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Public Interest Litigation as a tool of Social Justice with special reference to Jail Administration

INTRODUCTION ::

Generally, in traditional litigation there are two parties and either party files litigation before the court of law for the protection of their legal rights by their own but in Public Interest Litigation the concept is completely different and there is no winner and loser unlike traditional litigation. This is non-adversarial in nature and third person/stranger can file PIL on behalf of others. Therefore, it can be said that the concept of locus standi has been liberalised. It is often known by everyone about the proceedings of court but the person from lower strata, down-trodden, vulnerable groups, oppressed, marginalised section of the society are completely unaware about their legal rights. In case of infringement of their fundamental rights they have right to approach court for redressal of their grievances but it was impossible before the advent of PIL. But when Hon'ble P N Bhagwati and Hon'ble V R Krishna Iyer JJ. evolved the concept of PIL it becomes possible to get justice against the violation of their fundamental rights for poor masses and starved millions.

It is well known that in any democratic set up rule of law is basic feature. Rule of law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of the status quo which protects and preserves their dominance and permits them to exploit large section of the community but it exists also for the poor and the down-trodden, the ignorant and the illiterate who constitute the large bulk of humanity in their country.

So far as the topic of research project entitled "Public Interest Litigation as a tool of Social Justice with special Reference to Jail Administration" is concerned it is very relevant in day today context because all human beings are equal and rule of law is meant for all. Researcher would like to underline the issue of jail inmates who are languishing in jails and their fundamental rights are being infringed by jail officials due to their position.

It is submitted that they might be punished by competent court or might be under trial but they are entitled to enjoy their fundamental rights by all means. Be it environmental aspect, food, sanitation, medical facility, welfare scheme, cleanliness etc. There are plethora of cases where inhuman treatment are proved by court/s.

Prior to the advent of the public interest litigation in India the prisoners as class, were really in a helpless position. There was no means and forum to complain against the inhuman conditions prevailing in the jails, protective homes and reformatories. The public interest litigation has opened a wide avenue of remedies for the prisoner-victims, unprivileged and marginalised section of the society.

In the assigned research project I will try to mirror the jail administration with the help of judicial decisions. In pursuing this research project researcher has followed the traditional doctrinal approach. However, as the legal research may not exactly be done in any specific and recognized scientific methods as in the case of research in social sciences, a multi prompt approach has been adopted depending on the necessity.

Meaning and Definition of Public Interest Litigation:

At the outset, it has to be stated that there is no precise definition of public interest litigation accepted by one and all. However, there is widely accepted notion that it is litigation at the instance of a public spirited citizen espousing cause of other.

According to Black's Law Dictionary- "Public Interest Litigation means a legal action initiated in a court

of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

“Public Interest Litigation” without limiting generality of the said expression shall mean a litigation undertaken for the purpose of redressing genuine, substantive or larger public injury or public grievance or for enforcing public duty or for vindicating public interest but shall not include a matter involving individual, personal or private grievances of the petitioner or anyone else.^[2]

The preamble of the Constitution of India secures to all citizens social, economic and political justice and also equality of status and opportunity. The preamble also emphasizes upon the liberty of thought, expression, belief, faith and worship and fraternity assuring the dignity of the individual and the unity and integrity of the nation. The rule of law has been guaranteed to the people of India under the preamble of the Constitution and also under the Directive Principles of State Policy.

The preamble of the Constitution and the Directive principles plays a very pivotal role in the Indian legal system and a new and latest feature fulfilling the objectives laid down in the preamble is the rapid growth and development of public interest litigation which has opened a new chapter in the Indian judicial system. Thus the preamble of our constitution aims to secure justice to all its citizens. Article 38 enjoins the state to promote welfare of the people and strive to minimize inequalities. The thrust of Article 39 is towards an egalitarian society. Article 39-A mandates the state to operate a legal system which promotes justice on a basis of equal opportunity. For achieving the goal of forming a socialist, republic and social welfare state various legislations were enacted in the fields of agrarian reform, labour legislations, and other beneficial laws. However, on account of illiteracy, want of awareness and apathy the benefit of these beneficial measures did not reach the real beneficiaries. The poverty and backwardness disabled them to reach the doors of the Court for relief. The fundamental, other constitutional rights and statutory benefits remain only on papers. In such a situation the device of public interest litigation tends to plug the gap.

As per the jurisprudence of Article 32 of the constitution of India “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed”. Ordinarily, only the aggrieved party has the right to seek redress under Article 32.

The object of “public Interest Litigation is to enforce a right and/ or to redress a wrong which affects a large number of people, but who are too poor, illiterate, disadvantaged, unaware or unorganized to be able to get their rights enforced.

Public interest litigation is a new type of litigation initiated by the judiciary to enable the poor and vulnerable sections of society to approach the court to enforce their fundamental rights.

The key feature of PIL is its liberalization of the traditional rule of locus standi, or standing, which requires litigants to have suffered a legal injury in order to maintain an action for judicial redress in Indian.

What is Locus Standi?

The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the state or a public authority or any person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action.

No rigid rule of locus standi can be applied to public interest litigation. The Supreme Court has permitted any person acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion^[3].

It was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddling interloper to approach the Court under the guise of a public interest litigation. He has also left the following note of caution^[4].

“But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other

oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.”

It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold^[5].

