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A CRITICAL REVIEW ON PUBLIC INTEREST LITIGATION IN INDIA

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LL.M., Research Scholar in Law

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Abstract

Public interest litigation (PIL) has an imperative job in the common equity framework in that it could accomplish those targets which could scarcely be accomplished through ordinary private litigation. PIL, for example, offers a stepping stool to equity to distraught areas of society, gives a road to authorize diffused or aggregate rights, and empowers common society to spread mindfulness about human rights as well as enables them to partake in government basic leadership. PIL could likewise add to great administration by keeping the government responsible. This article will appear, with reference to the Indian experience, that PIL could accomplish these critical targets. Nonetheless, the Indian PIL experience additionally demonstrates to us that it is basic to guarantee that PIL does not turn into a veneer to satisfy private interests, settle political scores or increase simple publicity. Legal executive in a majority rule government ought to likewise not use PIL as a gadget to run the nation on an everyday premise or enter the genuine space of the official and legislature.

Keywords

Public Interest Litigation, Human Rights, Legislature, Government.

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Introduction

One of the all-encompassing points of law and legitimate frameworks has been to accomplish equity in the general public and public interest litigation (PIL) has turned out to be a helpful instrument in accomplishing this goal. For instance, PIL—in which the emphasis isn't on vindicating private rights yet on issues of overall population interest—broadens the span of legal framework to burdened areas of society. It additionally encourages a compelling acknowledgment of group, diffused rights for which singular litigation is neither practicable nor an effective technique.

By the by, PIL has for the most part gotten fringe consideration in discussions on common equity changes the world over. This isn't to propose that the advancement of PIL in different purviews has missed the consideration of researchers. To proceed with this convention, this article expects to basically inspect the advancement and improvement of PIL in India. The principle goal of this examination is to feature the clouded side of PIL with the goal that different purviews could take in valuable exercises from the Indian experience. The selection of India—a vote based system of more than 1 billion individuals administered by a customary law framework, principle of law and autonomous legal executive—for learning exercises in the zone of PIL is a conspicuous one given the commitment of India to the PIL statute.

Evolution of PIL

It ought to be noted at beginning that PIL, in any event as it had created in India, is unique in relation to class activity or gathering litigation. While the last giving access to equity to every single societal constituent. PIL in India has been a piece of the constitutional litigation and not common litigation. In this manner, so as to welcome the development of PIL in India, it is alluring to have a fundamental comprehension of the constitutional structure and the Indian legal executive.

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In the wake of picking up freedom from the British guideline on August 15, 1947, the general population of India embraced a Constitution in November 1949 with the would like to set up a "sovereign communist mainstream majority rule republic". Among others, the Constitution expects to verify to every one of its natives equity (social, financial and political), freedom (of thought, articulation, conviction, confidence and love) and correspondence (of status and of chance). These points were not simply optimistic in light of the fact that the establishing fathers needed to accomplish a social upset through the Constitution. The primary instruments utilized to accomplish such social change were the arrangements on central rights (FRs) and the mandate standards of state strategy (DPs), which Austin portrayed as the "soul of the Constitution".

So as to guarantee that FRs did not stay void statements, the establishing fathers made different arrangements in the Constitution to set up a free legal executive. As we will see beneath, arrangements identified with FRs, DPs and autonomous legal executive together gave a firm constitutional establishment to the advancement of PIL in India. Part III of the Constitution sets down different FRs and furthermore indicates justification for constraining these rights. "As a directly without a cure does not have much substance", the solution for methodology the Supreme Court straightforwardly for the authorization of any of the Pt III rights has likewise been made a FR. The holder of the FRs can't postpone them. Nor can the FRs be abridged by a change of the Constitution if such decrease is against the basic structure of the Constitution.

The Debate over Label: PIL or Social Action Litigation.

Given that the introduction of PIL in India was associated with the advancement of PIL in the United States, it was normal for researchers to draw examinations between the US experience and the Indian experience. One aftereffect of this correlation was that it was contended that PIL in India ought to be marked as social activity litigation (SAL). Baxi was the key researcher who mooted for such indigenous naming of PIL as a result of its particular qualities.

