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PUBLIC INTEREST LITIGATION: NEED FOR STATUTORY REGULATION

By

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Public interest litigation is one in which a class of the community have a pecuniary or some interest by which their legal rights or liabilities are affected.¹ An interest shared by citizens generally in affairs of local, State or national government.² It may be termed "as a right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker".³ In a recent case, the apex court observed, "The development of public interest litigation in India, has had an impact on the judicial systems of neighboring Countries such as Bangladesh, Sri Lanka, Pakistan and others".⁴

The PIL⁵ "to be used as an effective weapon in the armoury of law for delivering social justice to the citizens."⁶ PIL has given new hope for justice-starved millions of people of this country.⁷ The judiciary has to take up greater responsibilities to make this hope realizable as an accomplished reality.

In a good number of cases norms have been laid down by the Indian judiciary as well as in the other countries in relation to PIL and they may be summarized as follows:-

- i) The expression "person aggrieved" must be given wider interpretation⁸ and a flexible standard should be adopted in ascertaining "sufficient interest"⁹ and "fairness and justice"¹⁰ are the tests to be applied in determining the same.
- ii) 'Persons adversely affected'¹¹ by the action of the Government in making a mistaken policy decision is eligible for granting "standing"
- iii) The Government's decision to join a common marked was allowed to be challenged through PIL¹²

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¹ R Vs. Bedfordshire, (1855)24 LJ QB P.81

² Black's Law Dictionary (sixth Editor) quoted in AIR 1996 Cal P.181 at P.186

³ Per Krishna Iyer, J in Mumbai Kamgar Sabha Vs. Abdulbhai AIR 1976 SC P.1455 (para 7)

⁴ State of Uttaranchal Vs. Balwant Singh Chaufal, AIR 2010 SC (P.2575-87)at P.2578 Para 146

⁵ The Term "PIL" means Public Interest Litigation throughout this study

⁶ Dattaraj Nathuji Thaware Vs. State of Maharashtra & Others (2005), SCC P.590

⁷ Janata Dal Vs. H.s.Choudary & others (1992)4 SCC P.305

⁸ Attorney General of Gambia Vs. Pierra Sarr N 'Jie' (1961) AC P.617

⁹ Regina Vs. Secy. of State of Environment (1990) 1 QB P.504

¹⁰ Inland Revenue Commissioners Vs. National Federation of Self-employed and Small business Ltd., (1982) AC P.617

¹¹ Regina Vs. Commissioner of Police of the Metropolis (1968)2 WLR 893

¹² Blackburn Vs. Attorney General (1971)1WLR 1037

- iv) PIL was allowed to compel Government to enforce betting and gambling statutes and also laws against obscene publications¹³

In other words, PIL can be maintained for compelling the state to enforce the laws in public interest. This may incidentally contribute to the strengthening of the rule of law in a democratic rule.

- v) PIL petition can be filed by any person, where a challenge is made with regard to misuse or improper use of any public property, including the cases of political party in power¹⁴

- vi) PIL can be resorted to redress:

- i) Where Fundamental rights are violated particularly the cases of poor and oppressed sections of the community, whose grievances are not heard;
- ii) The civil matters where large amounts are involved pertaining to genuine litigants whose grievances are legitimate;¹⁵
- iii) In cases where death sentences are awarded and the persons involved facing untold agony or those sentenced to life imprisonment and kept in incarceration for long years;
- iv) Detenue's expecting release from detention;
- v) Disposal of cases where huge amounts of public revenue or unauthorized collection of tax amounts are locked up;
- vi) In service matters, persons suffering on account of long delays;
- vii) Courts have to be satisfied about the credentials of the applicant and the prima-facie correctness of the information;
- viii) The courts have to be selective in entering PIL to avoid the misuse of PIL by unscrupulous litigants

The Indian Courts exhibited a keen interest in maintaining the sanctity of PIL by preventing its abuse. The following norms have been laid down for this purpose:-

- i) The Supreme Court limited PIL only to those acting bonafide¹⁶ and denied to others. Thus, those acting without bonafide were denied PIL;
- ii) The Supreme Court rejected "standing to meddlesome interlopers who bring PIL for personal gain";¹⁷
- iii) The Courts have to do a lot of scrutiny of PIL petitions and be selective in entertaining them;

¹³ Regina Vs. Commissioner of Police of Metropolis (1973) QB P.241

¹⁴ S.Jayalalitha Vs. Government of Tamilnadu & others (1999)1 SCC P.53

¹⁵ Holicow Pictures (Pvt) Ltd. Vs. Prem Chandra Mishra & Others, AIR 2008 SC P.913

¹⁶ BALCO employee's Union (Regd) Vs. U nion of India & others AIR 2002 SC P.350

¹⁷ S.P.Gupta's Case AIR 1982 SC P.149

- iv) Standing should be denied to those who file PIL motivated by enmity between the parties ;¹⁸
- v) In dealing with frivolous PIL, exemplary costs should be awarded in monetary cases. In non-monetary cases also exemplary damages have to be awarded where PIL petitions were filed with oblique motives ;¹⁹
- vi) Persons filing PIL petitions should observe self-restraint by not plunging in arrears in which they are not well-versed;²⁰
- vii) Legal practitioners filing PIL petitions which were found to be a Camouflage to foster personal disputes,²¹ filing PIL petitions carelessly, meaningless, clumsy or against public interest,²² devoid of public interest to be labeled as publicity interest litigation²³ and raising in PIL petitions which are 'res integra' must be subjected to heavy costs;
- viii) Courts are justified in insisting for furnishing security before granting injunctions in appropriate cases ;²⁴
- ix) Costs awarded should be deposited within the period specified by the court. Failure to deposit shall result in the recovery of the costs as "arrears of land revenue";
- x) Courts should create, wherever not done so far, a lawyer's welfare fund to be used for providing help to deserving lawyers.

Public interest litigation jurisprudence has been enormously and exhaustively developed by the Indian Courts. It is time now that a Statute be enacted titled Public Interest Litigation (Regulation and Control) Act embodying the norms laid down in several cases. The Statute may provide for defining PIL, persons entitled to file PIL, cases in which PIL could be refused, lawyers abusing PIL remedy be subjected to disciplinary action by the Bar Council, criminal prosecution including contempt of court proceedings in appropriate cases, power of the court to award costs, rules relating to deposit of costs and recovery thereof in cases of default. The suggested Statute may deal with power of the court and the procedure for entering and dealing with PIL cases. A special cell may be created in the High Courts and the Supreme Court to carry out the various related functions, particularly in checking up the antecedents of the PIL applicants. The cell may be designated as "Public Interest Litigation controlling and regulating authority". Courts must be given enough power by Statute to deal with all cases of frivolous and vexatious PIL petitions. The much needed Statute may result in uniformity and certainty in PIL cases and thereby giving effect to 'justice according to law' and 'rule of law' – 'substitution of discretionary justice by legal justice'.

¹⁸ In Chhetriya Pardushan Mukti Samithi, AIR 1990 SC P.2060

¹⁹ Neetu Vs. State of Punjab & others AIR 2009 SC P.757

²⁰ S.P.Anand Vs. H.D. Deva Gowda & Others AIR 1997 SC p.272

²¹ (2005)1 SCC P.590

²² Charan Lal Sahu & Others Vs. Giani Zail Singh and another AIR 1984 SC P.309

²³ Sanjeev Bhatnagar Vs. union of India & Others AIR 2005 SC p.284

²⁴ Guruvayur Devaswom Managing Committee & another Vs. C.K.Rajan & others (2003) SCC P.546