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Tanya Singh

*B.B.A., LL.B (Hons.), 3rd
year, Amity Law School,
NOIDA (U.P), India*

Pramod Kumar Singh

*Professor & Head, Post-
graduate Deptt. Of English,
S.P. Jain College, Sasaram,
India*

Perspectives on public interest litigation (PIL) India

Tanya Singh, Pramod Kumar Singh

1. Introduction

The process of a social reform taking place in the form of a law, known as 'Public Interest Litigation' (PIL) or 'Social Action Litigation' (SAL), is recent one of the best developments in our country. It has come up as a boon for poor and deprived people of our country. Before outcome of PIL, social justice was a remote reality for our unprivileged, exploited and illiterate citizens of our country. The deprivation of legal resources to common masses of our nation is mainly due to three reasons, i.e. Firstly, lack of awareness of legal rights, secondly, lack of efforts due to low socio-economic status, and thirdly, lack of a legal system providing them legal assistance. The people will not seek legal redressal unless they become aware that the wrong done to them is a legal wrong for which a remedy in law is available to them. But even if they are aware of their legal rights, they cannot seek redressal because they do not have means to initiate the expensive legal litigation. The emergence of PIL has solved aforesaid all the three hurdles upto a great extent.

According to the traditional interpretation of law only a person who has suffered the legal setback himself can take steps to the court of law for proper relief. The recent reinterpretation of the concept of 'locus standi' by the Supreme Court has removed the hurdles in the way of filing PIL for the poor and deprived masses. Now any public-spirited person or individual or social action group can file a petition on behalf of a class of persons who, by reason of poverty or illiteracy or any other disability, cannot approach a court of law for justice. The new approach through PIL or SAL has virtually ushered a new era in the field of socio-economic reforms doing good for the welfare of poor and the oppressed masses.

2. Concept of 'Locus standi'

The word 'locus standi' (a Latin word) signifies the legal right to file a writ or a suit or conduct litigation in the court of law. As per the traditional Anglo-Saxon concept of the word 'locus standi', only a person could sue for judicial redressal of his grievances. No else had a right to file a petition on his behalf. The doctrine was emerged in an era when the courts were mainly concerned with the rights of the individual. But new reinterpretation of Supreme Court has brought us a new age of collective rights. The old and traditional doctrine of 'locus standi' has been found to be inadequate to meet the needs of a developing society comprising large population of illiterate and poor masses who neither know their legal rights nor have means to agitate deprivation and legal wrongs done to them. This was the reason that it was felt necessary the traditional interpretation of 'locus standi' so that the justice could reach to the poor masses. Accordingly, a new interpretation given to this doctrine under which if the rights of an individual or persons are violated and if by reasons of poverty or disability they cannot approach the court themselves, any social worker or public spirited individual or institution, acting in good faith, and not out of vengeance, can move the court for judicial redressal of their grievances ^[1].

3. PIL and other litigation: differences

The Public Interest Litigation (PIL) essentially differs from other ordinary litigation. An ordinary litigation is essentially individualistic in character whereas PIL is essentially for others or common causes. In case of an ordinary litigation, there is a dispute between two litigant parties, one raising claim or relief against the other and the other resisting such claim of relief. PIL on the other hand, is more in the nature of collective or generalized litigation,

Correspondence:

Tanya Singh

*B.B.A., LL.B (Hons.), 3rd year,
Amity Law School, NOIDA
(U.P), India*

dealing essentially in the enforcement or rights of a large number of disadvantaged and exploited persons in an area where it is the responsibility of the state to end such of exploitation and oppression. PIL is a cooperative effort on the part of the petitioner, the state and the courts to secure economic, social and cultural justice to the poor and the disadvantaged common masses [2].

