation’. The word public carries the meaning of the people, the general body of mankind, the community at large, the whole body politics, all the citizens of the state, the people of the neighborhood, the inhabitants of a particular place, populace, society, general etc.<sup>9</sup>

The term ‘public interest’ has been defined in Black’s law Dictionary as ‘something in which the public or community at large has some pecuniary interest or some interest by which their legal

<sup>6</sup>Stroud's Judicial Dictionary; Volume 4 (5th Edition).

<sup>7</sup>AIR 1993 SC 892 (Para 52).

<sup>8</sup> Dr. N.V. Paranjape: Public Interest Litigation, Legal Aid & Services, Lok Adalats & Para-Legal Services: Central Law Agency, Allahabad: Edition 2<sup>nd</sup> 2010, Page 1.

<sup>9</sup> Dr. S.R. Myneni: Public Interest Lawyering, Legal Aid and Para Legal Services: Asia Law House, Hyderabad: Edition: 2007, Page no.01.



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rights or liabilities are affected'. In the Stroud's Judicial Dictionary, the term public interest has been defined thus: "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 has a pecuniary interest, or some interest by which their legal rights or liabilities are affected".<sup>10</sup>

In the United States of America, the term 'Public Interest Law' is used. The Council for Public Interest Law set up by the Ford Foundation U.S.A, in its report, explains the term 'Public Interest Law' thus: "Public Interest Law is the name that has recently been given to effort to provide legal representation to previously unrepresented 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, environmentalists, consumers and ethnic minorities, and others".<sup>11</sup>

The Origin and Meaning of Public Interest Litigation, free legal aid, role of Advocates in this legal field for the protection of poor and illiterate persons of weaker sections of community need not be over emphasized in the present era of judicial consciousness and creativeness. This is sometimes termed as active judicialism applied by the Supreme Court and High Courts for the public welfare, among others.<sup>12</sup>

The question "What 'PIL' means and is?" has been deeply surveyed, explored and explained not only by various judicial pronouncements in many countries, but also by many eminent jurists, Judges, active lawyers, outstanding scholars, journalists and Social Scientists, etc. with a vast erudition. Basically the meaning of the words-, "Public Interest" is defined in the Oxford English Dictionary, 2nd Edition, Vol. XII as "the common wellbeing ... also public welfare."

According to Stroud's Judicial Dictionary, Public Interest is defined thus: "Public Interest (1) A matter of public or general interest" does not mean that which is interesting as gratifying curiosity

<sup>10</sup> Ibid: Page no. 01.

<sup>11</sup> Dr. S.R. Myneni: Public Interest Lawyering, Legal Aid and Para Legal Services: Asia Law House, Hyderabad: Edition: 2007, Page No.01.

<sup>12</sup> J.P.S. Sirohi and AnelSirohi: Public Interest Lawyering Legal aid and Para-Legal services: Allahabad Law agency Faridabad (Haryana)First Edition 2003: Page 21.



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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.”<sup>13</sup>

Public Interest is defined in Black’s Law Dictionary (Sixth Edition) 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 interest of the particular localities, which may be affected by the matters in question. Interest shared by the citizens generally in affairs of local, State or national Government....”<sup>14</sup>

Mr. Justice P. N. Bhagwati (as he then was) has explained the emergence of the concept of Public Interest Litigation in the Indian Legal system in one of his Articles contributed under the caption ‘Social Action Litigation’: The Indian experience, thus: “The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this purpose, it is necessary to make procedural innovations in order to meet the challenges posed by this new role of an active and committed judiciary. The Summit Judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of the western thoughts, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups during the last four or five years, however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice starved millions of India.”<sup>15</sup>

The subject of Public Interest Litigation was initially discussed and highlighted by Justice Krishna Iyer, without assigning the terminology in Mumbai Kamgar Sabhav. Abdul Bhai,<sup>16</sup> while disposing an industrial dispute with regard to payment of bonus in Para 7 thus:

“Our adjectival branch of jurisprudence, by and large, deals not only 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

<sup>13</sup>Ibid: Page 21.

<sup>14</sup> Ibid: Page no. 21.

<sup>15</sup>Vide ‘Role of Judiciary in Plural Societies’, Published in 1987.

<sup>16</sup>AIR 1976 SCC 1455: (1976) 3 SCC 832.



