

## 29 Public Interest Litigation

**T**he concept of Public Interest Litigation (PIL) originated and developed in the USA in the 1960s. In the USA, it was designed to provide legal representation to previously unrepresented groups and interests. It was undertaken in recognition of the fact that the ordinary marketplace 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, racial and ethnic minorities, and others.<sup>1</sup>

In India, the PIL is a product of the judicial activism role of the Supreme Court. It was introduced in the early 1980s. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were the pioneers of the concept of PIL.

PIL is also known variously as Social Action Litigation (SAL), Social Interest Litigation (SIL) and Class Action Litigation (CAL).

## MEANING OF PIL

The introduction of PIL in India was facilitated by the relaxation of the traditional rule of '*locus standi*'. According to this rule, only that person whose rights are infringed alone can move the court for the remedies, whereas, the PIL is an exception to this traditional rule. Under the PIL, any public-spirited citizen or a social organisation can move the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged position are themselves unable to approach the court for the remedies. Thus, in a PIL, any member of the public having 'sufficient interest' can approach the court for enforcing the rights of other persons and redressal of a common grievance.

The Supreme Court has defined the PIL as "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 have pecuniary interest or some interest by which their legal rights or liabilities are affected."<sup>2</sup>

PIL is absolutely necessary for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives. In other words, the real purposes of PIL are:

- (i) vindication of the rule of law,
- (ii) facilitating effective access to justice to the socially and economically weaker sections of the society, and
- (iii) meaningful realisation of the fundamental rights.

## FEATURES OF PIL

The various features of the PIL are explained below:

1. PIL is a strategic arm of the legal aid movement and is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity.
2. PIL 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.
3. PIL 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 promote and vindicate public interest.
4. PIL demands that violations of constitutional and legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.
5. PIL is essentially a co-operative effort on the part of the petitioner, the State or Public Authority, and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.
6. In PIL, litigation is undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, diffused rights and interests or vindicating public interest.
7. In PIL, the role held by the Court is more assertive than in traditional actions; it is creative rather than passive and it assumes a more positive attitude in determining acts.
8. Though in PIL court enjoys a degree of flexibility unknown to the trial of traditional private law litigations, whatever the procedure adopted by the court it must be procedure known to judicial tenets and characteristics of a judicial proceeding.

9. In a PIL, unlike traditional dispute resolution mechanism, there is no determination on adjudication of individual rights.

## SCOPE OF PIL

In 1998, the Supreme Court formulated a set of guidelines to be followed for entertaining letters or petitions received by it as PIL. These guidelines were modified in 1993 and 2003. According to them, the letters or petitions falling under the following categories alone will ordinarily be entertained as PIL:

1. Bonded labour matters
2. Neglected children
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases)
4. Petitions from jails complaining of harassment, for premature release and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right
5. Petitions against police for refusing to register a case, harassment by police and death in police custody
6. Petitions against atrocities on women, in particular harassment of bride, brideburning, rape, murder, kidnapping, etc.
7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes
8. Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance
9. Petitions from riot-victims
10. Family pension

The cases falling under the following categories will not be entertained as PIL:

1. Landlord-tenant matters
2. Service matter and those pertaining to pension and gratuity
3. Complaints against Central/ State Government departments and Local Bodies except those relating to item numbers (1)

to (10) above

4. Admission to medical and other educational institution
5. Petitions for early hearing of cases pending in High Courts and Subordinate Courts

## PRINCIPLES OF PIL

The Supreme Court evolved the following principles in regard to PIL<sup>3</sup> :

1. The Court in exercise of powers under Articles 32 and 226 of the Constitution can entertain a petition filed by any interested person in the welfare of the people who are in a disadvantaged position and thus not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the Fundamental Rights of such disadvantaged people and direct the State to fulfil its constitutional promises.
2. When the issues of public importance, enforcement of the fundamental rights of large number of people vis-a-vis the constitutional duties and functions of the State are raised, the court treat a letter or a telegram as a PIL. In such cases, the court relaxes the procedural laws and also the law relating to pleadings.
3. Whenever injustice is meted out to a large number of people, the court will not hesitate to step in to invoke Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights which provide for a reasonable and fair trial.
4. The common rule of *locus standi* is relaxed so as to enable the court to look into the grievances complained on behalf of the poor, deprived, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for violation of any constitutional or legal right.
5. When the Court is *prima facie* satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.
6. Although procedural laws apply on PIL cases, the question as to whether the principles of res judicata<sup>4</sup> or principles analogous thereto would apply depend on the nature of the petition and also facts and circumstances of the case.

7. The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a PIL.
8. However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for redressal of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.
9. The Court in special situations may appoint Commission or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Commission.
10. The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.
11. The Court would ordinarily not step out of the known areas of judicial review. The High Court although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.
12. Ordinarily the High Court should not entertain a writ petition by way of PIL questioning constitutionality or validity of a statute or a statutory rule.



## GUIDELINES FOR ADMITTING PIL

The PIL has now come to occupy an important field in the administration of law. It should not be allowed to become 'Publicity Interest Litigation' or 'Politics Interest Litigation' or 'Private Interest Litigation' or 'Paisha Interest Litigation' or 'Middle-class Interest Litigation' (MIL).

The Supreme Court, in this context, observed: "PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasise the parameters within which PIL can be resorted to by a petitioner and entertained by the court."<sup>5</sup>

Therefore, the Supreme Court laid down the following guidelines for checking the misuse of the PIL<sup>6</sup> :

1. The court must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
2. Instead of every individual Judge devising his own procedure for dealing with PIL, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL filed and discouraging PIL filed with oblique motives.
3. The Court should *prima facie* verify the credentials of the petitioner before entertaining the PIL.
4. The Court shall be *prima facie* satisfied regarding the correctness of the contents of petition before entertaining the PIL.
5. The Court should be fully satisfied that substantial public interest is involved before entertaining the petition.
6. The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

7. The Court before entertaining the PIL must ensure that the PIL is aimed at redressal of genuine public harm and public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing PIL.
8. The Court should also ensure that the petition filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

## NOTES AND REFERENCES

1. Balancing the Scales of Justice - Financing Public Interest Law in America (A Report by the Council for Public Interest Law) 1976, pp. 6–7.
2. *Janata Dal v. H.S. Chowdhary*, 1992.
3. *Guruvayur Devaswom Managing Committee v. C.K. Rajan*, 2003.
4. The principle that when a matter has been finally adjudicated upon by a court of competent jurisdiction it may not be reopened or challenged by the original parties or their successors in interest. Its justification is the need for finality in litigation. *Oxford Dictionary of Law*, Eighth Edition, 2015, p. 537.
5. *BALCO Employees Union v. Union of India*, 2002.
6. *State of Uttaranchal v. Balwant Singh Chaupal*, 2010.