He fought that though PIL in the United States has concentrated on "community support in governmental basic leadership", the Indian PIL talk was coordinated against "state restraint or governmental disorder" and was centered essentially around the provincial poor. Writing in the mid 1980s, Baxi featured another complexity: that not at all like India, PIL in the United States tried to speak to "interests without gatherings, for example, commercialization or condition.

No less than two remarks could be made about the craving to assign PIL as SAL. In the first place, the term "social activity" most likely inferred the job that law could/should play in social designing. Be that as it may, taking into account that in PIL cases judges (as opposed to the legislature) assume a key job and the law is judgemade law, one ought not over-gauge what courts could convey through

PIL/SAL in a vote based system. Most likely, courts could help in giving an official acknowledgment to the voices of minorities or destitutes that may be overlooked something else, however it is doubtful to expect that they could accomplish social change alone. Besides, as we will note in the following segment, the character of the PIL in India has changed a ton in the second stage in that now it isn't constrained to upholding the interests of hindered areas of society or to reviewing state suppression and governmental wilderness. Truth be told, in the second stage, the focal point of PIL in India has moved from poor to the white collar class and from changing state

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abuse of distraught gatherings to supplications for municipal support in administration. In spite of the fact that there are still contrasts between how the PIL statute has unfurled in the United States and India, the qualification with regards to the topic or the fundamental goal of the PIL isn't that much as it used to be the point at which a contention was made to mark PIL as SAL.

The Three Phases of PIL

In the principal stage—which started in the late 1970s and proceeded through the 1980s—the PIL cases were by and large recorded by public-energetic people (legal advisors, writers, social activists or scholastics). The majority of the cases identified with the rights of distraught areas of society, for example, tyke workers, fortified workers, detainees, simple-minded, asphalt inhabitants, and ladies. The help was looked for against the activity or non-activity with respect to official organizations bringing about infringement of FRs under the Constitution. Amid this stage, the legal executive reacted by perceiving the rights of these individuals and offering headings to the government to review the supposed infringement. To put it plainly, it is questionable that in the primary stage, the PIL really turned into an instrument of the kind of social change/unrest that the establishing fathers had expected to accomplish through the Constitution.

The second phase of the PIL was during the 1990s amid which a few critical changes in the science of PIL occurred. In contrast with the principal stage, the recording of PIL cases turned out to be increasingly systematized in that few specific NGOs and legal advisors began conveying matters of public interest to the courts on a much normal premise. The expansiveness of issues brought up in PIL likewise extended hugely—from the security of condition to defilement free organization, directly to instruction, lewd behavior at the work environment, movement of businesses, standard of law, great administration, and the general responsibility of the Government. It is to be noticed that in this stage, the candidates looked for alleviation not just against the activity/non-activity of the official yet in addition against private people, in connection to strategy matters, and in regards to something that would obviously fall inside the space of the legislature.

Then again, the third stage—the present stage, which started with the 21st century—is a period in which anybody could document a PIL for nearly anything. It appears that there is a further extension of issues that could be raised as PIL, for example getting back to back the Indian cricket group from the Australia visit and keeping a supposed marriage of a performing artist with trees for visionary reasons. From the legal executive's perspective, one could contend that it is the ideal opportunity for legal thoughtfulness and for checking on what courts endeavored to accomplish through PIL. When contrasted with the second stage, the legal executive has apparently demonstrated more limitation in issuing bearings to the government. Despite the fact that the legal executive is probably not going to move back the broad extent of PIL, it is conceivable that it may make progressively estimated intercessions later on.

Impetus for PIL

Various variables added to the strong improvement of PIL in India. The primary factor has just been noted over, that is, the constitutional system identifying with FRs and DPs. Obviously in view of FRs and DPs, the Indian legal executive would have delighted in a relative preferred

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standpoint in tying down PIL vis-'a-vis courts of those locales, (for example, the United Kingdom and Australia) where there was no Bill of Rights. Besides, a few constitutional arrangements concerning the forces of the Supreme Court helped the Court in thinking of imaginative and whimsical cures, which thusly raised social desires. For example, an arrangement which enabled the Supreme Court to pass any request for "doing total equity" demonstrated more than convenient in PIL cases. The Constitution likewise gives that the law proclaimed by the Supreme Court will tie on all courts and that "all experts, common and legal, in the region of India will act in help of the Supreme Court". Thirdly, the ascent of PIL relates to the degree and dimension of legal activism appeared by the Indian Supreme Court and High Courts. Through its activism throughout the years, the Indian Supreme Court has apparently turned into the most dominant court on the planet. Some significant occasions of activism, which straightforwardly given driving force to PIL are: presenting the fair treatment prerequisite in art. 21, in spite of its dismissal by the Constituent Assembly; utilizing DPs to make new FRs; perusing inferred restrictions as fundamental component on the intensity of Parliament to revise the Constitution; proclaiming legal audit an essential element of the Constitution; and getting to be, basically, a self-named judiciary⁸⁴ with no genuine constitutional checks.