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cause title create a secret weapon to non-suit a party. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. Test litigations, representative actions, and pro bono publico and like broadened forms of legal proceedings are in keeping with the correct accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on the merits by suspect reliance on peripheral procedural shortcomings. Even Article 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 *locus-standi* alternative. Public interest is promoted by a spacious construction of in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher courts. Here the remedy is shared by a considerable number, particularly when they are weaker. Less litigation is the aim of adjectival law.”<sup>17</sup>

In a leading case of *Janata Dal v. H.S. Chaudhary and others*,<sup>18</sup> meaning of public interest litigation was explained. It has been observed in Para 51 of the judgment that the expression ‘litigation’ means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression ‘PIL’ means a legal action initiated in a court of law for the enforcement of a 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. The concept of ‘PIL’ in modern society is related to social, economic, political and ideological causes being faced by the society and various types of people belonging to poor, illiterate weaker sections of society who have no access to justice because of their limited resources and lack of legal and other concerned competency. These are the challenges for which ‘PIL’ concept is evolved by the superior court. It is termed as expanded roles of court in the modern ‘social’ State and the new demands for judicial responsibility. The role of court in promoting the legal system in the field of ‘PIL’ has been widened and expanded by the courts to meet all those challenges being faced by those who are the least advantaged and to give new hope for the justice to

<sup>17</sup> J.P.S. Sirohi and AnelSirohi: Public Interest Lawyering Legal aid and Para-Legal services: Allahabad Law agency Faridabad (Haryana): First Edition 2003: Page 22.

<sup>18</sup> AIR 1993, SC 892.



starved millions. According to the Supreme Court<sup>19</sup> the concept of 'PIL' which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records, especially in the arena of constitutional and. legal treatment for the unrepresented and underrepresented.

### **The Purpose and Scope of Public Interest Litigation:**

The Purpose and Scope of Public Interest Litigation can be clarified that it is available for the protection of those persons who are suffering from poverty, Social, economic, illiteracy, exploitation, atrocity and other obstacles in Indian society therefore they are unable to access to the Court or Legal System. The scope and importance of Public Interest Litigation has been clarified in the landmark judgment namely People Union for democratic rights v. Union of India<sup>20</sup> hon'ble Justice Bhagwati. Hence on the basis of aforesaid case it can be said that hon'ble Supreme Court of India is the watchful sentinel in our country for poor, weaker and disable sections of people.

### **Prevention of Abuses of Public Interest Litigation:**

In present scenario the abuses of Public Interest litigation are at its own extreme to take unfair disadvantages and to defeat or fail the ends of justice. Now a days Public Interest litigation is being treated as a means of earning name, fame and money which is not in the interest of the people who are highly in the need of fair and satisfactory justice in accordance with time & circumstances. Therefore some guidelines and directions have been issued by the apex court from time to time. In this regards court had a concern to strike up on the abuses of PIL. Thus with regard to abuses of PIL, hon'ble Justice Bhagwati propounded the guideline in case of MC Mehta v. Union of India<sup>21</sup>. Hon'ble Justice Bhagwati held leading guidelines in Judges Transfer case: the Court must scrutinize or examine being cautious beware that when the person come in the court than whether the person came with bonafide or for personal or individual gain or profit or motivated by politics or other malafide or ill feelings? Hence it can be summarized that PIL must not be for personal or individual gain or profit, motivated by politics, other malafide or ill feelings. The process of the Court must not be abused namely the PIL entertained or filed in which the larger interest of people is vested and also must be in good faith & conscious. Some relevant important cases pertaining to abuse of PIL are as

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<sup>19</sup> Ibid

<sup>20</sup> AIR 1980 SC 1579.

<sup>21</sup> AIR 1987 SC 1087.



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under: Janta Dal v. HS Chaudhary<sup>22</sup>, Krishna Swami v. Union of India<sup>23</sup>, Simran Jeet Singh v. Union of India<sup>24</sup>, Volko Employee Union v. Union of India<sup>25</sup>, V. Singh v. Union of India<sup>26</sup>, Guruvayur Devasvam Managing Committee v. C.K. Rajan<sup>27</sup> and etc.

