

PUBLIC INTEREST LITIGATION: CORDITE TO ERADICATE CORRUPTION

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ABSTRACT

Public Interest Litigation (hereafter referred to as PIL) is regarded to be a kind of judicial activism that renders justice dealing with the safeguarding and fortification of public interests. It is the power given to the public by Court of Law. In a PIL, vigilant citizens of the country get an affordable legal remedy as there is only a nominal court fee involved in this process. Further, by means of a PIL, the litigants get equipped with the weapon to fight larger public domain issues, especially in the fields of human rights, consumer welfare and environment. Modern society uses PIL as a tool to curb social evils such as corruption. India, as we all know suffers from a staid ailment called as corruption and to tackle it, PIL is actively used. PIL offers a ladder to justice for the disadvantaged sections of society and provides an avenue to enforce diffused or collective rights, while allowing the informed citizenry to participate in the decision making.

Hence it is very essential to investigate the credibility and traits on the impact of PIL in tackling corruption. Will the so-called Litigation tool be an effective weapon to fight the 'big fishes' of the society?

PUBLIC INTEREST LITIGATION

Public interest litigation writ petition can be filled in the Supreme Court under article 32 only if the question concerning the enforcement of a fundamental right is involved. Under article 226, a writ petition can be filled in a high court whether or not a fundamental right is involved. The supreme court has entertained a number of petitions under article 32 complaining of infraction of fundamental rights of individuals, or of weak or oppressed groups who are unable themselves to take the initiative to vindicate their own rights. The Supreme Court has ruled that to exercise its jurisdiction under article 3, it is not necessary that the affected person should personally approach the court. The court can itself take cognizance of the matter and proceed suo moto or on a petition of any public spirited individual or body.¹

The courts exercising their power of judicial review found to its dismay that the poorest of the poor, deprived, the illiterate, the urban and the rural unorganized labour sector, women, children, handicapped by ignorance, indigence and illiteracy and other downtrodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'social interest litigation' or 'public interest litigation' was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The courts in *pro Bono publico* granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions *pro Bono publico* and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by-pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings.² The courts in *pro Bono publico* proceedings intervened when there had been callous neglect as a policy of state, a lack of probity in public life, abuse of power in control and destruction of the environment.³

The courts started exercising greater care and caution in the matter exercise of jurisdiction of public interest litigation. In *Balco Employees union (Regd.) v. Union of India*, it was held:

¹ Indian Constitutional Law, M.P.Jain, 8th edition 2014 pg-1370

² Dr. L.M. Singhvi, Constitution of India, 2013, volume-2 pg- 2620

³ supra 2, pg- 2622

*"Public interest litigation, or PIL as it is more commonly known, entered the Indian Judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage it was intended to vindicate the public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantaged position and were unable to seek legal redress. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what the words themselves said., litigation in the interest of the public."*⁴

Public interest Litigation: means a 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 has pecuniary interest or some interest by which their legal rights or liabilities are affected. PIL undertaken for the purpose of redressing public injury, enforcing a public duty, protecting social collective, diffused rights and interests or vindicating public interest, any citizen who is acting *Bono fide* and who has sufficient interest has to be accorded standing.⁵

Public interest litigation have been entertained by the supreme court under Article 32 and by the High Court's under Article 226 of the Constitution not only from associations or organizations or individuals interested in a common cause.⁶ If there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, the judiciary must occupy the field to sub-serve the public interest.⁷ The judiciary to step a miles step ahead to render public's corner in the interest of society.

Issues of public importance, enforcement of fundamental rights of a large number of public vis-a-vis the constitutional duties and functions of the state, if raised, the Court can treat a letter or a telegram as a public interest litigation upon procedural laws as also the law relating to pleadings. Whenever injustice is meted out to a large number of people, the Court will not

⁴ *Supra* 2, pg- 2621

⁵ *Supra* 2, pg- 2622

⁶ *Supra* 2, pg- 2623

⁷ *Supra* 2, pg- 2624

hesitate in stepping in. Article 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide the reasonable and fair trial.⁸

The executive and the abuse of power

The grave abuse of power by the executive as a result of corruption, nepotism and favoritism which have increasingly come to light, partly, as the result of investigative journalism, and partly as the result of litigation in the Courts, makes it necessary to bring the result.⁹

In *K.N. Guruswamy v. Mysore Bose J.* For a constitution Bench:

The appellant and the fourth respondent were rival liquor contractors for the sale of a liquor contract for the year 1953-54 in the state of Mysore. The contract was auctioned by the Deputy commr. Under the authority conferred upon him by the Mysore exercise act, The appellant's bid was the highest and the contract was knocked down in his favor, subject to formal confirmation by the Deputy Commr. The fourth respondent was present at the auction but did not bid. Instead of that he went direct to the Exercise Commr. Cancelled the sale in favour of appellant and directed the DC to take action under rule 10. The latter accepted respondent's tender. The appellant's application for a writ of mandamus was dismissed by the high court, but he was granted a certificate under Article 133(1) of the Constitution.¹⁰

Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to the public interest as well as the interest of justice.¹¹ The creative incentive of the executive officers being favour to one's with taking bribe and corrupting the system. In this to the core of the interest of the public is to have a transparent system.