Conclusion

PIL has a critical task to carry out in the common equity framework in that it bears a stepping stool to equity to burdened areas of society, some of which probably won't be all around educated about their rights. Moreover, it gives a road to authorize diffused rights for which it is possible that it is hard to distinguish an oppressed individual or where distressed people have no motivations to thump at the entryways of the courts. PIL could likewise add to great administration by keeping the government responsible. To wrap things up, PIL empowers common society to assume a functioning job in spreading social mindfulness about human rights, in giving voice to the underestimated segments of society, and in permitting their cooperation in government basic leadership.

In any case, the Indian PIL experience additionally demonstrates to us that it is basic to guarantee that PIL does not turn into a secondary passage to enter the sanctuary of equity to satisfy private interests, settle political scores or basically to increase simple publicity. Courts ought to likewise not utilize PIL as a gadget to run the nation on an everyday premise or enter the genuine space of the official and legislature. The path forward, along these lines, for India just as for different purviews is to strike a parity in permitting real PIL cases and disheartening silly ones. One approach to accomplish this goal could be to restrict PIL principally to those situations where access to equity is undermined by some sort of inability. The other valuable gadget could be to offer monetary disincentives to the individuals who are found to utilize PIL for ulterior purposes. In the meantime, it merits considering if some sort of monetary motivators—for example ensured cost request, lawful guide, professional bono litigation, financing for PIL common society, and amicus curie briefs—ought to be offered for not disheartening real PIL cases. This is Important in light of the fact that given the first basic method of reasoning for PIL, almost certainly, potential offended parties would not generally be ingenious.

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3. Christine M. Forster and VednaJivan, "Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience" (2008) 3(1) *Asian Journal of Comparative Law*; Parmanand Singh, "Human Rights Protection through Public Interest Litigation in India" (1999) XLV *Indian Journal of Public Administration* 731; Susan S. Susman, "Distant Voices in the Courts of India Transformation of Standing in Public Interest Litigation" (1994) *Wisconsin International Law Journal* 57; Helen Hershkoff, "Public Interest Litigation: Selected Issues and Examples", <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/PublicInterestLitigation%5B1%5D.pdf> [Accessed October 8, 2008].
4. See Sheetal B. Shah, "Illuminating the Possible in the Developing World: Guaranteeing the Human Right to Health in India" (1999) 32 *Vanderbilt Journal of Transnational Law* 435, 463.
5. Constitution of India 1950 Preamble. Although the terms "socialist" and "secular" were inserted by the 42nd amendment in 1976, there were no doubts that the Constitution was both socialist and secular from the very beginning.
6. Constitution of India 1950 Preamble.
7. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966), p.27. "The social revolution meant, 'to get (India) out of the medievalism based on birth, religion, custom, and community and reconstruct her social structure on modern foundations of law, individual merit, and social education'." (Austin, *Cornerstone of a Nation*, p.26, quoting K. Santhanam, a member of the Constituent Assembly.)
8. Austin, *Cornerstone of a Nation*, p.50.
9. M.P. Jain, "The Supreme Court and Fundamental Rights" in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India—Its Grasp and Reach* (New Delhi: Oxford University Press, 2000), pp.1, 76.
10. Constitution of India 1950 art.32.
11. *Bheshar Nath v CIT* AIR 1959 SC 149; *Nar Singh Pal v Union of India* AIR 2000 SC 1401.
12. The judiciary is the "sole" and "final" judge of what constitutes basic structure of the Constitution. Over a period of time, various provisions have been given the higher pedestal