## **The Impact of Public Interest litigation:**

The impact of The PIL offers to the oppressed class of our Indian society a new front for their battle for justice and human dignity. The evolution of PIL has provided to the weaker sections of the society an opportunity to fight for justice by implementation of existing laws and as a result of that PIL has become a very important means to eliminate the causes of exploitation and oppression of the poor masses. For a long time, the Apex Court had remained “an arena of legal quibbling for men with long purses”<sup>28</sup> but now it is being identified as the “last resort for the oppressed and the bewildered”.<sup>29</sup> The People are realizing that the court has constitutional power of intervention, which can be invoked to ameliorate their miseries arising from repression; governmental lawlessness and administrative deviance. Main groups now flock to the Supreme Court for seeking justice. They brought a new kind of lawyering and a novel kind of judging. They add a poignant twist to the docket explosion.<sup>30</sup> Now Public Interest Litigation brought a new kind of dialogue on the judicial role in traumatically changed society.<sup>31</sup> The hurdle of locus standi or standing in the path of socially motivated litigation is no longer a matter of argument.<sup>32</sup> Justice Krishna Iyer rightly observed that Public interest Litigation is a part of the process of participating justice. The court has indeed, declared Public Interest Litigation as a co-operative action and upholds law particularly when fundamental human rights are infringed.<sup>33</sup> The Supreme Court while entertaining Public Interest Litigation emphasized. “Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the Courts for improving their life conditions and making basic human

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<sup>22</sup>(1992)4 SCC 305.

<sup>23</sup>(1992)4 SCC 605.

<sup>24</sup>(1992) SCC 653.

<sup>25</sup>(1992)4 SCC 553.

<sup>26</sup>AIR 2004 SC 1923.

<sup>27</sup>AIR 2004 SC 561.

<sup>28</sup>KeshwanandaBharti v. State of Kerala (1973) Article SCC 225.

<sup>29</sup>Per Justice Goswami, State of Rajasthan v. U.O.I., (1977) 3 SCC 225.

<sup>30</sup>BaxiUpendra, The Crisis of the Indian Legal System, Vikas Publishing House Pvt. Ltd., Sahibabad (1982) 58.

<sup>31</sup>Chinnappa Reddy, Judicial Process and Social Change (1981) LX VI SCJ 1.

<sup>32</sup>Sachar, Rajinder, Social Action Litigation - Activist and Traditionalist Judges (1987) 1 SCC14.

<sup>33</sup>Madhya Menon, N.R., Dawn of Human Rights Jurisprudence, (1987) 1 SCC 7.



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meaningful for them. The time has now come when the Courts must become the Courts for the poor and struggling masses of this country. Fortunately, this change is gradually taking place and Public Interest Litigation is playing a large part in bringing this change.”<sup>34</sup> Though PIL was initiated for limited purposes but its scope has been enlarged by glorious decisions pronounced in various cases by the Apex Court of India. It will be worthwhile to discuss some of the areas of PIL in the light of decided cases. It will be appropriate to deal with the scope and object of ‘public interest litigation’ (PIL), the horizon of which is widely extended and which at present constitutes a new chapter in justice delivery system acquiring a significant degree of importance in the modern legal jurisprudence practiced by Courts in many parts of the world, based on the principle, “Liberty and Justice for All”.<sup>35</sup>

The Supreme Court has widely enlarged the scope of PIL by relaxing and liberalizing the rule of standing by treating letters or petition sent by any person or association complaining violation of any fundamental rights and also entertaining Writ Petitions filed under Article 32 of the Constitution by public-spirited and- policy oriented activist persons or journalists or of any Organization. The newly invented proposition of law laid down by many learned Judges of the Supreme Court in the arena of PIL irrefutably and manifestly establish that our dynamic action in the field of PIL is by no means less than those of other activist judicial systems in other parts of the world. There may be numerous circumstances justifying the entertaining of Public Interest Litigation but an exhaustive list of all such situations is not possible.<sup>36</sup> In *State of H.P. and another v. Lined Ram Sharma and others*,<sup>37</sup> the Supreme Court held that an affirmative action in the form of some remedial measure, in public interest, in the background of the constitutional aspirations as enshrined in Article 38 read with Articles 19 and 21 of the Constitution may be permitted. By means of judicial directions in cases of executive inaction or slow action is permissible within the limits and the process of judicial review, if the High Court energies executive action, should be used cautiously. Remedial action in public interest must always be with caution and within limits. In a petition filed by Hillman for direction for construction of a part of a road, the High Court directed the executive to favorably consider the

<sup>34</sup>Per Justice Bhagwati in *People's Union for Democratic Rights v. UOI*, AIR 1982 SC 1473. (260).

