

Time to Ease Public Access to Justice: Solace of PIL

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Abstract

Access to Justice is a Fundamental Right guaranteed to citizens by Article 14 and Article 21 of the Constitution of India. According to the Supreme Court justice should be conveniently accessible in terms of distance and adjudication must be affordable to the disputants these are the main facets that constitute the essence of access to justice. The public interest litigation is to ensure public interest and protection of legal and constitutional rights of disadvantaged and oppressed groups or individuals and ensure socio-economic justice for them. PIL should be accessible to the deprived all over the country. The arrangement today has blocked roads to justice under the PIL. This is so because only higher courts are allowed to hear and present the PIL. The PIL cannot be heard by any district court, nor can it be brought before a local court. It is necessary to amend the regulation that states a PIL may only be heard in high courts or the Supreme Court. A constitutional or legislative amendment is required for this the union government and the state governments ought to take the initiative. All political party legislators and members of parliament ought to back such a measure. This proposed change would certainly ease the public access to justice and give solace to common people.

Keywords: Access to justice, Public Interest Litigation, District Courts & PIL, Protection of General Interest of the People.

Introduction

The Constitution Bench of the Supreme Court in landmark judgment *Anita Kushwaha Versus Pushap Sudan*ⁱ has held that access to Justice is a Fundamental Right guaranteed to citizens by Article 14 and Article 21 of the Constitution of India. An aggrieved person cannot be left without the remedy and this access to justice is a human right and in certain situations even a fundamental right. Access to justice is and has been recognized as a part and parcel of right to life in India and in all civilized societies around the globe. This right is so basic and inalienable that no system of governance can possibly ignore its significance. According to the Supreme Court justice should be conveniently accessible in terms of distance and adjudication must be affordable to the disputants these are the main facets that constitute the essence of access to justice. We often see that many people could not approach to the doors of justice because of their ignorance and other social and economical factors. In such cases Public Interest Litigation would be great relief to them. But in the present practice PIL usually filed in the higher courts by easing this practice justice can be given to ordinary people.

Meaning of Public Interest

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.ⁱⁱ The words 'public interest' means an act beneficial to public in general. It connotes action necessarily taken for public interest.ⁱⁱⁱ According to Stroud's judicial dictionary 'Public Interest' has been defined thus:

"A matter of public 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 have a pecuniary interest or some interest by which their legal rights or liabilities are affected."^{iv}

In the context of PIL, 'public interest' means 'welfare of people in general.' It includes all those things in which some economic, social or legal interest of people in general or community is involved and which affect the legal rights or liabilities of person. It, therefore, also includes rights of citizens which arise from the acts of the State or the Government.

Campbell C.J in the English case of Rv. Badfordshire,^v observed that in the context of justice public interest implies general interests that are associated with the community or society which affect the rights and liabilities of the people. Public interest litigation, therefore, means the legal proceedings which are instituted in a law court for the protection, enhancement or enforcement of general interest of the people.

Object of Public Interest Litigation

The object of the public interest litigation is to ensure public interest and protection of legal and constitutional rights of disadvantaged and oppressed groups or individuals and ensure socio-economic justice for them. The court would not hesitate to entertain a PIL writ against any non-governmental institution or any person invested with statutory or public duties or public obligations when their act or omission affects the rights of disadvantaged groups or individuals who are unable to approach the court against injustice caused to them.^{vi}

Therefore, it is clear that the goal of public interest litigation is to further the public interest, which demands that the legal or constitutional rights of a greater number of people who are impoverished, oppressed, ignorant, or in other socially or economically disadvantaged situations should not be violated without recourse. The court is empowered to take cognizance of public interest litigation when there are complaints which shock the judicial conscience.^{vii} PIL is designed to serve a broader public interest, for example in cases where those affected by a wrong cannot afford to bring legal action themselves or for who for other reasons do not have access to the legal system. PIL is unique in that these legal actions can be brought by third parties, public spirited person including NGOs, on behalf of a large group of affected persons or on behalf of the general public.^{viii}

Where PIL can file?