13. of basic structure or basic features of the Constitution, e.g. independence of judiciary, judicial review, rule of law, secularism, democracy, free and fair elections, harmony between FRs and DPs, right to equality, and right to life and personal liberty. See Mahendra P. Singh (ed.), *Shukla's Constitution of India*, 10th edn (Lucknow: Eastern Book Co, 2001), pp.884–97; Jain, “The Supreme Court and Fundamental Rights” in Verma and Kusum (eds), *Fifty Years of the Supreme Court of India*, pp.8–13.
14. See, for example, Constitution art.15(2) (right of non-discrimination on grounds only of religion, race, caste, sex, place of birth or any one of them to access and use of public places, etc.); art.15(4) (special provision for advancement of socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes); art.16 (equality of opportunity in matters of public employment); art.19 (rights regarding six freedoms); art.29 (protection of interests of minorities).
15. See, for example, Constitution art.14 (right to equality); art. 15(1) (right of non-discrimination on grounds only of religion, race, caste, sex, place of birth or any one of them); art.20 (protection in respect of conviction of offences); art.21 (protection of life and personal liberty); art.22 (protection against arrest and detention); art.25 (freedom of conscience and right to profess, practice and propagate religion).
16. See, e.g. Constitution arts 26, 29 and 30.
17. Austin cites three provisions, i.e. Constitution arts 15(2), 17 and 23 which have been “designed to protect the individual against the action of other private citizen”: Austin, *Cornerstone of a Nation*, p.51. However, it is reasonable to suggest that the protection of even arts 24 and 29(1) could be invoked against private individuals. See also Vijayashri Sripati, “Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950–2000)” (1998) 14 *American University International Law Review* 413, 447–48.
18. See *AjayHasia v Khalid Mujib* AIR 1981 SC 487; *Pradeep Kumar v Indian Institute of Chemical Biology* (2002) 5 S.C.C. 111. In the application of the instrumentality test to a corporation, it is immaterial whether the corporation is created by or under a statute. *Som Prakash Rekhi v Union of India* AIR 1981SC 212.
19. The FRs are judicially enforceable whereas the DPs are unenforceable in the courts. For the relevance of this difference, see Mahendra P. Singh, “The Statics and the Dynamics of the Fundamental Rights and the Directive Principles—A Human Rights Perspective” (2003) 5 *Supreme Court Cases (Jour)* 1.
20. 19 Constitution art. 37.
21. *State of Madras v Champakam Dorairajan* AIR 1951 SC 226.
22. *CB Boarding & Lodging v State of Mysore* AIR 1970 SC 2042; *Kesvananda Bharti v State of Kerala* AIR 1973 SC 1461; *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789; *Unni Krishnan v State of AP* (1993) 1 S.C.C. 645. See also Rajiv Dhavan, “Republic of India: The Constitution as the Site of Struggle: India’s Constitution Forty Years On” in Lawrence W. Beer (ed.), *Constitutional Systems in Late Twentieth Century Asia* (Seattle: University of

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23. Washington Press, 1992), pp.373, 382–383, 405 and 413–416.
24. *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789, 1806.
25. See the cases cited below in fnn.35–49. See also Jain, “The Supreme Court and Fundamental Rights” in Verma and Kusum (eds), *Fifty Years of the Supreme Court of India*, pp.65–76.
26. Austin, *Cornerstone of a Nation*, p.175.
27. Constitution of India 1950 arts 32.
28. 26. See, for an analysis of some of the landmark judgments delivered by the Apex Court during these years, Gobind Das, “The Supreme Court: An Overview” in B.N. Kirpal et al. (eds), *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* (New Delhi: OUP, 2000), pp.16–47.
29. These two judges headed various committees on legal aid and access of justice during 1970s, which provided a backdrop to their involvement in the PIL project. See Jeremy Cooper, “Poverty and Constitutional Justice: The Indian Experience” (1993) 44 *Mercer Law Review* 611, 614–615.
30. See Cooper, “Poverty and Constitutional Justice” (1993) 44 *Mercer Law Review* 611, 616–632; See Shah, “Illuminating the Possible in the Developing World” (1999) 32 *Vanderbilt Journal of Transnational Law* 435, 467–473; Vijayashri Sripathi, “Human Rights in India Fifty Years after Independence” (1997).
31. *Denver Journal of International Law and Policy* 93, 118–125.
32. It is suggested that the way a judge applies the rule of standing corresponds to how she sees her judicial role in the society. Aharon Barak, “Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy” (2002) 116 *Harvard Law Review* 16, 107–108.