<sup>35</sup>Dr. S.S. Sharma: *Legal Service, Public Interest litigations and Para-Legal Services*: Central Law Agency Allahabad: First Edition 2003 p. 260-261.

<sup>36</sup>*Ibid*: Page 260-261

<sup>37</sup>AIR 1986 SC 847.





demand for additional funds and also gave a direction to report to the Court what progress had been done.<sup>38</sup>

It was held that the first direction was enough. There was no need for the High Court to direct that the matter be listed again before it. The Supreme Court, however, did not delete that part of the order of the High Court, out of deference, but directed that the information be placed before the High Court to inform it as to what steps had been taken and thereafter the High Court need not take any further action and leave the priorities and initiative to the judgment both of the executive and legislature to pursue the matter.<sup>39</sup>

The Hon'ble Supreme Court and High Courts of India delivered many leading and landmark cases for the welfare and interest of poors, weakers, downtrodden, ordinary people, disable, neglected languishing in Jail exploited and other persons & also relating to life and personal liberty. Hence the impact of PIL conveys the messages that act against human, crimes, arbitrariness, atrocities, exploitations; human trafficking and etc. shall not be tolerated towards the people or human. In respect of entertaining or dealing with PIL or petitions for the purpose of the article 32 and 226, Supreme Court under article 145 and High Courts under article 227 are having power to make rules for regulating the practice and procedure of the Court therefore the procedures of the Cr.P.C 1973 and C.P.C 1908 are not applicable in this regards hence the Supreme Court and High Courts Make rules to regulate its practice and procedure for PIL and petitions which is applied for the same.

### Remedies & Suggestions:

The Remedies & Suggestions are as under:

1. PIL should be entertained, dealt with & scrutinized very cautiously & vigilantly to ensure the ends of justice and for the prevention of abuses of process.
2. Petitioner must come with clean hands or bonafidely and good consciously.
3. Personal Interest or gain or profit must not be involved in PIL.
4. The wide range of public interest must be in PIL which is one of foundations of it.

<sup>38</sup> Dr. S.S. Sharma: Legal Service, Public Interest litigations and Para-Legal Services: Central Law Agency Allahabad: First Edition 2003 p. 260-261.

<sup>39</sup> Ibid.



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5. PIL must not be motivated from politics.
6. Malafide or ill feelings must not be involved to PIL.
7. The Court Strictly must not allow to politicians, institutions, organizations, social welfare institutions and other persons to abuse the process of the Court and to defeat or fail the justice.
8. PIL is subjected to the discretionary power of the Court so the same cannot be claimed to entertain rightfully. The discretionary power of the Court should be exercised for the welfare of people and to ensure the ends & delivery of justice.
9. The PIL should not be individualistic but should be related to the vast range of interest of people for their welfare.
10. It should be filed for the benefit of affected persons who belong to the disadvantaged sections of society such as women, children, unorganized labour etc.
11. It must not be abused.

## **Conclusion:**

Public Interest Litigation is very positive, remarkable and historic in spite of many abuses, pendency of petitions, lack of judges and others in Indian Judiciary. PIL is an effective remedy for many kinds of problems. PIL has gone down the history in India and highly worth appreciating in today's context. It cannot be denied that the condition of PIL is very miserable and the efforts which are being done by means of PIL are not sufficient, satisfactory and required for Ordinary people or Masses or persons in accordance with necessities, Laws, time and circumstances. In this regards it is truly said that something is better than nothing. The role of Legal & Para-Legal services in delivery of justice is very essential & compulsory because Public Interest Litigation and Legal-Aid & Para-Legal services both are the most beneficial and helpful for weaker section, vulnerable sections of people and other disable persons. Both are the best means or mediums in the Legal system for welfare of aforesaid people. The Legal & Para-Legal Services & Public Interest Litigation both are the basic things of our justice system, with the coordination of judicial activism, Judicial review, writs, directions, order and other connected things of the courts respective therefore it has become the most empowered and powerful strength of High Court & Supreme Court of India for the protection, preservation, promotion and other things relevant of Fundamental Rights, Human Rights, Legal Rights, Statutory Rights and other Rights.