PILs are filed in High Courts or Supreme Courts as per Article 226 for High Courts and Article 32 for Supreme Courts, just as writ petitions. When public interest in affecting at large then

this can be filed but affecting on only one person is not a ground for filing this petition. There are various area where a public interest litigation can be filed.

- Violation of basic human rights of the poor.
- Content or conduct of government policy.
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights.

These are the main area where any public interest litigation can be filed against State/Central Govt., Municipal Authorities, and not any private party. However private party can be include in this as a respondent after making concern state authority. This petition is filed in High court or Supreme Court just a same manner as other writ petition filed. There is some fee for this purpose and its hearing proceeds are also just like other cases.^{ix}

What is importance in social context?

Usually, national courts dispensed justice and rendered decisions to those who approached them. However, the people who approach the courts are wealthy individuals who can afford to hire lawyers who determine whether a case is worthwhile to pursue in court, as fees are also necessary for meting out in the justice system. But what about the deprived in the country who require justice but either cannot pay for legal support or have no access to courts?

The former Chief Justice of India, Ranjan Gogoi, expressed his view that public interest litigation is almost codified for the poor.^x But if that is so, then the process of the PIL should be accessible to the deprived all over the country. What are the terms which will ensure that an indigent citizen in a far-flung village or a metropolis can get access to justice under the PIL? The arrangement today has blocked roads to justice under the PIL. This is so because only higher courts are allowed to hear and present the PIL. The PIL cannot be heard by any district court, nor can it be brought before a local court. Changes to this prohibitive clause must be taken into consideration.

It may have been assumed that only the higher courts would be legally capable of handling crucial matters pertaining to the public interest at the time such a unified provision was created. State capitals were home to the majority of the country's publications at that period. It seemed sense that the high courts would only be expected to review PIL cases based on articles that appeared in these news publications. But now, many national newspapers are stretch over regions and districts, and more public grievances are being reported. Districts have their own newspapers. Most national newspapers are published in English or Hindi, while regional newspapers are published in the local languages. The district editions of national newspapers are no less than those of the state capital-based dailies. The main topics covered by district newspapers and editions are financial crimes, irregularities in the nationalized and cooperative banking sector, delays and corruption in administrative work, farmer problems, essential commodities and the failure of the decentralized panchayati raj system as a result of the bureaucracy's uncooperative attitude. Significant public problems are considered by watchful judges in a PIL.

However, as of right now, a person or a social organization cannot use the PIL in lower or district courts due to the prohibitive procedure. This denies justice to the poor. A Public Interest Litigation can be filed by any socially aware individual or non-governmental group that advocates for the underprivileged. It is the mechanism that guarantees public involvement in the judicial review of administrative action. It might introduce a small degree of democracy into the legal system.

What will be the benefit?

Therefore, it is necessary to amend the regulation that states a PIL may only be heard in high courts or the Supreme Court. A constitutional or legislative amendment is required for this. It is possible for the district courts to hear PILs. District advocates are also capable of handling cases since they have the necessary legal expertise and understanding.

In this regard, the union government and the state governments ought to take the initiative. All political party legislators and members of parliament ought to back such a measure. The public

interest will be the only foundation for this modification. Legal remedies for grievances revealed in district newspapers would be made possible if district courts are granted the authority to consider PILs. In reality, the district editions of newspapers initially reported on a number of incidents that later gained national prominence. People living in smaller cities and surrounding rural areas will be able to receive the justice they are entitled to if district courts are granted the authority to move forward with PILs.^{xi}

Public Interest Litigations within the Territorial Jurisdiction of District Courts:

As of right now, there is no legislation governing the admission of cases in public interest litigation. Local courts have not been prohibited from accepting matters related to public interest litigation. At the same time the District Courts' authority to accept and hear cases of public interest that come under their purview has not been restricted by the Supreme Court in any way. Therefore, the District Courts possess the necessary competence to receive such matters on file and handle them in accordance with the current Civil, Criminal, or Revenue laws. Since, the Supreme Court, in *Municipal Council, Ratlan v. Vardhi Chand*,^{xii} recognized the standing of the citizens to seek directions against the Municipality for removal of stench and stink caused by open drains and public excretion, under section 133 of the Code of Criminal Procedure, any advocate or person or any association or social organization can file public interest litigation in District Courts where the nalties (side canals) on the roads and streets are not provided or not maintained in existing ones and filth is stored and there is fear of spreading some diseases by Polluting the atmosphere due to the negligence and undutious conduct of the Municipality. Through public interest litigation, anyone may request the district judge to order the negligent municipality, corporation, or even *Gram Panchayat* in question to remove the nuisance.