4. Historical Perspective

It is difficult to point out a precise date when PIL was initiated in our country. However, in the year 1978 a turning point came when the Hon'ble Supreme Court took cognizance of the letters written by Charles Shobhraj and Sunil Batra from their prison in Delhi's Central Jail complaining about the torture to which they and their fellow prisoners were subjected to in the Jail premises. (AIR 1980 SC page. 1579) The court treated their letters as writ petitions and proceeded to enquire into the conditions of the prisoners and adjudicate accordingly. The court then started taking notice of articles published in newspapers drawing attention to the plight of undertrials languishing in prisons for years together. The PIL helped the court to release many undertrial prisoners through its interim orders. Since then the range of the PIL has spread from release of bonded labour, to child labour, to Nari Niketan, to street hawkers, to environmental issues. It may be pointed out that it was Justice P.N. Bhagwati and Justice V.R. Krishna Iyre who mainly created an atmosphere for PIL and promoted it. It is a memorable and historical Judgment in "Jolly-vs-Bank of Cochin (AIR 1980 SC page 470) when Justice Krishna Iyre stated that it would be unjust to send a person to jail when he is unable to pay his debt due to extreme poverty and illness in the family. A new history was ushered in the field of criminal justice when Supreme Court directed release of poor under trials languishing in Bihar jail for a long time without waiting the conclusion of their trial. (AIR 1979 SC page 1360) The system of criminal justice was further reformed when Supreme Court on an application of Sheela Barse, a noted social worker, ordered that a criminal case against a juvenile cannot continue beyond a year. (AIR 1978 SC page 1778).

5. Necessity of Pil

India is poor country in which majority of people live below the poverty line. The poor and the illiterate people are not able to understand their legal problems and do not have adequate means to take shelter of court for justice through the traditional type of litigation because of its high expenditure, complicated procedure and slow process. The Apex court realized that the protection of law has so far been available only to the rich and politically powerful persons. The civil and political rights of the poor and deprived people exist only on paper and not in reality. The time has now come when the courts of justice be opened for poor masses also. An application filed in a representative of poor, called PIL, could open up a new judicial system which now has become an effective instrument of social justice and reform.

Landmark Examples of PILs

(1) PIL for Labourers' Welfare

- a) **'Neeraj Choudhary-vs-state of M.P.' case; (1964 SCC 243):** In this case a writ petition was filed by a journalist in the form of a letter of the Supreme Court informing that nearly 135 bonded labourers within the meaning of Bonded Labour System (Abolition) Act, 1976 are working in the stone quarries of Faridabad. The Supreme Court ordered for their release and rehabilitation.
- b) **'Bandhu Mukti Morcha-vs-Union of India' case; (1984 SCC (3) 161):** In the case, a letter addressed to Justice Bhagwati relating the deplorable condition of bonded labourers working at Faridabad stone quarries was admitted as PIL and Supreme Court ordered for their rehabilitation and held that these mining workers are entitled to all benefits under Mines Act.
- c) **'Peoples' Union For Democratic Rights-Vs-Union Of India' Case; (AIR 1962 SC 1473):** In this historical case, it was held that every person rendering service or labours are entitled to the minimum wages and non-payment of minimum wages violates Article 23 of the Indian constitution. Forced labour or work by compulsion was also held to be illegal.
- d) **'Ram Kumar Mishra-Vs-State of Bihar' Case; (AIR 1984 SC 537):** This case was admitted on letter of a public spirited person complaining about non-payment of minimum wages to the labourers employed in Bhagalpur and Sultanpur ferries running across Ganges and a direction was issued to ensure those minimum wages.

(2) PIL for Children and Juveniles Welfare

- a) **'Peoples' Union for Democratic Right-vs-Union of India' case; (AIR 1962 SC 1473):** In this case, it was held by Supreme Court that no children below 14 years of age can be employed in any mine or factory or any other hazardous works.
- b) **'Sheela Bares-Vs.-Union of India' Case; (AIR 1986 SC 1778):** This historical case was decided on a Public Interest Petition of a social worker of Maharashtra Ms. Sheela Barse. The Supreme Court in this case held that a criminal prosecution against a juvenile cannot continue beyond 9 months if offenses are punishable upto 7 years. The investigation must be completed within 3 months from the date of filing an FIR and the trial thereafter, must conclude within 6 months from the date filing the charge-sheet, otherwise the prosecutions are liable to be quashed. It was further held that even cases against adults cannot be allowed to continue beyond an unreasonable length of time (para 12) and hence inordinately delayed cases are liable to be quashed.