Court while highlighting the need for the society and its entitlement to know has observed that public interest is better served by effective application of the right to information.¹²

⁸ *Guruvayur Devaswom Managing Committee v. C.K. Rajan* AIR 2004 SC 561

⁹ *Constitutional law of India*, H.M. Seervai, volume- 1, pg-378

¹⁰ 1955 (1) S.C.R

¹¹ *Dinubhai Boghabhai Solanki v. State of Gujarat and Ors* 2014 (4) SCC 626.

¹² *Namit Sharma v. Union of India (UOI)* 2013 (1) SCC 745.

The authority can direct such disclosure, for reasons to be recorded, stating that the public interest outweighs the private interest.¹³ There are various kinds of impact of RTI such as prevailing corruption, exposing corruption, curtailing wasteful public expenditure and many more. The Corruption Perception Index brought out by Transparency International for the years 2010 ranked India 87th out of 178 countries. There are two types of corruption: First, there is big ticket corruption associated with abuse of discretion allocation of resources, and the second is petty corruption of resources, which we often see in day to day interaction/ confrontation with government. Knowingly there appears to be a decline in petty corruption, but there is increased big ticket corruption as evident from major scandals such as 2G, Commonwealth Games, and the Adarsh Housing society Scandal . Role of RTI has helped to bring out these big scams in light¹⁴. The scams have been identified and brought into society through RTI but the eradication of corruption as a high range of public interest problem, regarding the affirmative action's of the government using the Public funds is to be eradicated only through the Judicial decision.

Two Yale University researchers, Leonid Peisakhin and Paul Pinto conducted an experiment on slum dwellers in Delhi, who applied for ration card. The applicants were randomly assigned to one of the four experimental groups. The first group applied for a ration card and then did nothing about it, the second group attached a letter of recommendation from an NGO to their applications ,the third paid a bribe after putting in their application, and the fourth enquired about the status of their ration card application through a right to information request shortly after the initial application. It was found that although the group that paid bribes was by far the most successful in getting their application processed faster, the group that put in an RTI request was almost as successful.¹⁵ This clearly states out the public intervention in the societal changes and to laws governing.

Numerous cases are there where RTI act has been helpful in exposing corrupt practices. Poorest Areas Civil Society brought out a publication, Action Research Villages: A Right to

¹³ *Supra* 13 para 70

¹⁴ Right to information act in India, SUDHIR NAIB, pg- 71

¹⁵ *Supra* 14, pg 71-72

information Campaign, which brings out a number of success regarding RTI campaign which bring justice to people after fighting against corruption.¹⁶

The right of citizens to know what governments, international organizations and private corporations are doing, and how public resources are allocated, directly reflects anti-corruption concerns. Corruption flourishes in darkness and so any progress towards opening governments and intergovernmental organizations to public scrutiny is likely to advance anti-corruption efforts¹⁷.

In a regime of a bad governance it needs secrecy to survive. It allows inefficiency and corruption to thrive. Y.K Sabarwal in one of his speeches he mentioned that there are three definitions of efficiency that is:

- 1) policy efficiency
- 2) service efficiency and last but most important
- 3) Administrative efficiency –It's the efficiency comprises of conducting the administration without unnecessary delays or ulterior or corrupt motives and giving reasons while passing various orders.¹⁸

A government which produces a trustworthy flow of information creates greater certainty and transparency. This is especially appreciated by those who intend to invest in the country's economy. International experience shows that countries that allow citizens access of public information have seen reduction in indicators of corruption and consequently, substantial increase in administrative efficiency¹⁹. As pointed by H.M Seervai, "corruption, nepotism and favouritism have led to the gross abuse of power by the Executive, which abuse has increasingly come light partly as a result of journalism and partly as a result of litigation in courts²⁰.

¹⁶ *Supra* 14, pg -73

¹⁷http://oas.org/dil/access_to_information_human_Policy_Recommendations_Transparency_International_Right_to_Information_as_an_Anti-Corruption_Tool.pdf (29/01/2015 8:30)

¹⁸ Right to information, Sairam bhat, pg -15

¹⁹ *Supra* 18, pg -16

²⁰ *Supra* 18, pg- 29

The judicial decisions playing the more key role in deciding the matter coming to their view in light to the public interest. Court while highlighting the need for the society and its entitlement to know has observed that public interest is better served by effective application of the right to information.²¹ This decision of Court's clearly lay down the principle of RTI a legislative tool helping out the anti-social practice of corruption partly striving to eradicate corruption in the interest of public.

Public interest Litigation would be the only tool under the constitution of India to strive and achieve the effective eradication of the anti-social practices in light to the judicial decisions. As well know the fact that all the judicial decision as per article 141 of the Constitution of India states that decisions of the Supreme Court as binding on all other authorities of the land. (This basically mean that the law laid down by the Supreme Court is said to be the law of land). The legal position with regard to the right to information has developed through several supreme court decisions and these decisions played a really key role in eradication of corruption from the society.

CONCLUSION

With the emergence of Right to Information, it has successfully tackled various corrupt practices within the public authorities. Further, when this tool becomes lethal when PIL is instituted to redress the problem explored in such information. However, various frivolous petitions under the garb of PIL are also instituted for various vested interests. Therefore, utmost care needs to take while examining such petitions. Public interest litigation is a powerful tool that needs to be handled with care. Overuse or abuse of PIL will render it ineffective. Especially in a democratic country like India, where the problem of corruption still persists PIL can be seen as a ray of hope when injustice has been done.

²¹ Supra 12.