In the same way, any person with a public interest may file a PIL in district court where someone has forcibly taken land from the poor or people from SC, ST, and BC who were afraid to approach the court or even find the strength to do so because of the threat of such land usurps. To free the captured lands from the atrocities of such criminals and return them to their rightful owners, anyone may petition the district judge. Anybody can file a complaint with the District

Judge for a suitable remedy if they find areas among the residential homes where dirty water and dirt are released into the air and left on the sides of the roads, causing sickness to spread and air pollution.

Nature of Public Interest Litigation

In *People's Union for Democratic Rights v. Union of India and others*^{xiii} the Supreme Court has discussed the nature of Public Interest Litigation thus:

The Public Interest Litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claims seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to protect public interest Constitutional and legal rights of large numbers who are poor, socially and economically disadvantaged position. There should not be destruction of the rule of law which forms the essential elements of public interest in any democratic country. The rule of law does not mean that the protection of law is available only to a fortunate few for protecting and upholding the status under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law meant for them also, though today it exists only on paper and not in reality.

Precautions and care

For those members of society who were unable to defend their rights and interests, there is public interest litigation. These days, the wealthy class of society abuses the same for their personal gain.^{xiv} Public Interest Litigation is a weapon that is to be used with great care and prudence. The Courts have to be careful in entertaining a PIL which requires careful investigation into the bona fides of the petitioners, apart from separating genuine from frivolous

petitions. Such abuse not only wasted the precious time of the courts but also created frustration in the minds of the genuine litigants. Also, the forum of PIL is not meant for serving a political purpose or solving political problems, where no legal wrong or legal injury to the petitioner or any identified class of people, is shown. According to court rulings, if PILs are not appropriately regulated, they will be used by unscrupulous parties as a means of retaliation and releasing animosity. A PIL-styled petition that is nothing more than a front to incite private conflicts ought to be dismissed. Appropriate steps have been made to stop these kinds of litigation. For instance, the Bombay High Court modified its PIL filing guidelines in August 2016 and stated that the petitioner must provide a security deposit that will be subject to the court's final or interim judgment. In the event that the Court determines that the petition is without merit, the security deposit will be forfeited and the petition will not be accepted or recorded by the registry for as long as the Court sees proper. This was indeed a wonderful step taken by the Bombay High to force lawyers and litigants who tend to file “Publicity Interest Litigations” to think twice before they file one.^{xv}

Conclusion

The courts have only been utilized thus to defend the interests of the wealthy and well-off. Only these elite groups have had the ability to petition the courts to have their vested interests protected. The only wealthy people currently possess the golden key to open the doors of justice. Now, however, the courts should be opened to the impoverished and oppressed, the uneducated and ignorant, and their cases ought to be heard through public interest litigation. The goal of the public interest litigation is to provide justice to these marginalized human beings, who make up the majority of Indian citizens and who are the true ‘people of India’ having drafted the country's glorious Constitution. Now the time has come to transform the Courts as ‘the Courts for the poor and the struggling masses of this country’. The Courts must shed their character as upholders of the established order and the status quo. The vast majority of individuals who have been denied justice for generations by a callous and cruel society must receive justice from the courts. They must come to understand that social justice is the cornerstone of our constitution, that it is their sacred duty to uphold the fundamental human rights of the underprivileged and vulnerable members of society, and that everyone involved

must actively contribute to the achievement of the goals outlined in the constitution. But rule that a PIL can only be heard in high courts or the apex court ends up denying justice to the poor. Therefore District courts should be empowered to hear the Public Interest litigation. This proposed change would certainly ease the public access to justice and give solace to common people.

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Endnotes

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