(3) PIL against ragging in medical colleges; (AIR 1985 SC 910)

- a) 'State of Himachal Pradesh High Court was treated as writ by Himachal Pradesh High Court and proper direction was issued to state Government to check ragging in the colleges. The Supreme Court upheld the decision.

(4) PIL for Basic Amenities

- a) '**State of Himachal Pradesh-vs-U.R. Sharma' case; (AIR 1986 SC 847):** In this public interest petitioner filed by a citizen of Indian, the Supreme Court directed to construct road for communication of people of hilly area.

(5) PIL for Prisoners' Right and Jail Reforms:-

- a) '**Madhu Limaye-vs-Superintendent of Tihar Jail' case; (AIR 1975 SC 1505):** This application was filed against discrimination between Europeans and Indians in Tihar jail. Supreme Court directed to make amendments in Jail manual to provide equal treatment to all prisoners.

- b) '**Sunil Batra-vs-Delhi Administration' case; (AIR 1976 SC 1675):** A letter of a prisoner of Tihar Jail namely Sunil Batra was treated as a PIL for protecting fundamental rights of the prisoners. Supreme Court held that the prisoners are also entitled to their fundamental rights like other persons. It was held that the law does not empower jail authorities to continue a prisoner in a cell apart from other prisoners on the ground or pretext that he was awarded sentence of death.

- c) '**M.H. Hoskot-vs-State of Maharashtra' case; (AIR 1978 SC 1548) :**In this case, Supreme Court held that the prisoners on conviction have legal right to file an appeal or revision against order of sentence and it is duty of jail authority to provide him a free copy of judgement and free legal service to enable them to appeal.

(6) PIL against Physical Torture and Handcutting

- a) '**Prem Shankar Sukla-vs-Delhi Administration' case; (AIR 1980 SC 1535):** Supreme Court ruled in this case, that hand-cuffing of prisoner or an undertrial is inhuman and unlawful in the eye of law. Even in cases where in extreme circumstances, handcuffs have to put on the prisoner, the escorting authority must record contemporaneously the reason for doing so and seek the permission of the court.

- b) '**Sunil Batra-vs-Delhi Administration' case; (AIR 1980 SC 1579):** On complain of a prisoner, Supreme Court in this case Apex Court laid down a law that young jail inmates must be kept separated from adults and solitary confinement must not be done. It was further held that visits to the prisoners and handcuffing through iron bars should be resorted to only in gravest situation.

- c) '**Kadra Pehadiya-Vs-State Ofbihar' Case; (AIR 1981 SC 939):** The Hon'ble Supreme court held in this case, held that the under trials on conviction should be

provided with a fairly competent lawyer at state expenses to file an appeal or revision. It was further held that under trials cannot be kept in leg or hands iron bars nor can they be asked to work outside jail walls.

(7) PIL for Hawkers and Street Traders

- a) '**Sodan Singh-vs-New Delhi Municipal Committee' case; (AIR 1989 SC 1988):** It was held in this case, Apex Court held that the right to carry on trades or business on streets is fundamental right enshrined in Article 19(1) (g) of constitution but the right, however, is subject to reasonable restrictions. The hawkers though do have the fundamental right to carry on the business of their choice but not to do so on a particular place. The hawkers also cannot claim that they must be permitted to trade on every road in the city. If the road is not wide enough to conveniently manage the traffic on it, no hawking may be permitted at all or may permitted only once a week. Hawking may also be prohibited near hospitals or where necessity of security reasons so demand the right to subject to reasonable restrictions under clause (6) of Article 19 of constitution.

(8) PIL for Women Welfare

- a) '**Sheela Barse-vs-State of Maharashtra' case; (AIR 1983 SC 378):** A petition was filed before Supreme Court by noted social worker and lawyer Sheela Barse against custodial violence to women prisoner whilst confined in police custody and the court issued several directions to protect them from police harassment in police lock-up.

- b) '**Vishal Jeet-vs-Union of Indian' case; (AIR 1990 SC 1412):** A petition was filed by a social worker to check sexual exploitation of girls and women in flesh trade and the Supreme Court issued direction to take preventive steps to check flesh trade and exploitation of girls and women.

(9) PIL for Human Health and Hygiene

- a) '**M.C. Mehta-vs-Union of India' case; (AIR 1987 SC 956):** A Public Interest petition was filed by lawyer for removal of hazardous industry engaged in manufacture and seals of a hazardous product at a thickly populated area causing health hazards to the workmen and the community living in the neighborhood. The Supreme Court directed to shift and relocate the plant at some other place.

- b) '**Pyre Lal-vs-Delhi Municipality' case; (AIR 1963 SC 133):** A petition was filed against order of Municipal committee of Delhi to check sale of cooked food on the public streets creating permanent unhygienic conditions on the road. The Supreme Court upheld the resolution of Municipal committee in the public interest.

(10) PIL against environment pollution:-

- a) '**Rural Litigation and Entitlement Kendra-vs-State of U.P.' case; (AIR 1985 SC 652):** A Public interest petition was filed by a social organization to check imbalance of ecology and hazards to healthy

environment due to working of lime-stone quarries at Dehradun. The Supreme Court ordered their closure in view of ecological imbalance and public health hazards. Thus, a new law in the nature of public interest emerged for welfare of citizen of India and it was settled with the passage of time.

6. Procedure of Filing Pil Cases

A PIL can be filed in the Supreme Court under Article 32 or High courts under Articles 226 by a social worker or public spirited persons or a registered social organization (i.e. trust or society) on behalf of the poor. Many PILs have been initiated during 1980-1982 out of letters written by social workers, journalists, law teachers, lawyers and civil liberty activities addressed to Mr. Justice P.N. Bhagwati in his capacity as justice of the Supreme Court and Chairman of the committee for implementing the Legal Aid Schemes. These letters were accompanied by newspaper clipping or investing reports in order to justify their submission. These letters were converted into writ petitions and admitted in the Supreme Court. In these PIL cases, the courts have appointed public interest lawyers as amicus curiae to conduct the litigation on behalf of the petitioners. When evidence in PIL cases was not sufficient to prove the allegation narrated in the petition, the court has appointed commissions of experts to investigate the matter and to submit reports to the court. In most cases the Supreme Court accepted the reports of the commissions and passed orders to give interim or permanent relief to the petitioners.

7. Evidentiary Problem in Pil

Most of the PILs in the past have been filed on the basis of newspaper reports or letters written by the affected people. As there were not enough documents and investigation reports, the state counsel often denied all the allegations contained in the counter affidavit denying the veracity of the newspaper clippings. The opposite parties including the government agencies were reluctant to produce documents on the plea of privilege.

In most of the PIL cases where there was lack of evidence, the court appointed commissions of experts to investigate the matter and submit their reports to the court. In several PIL cases, social workers, teachers, researchers, journalists and lawyer, court officer, doctors etc. were appointed as ombudsmen and their reports were accepted by the court without being challenged. In almost all cases the state was asked to bear the expenses incurred by the commission. For example, in the case of 'Bhagalpur blinding' the court appointed the registrar of the Supreme Court to interview the victims and to submit a report. In the Asiad workers case, the Supreme court appointed three social scientists (Dr. Alfred Dessouza, Dr. Walter Fernandes and Prof. Das Gupta) to make an enquiry and report. In the Kanpur undertrial rape case, the court asked the District Judge to investigate the case. According to a survey, 1.8 million people in India are subjected to police torture every year and more than 60 percent of them either belong to religious minority or are Dalits^[3].

8. Conclusion

Human duties have been provided in the Article 27 that every individual shall have duties towards his family and society^[4]. The system of PIL has created an awareness among the judge and lawyers about their responsibility to administer social justice to the exploited millions and has compelled them to take human suffering more seriously. The decision of courts based on PIL has exposed the state's liability to compensate for violation of fundamental rights. PIL is an effective legal device to control the governments so as not to leave state agencies free to violate the law or be casual or negligent to its enforcement.

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