Procedure for Filing Public Interest Litigation:

Subject	India
Who can bring about a PIL? (The question of <i>locus standi</i>)	Almost anyone can bring about a PIL as long as that person is able to prove that he/she is a public spirited citizen.
Under what provisions of law can a PIL be entertained?	PILs are generally entertained under Article 226 of the Constitution of India in the High Courts and under Article 32 of the Constitution in cases where the PIL is in pursuance of violation of fundamental rights.
Mode of bringing a PIL	A PIL can be filed or brought about in a number of ways. It can be instituted by filing a Writ Petition, by writing letters to the Chief Justice of India (epistolary jurisdiction) or cognizance of public interest issues can also be taken <i>suo motu</i> by the Courts on the basis of media reports.
Procedure	PIL cases are usually presented either by the Petitioners themselves (including their attorneys) or by appointment of amicus curiae by the Courts themselves to look in to the matters.
Costs – Whether borne by the litigant?	No. The litigant does not bear the cost of a PIL.
Termination of PILs	PILs are usually not terminated in India. This is done to ensure the enforcement of directions given by the Court in a particular case.

On basis of above it can be said that Public Interest Litigation petition is filed in the same manner, as a writ petition is filed. The High Court of Gujarat has framed rules in regard to filing Public Interest Litigation. The detailed can be found in the annexure attached herewith.

Against whom Public Interest Litigation can be filed:

A Public Interest Litigation can be filed against a State/ Central Govt., Municipal Authorities, and not any private party. According to Art.12, the term “State” includes the Government and Parliament of India and the Government and the Legislatures of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Thus the authorities and instrumentalities specified under Art.12 are –

- The Government and Parliament of India
- The Government and Legislature of each of the States
- All local authorities
- Other authorities within the territory of India or under the Government of India.

In *Electricity Board, Rajasthan v. Mohan Lal*, the Supreme Court held that “other authorities would include all authorities created by the Constitution of India or Statute on whom powers are conferred by law”. However, “Private party” can be included in the PIL as “Respondent”, after making concerned state authority, a party. For example- if there is a Private factory in Delhi, which is causing pollution, then people living nearby or any other person can file a PIL against the Government of Delhi, Pollution Control Board, and against the private factory. However, a PIL cannot be filed against the Private party alone.

Opinion of Judiciary vis-a-vis Leading Cases:

As the topic is related to Jail administration therefore it would be relevant to put forth the opinion of judiciary in regard to PILs. There are plethoras of decisions of the judiciary wherein the interest of millions have been protected.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners was *Hussainara Khatoon v. State of Bihar*⁶; in this case a lady advocate of supreme court of India had filed a petition whose name was Pushpa Kapila Hingorani . That petition consist of the condition of the prisoners whose suits were pending in the court were detained in the Bihar jail. The special thing about this petition was that this petition was not filed by any single prisoner this petition was filed by various prisoners of the Bihar jail. As the case get filed before the Honourable supreme court before the bench headed by justice P.N.Bhagwati. This petition was filed by the name of the prisoner Husnara Khatoon .that's why the petition came to be known as Husnara Khatoon Vs State of Bihar.In this petition case Supreme Court upheld that the prisoners should get benefit of free legal aid and fast hearing. Because of this case 40,000 prisoners whose suits were pending in the court were released from the jail .Then after many cases like this have registered in the Supreme Court. The concept of Public Interest Litigation (PIL) is in consonance with the objects enshrined in Article 39A of the Supreme Court to protect and deliver prompt social justice with the help of law. Before the 1980s, only the aggrieved party could approach the courts for justice

In, the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of under trial prisoners languishing in various jails in Bihar. These proceeding led to the release of more than 40,000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners.

In 1981 Justice P. N. Bhagwati in *S. P. Gupta v. Union of India*⁷, articulated the concept of PIL as follows, "Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons."^[8]

In *Anil Yadav v. State of Bihar*⁹, exposed the brutalities of the Police. News paper report revealed that about 33 suspected criminals were blinded by the police in Bihar by putting the acid into their eyes. Through interim orders Supreme Court directed the State government to bring the blinded men to Delhi for medical treatment. It also ordered speedy prosecution of the guilty policemen. The court also read right to free legal aid as a fundamental right of every accused. Anil Yadav signalled the growth of social activism and investigative litigation.

It is submitted that the contribution of judiciary has always been available to the needy. If enforcement agencies fail to discharge its duties court will not sit like mute spectator.

In *Khatri Vs. State of Bihar*,¹⁰ a two-judges division bench of the Supreme Court headed by Justice Bhagwati, explained the concept of the right to free legal services and issued a series of directions, to the administration to get the 18 prisoners blinded by the jail staff, treated by expert doctors. This case is popularly known as the "Bhagalpur Blinding" case....in another related matter, the Supreme Court dealt with the habeas corpus petition filed by the blinded prisoners.^[11]

In *Mathew Areeparmtal vs. State of Bihar*,¹² a division bench of the Supreme Court issued directions to the State to release large number of people found in jails without trial for petty offences. Similarly in *Kamala Devi vs. State of Punjab*,¹³ a division bench of the Court speaking through Justice O. Chinnappa Reddy, entertained a writ petition filed by the petitioner, complaining against detention of several children in the Central Jails at Ludhiana and Amritsar, consequent to their rounding up in army action within the precincts of Golden Temple, Amritsar. The Court issued directions to release all of them, as it was found that no reasons for such detention were forwarded by the state.

A story of PIL would also worth quoting to understand the topic of research project which is mentioned here as under:

"A public interest litigation (PIL), in connection with the alleged violation of human rights of prisoners of the Central jail in Sabarmati here, has been filed in the Gujarat High Court by Mr. Shamshad Pathan, a member of Jan Sangharsh Manch issued notice to the State of Gujarat, Inspector General of Police (Prisons) and the Jail Superintendent of Sabarmati Central Jail Mr. V. Chandrashekar against whom the allegations of atrocity have been made. The notice is made returnable on 30-3-2009. The High Court also directed the District and Sessions Judge to visit the Sabarmati Jail during week-end and inquire into the incidents within the jail. The High Court further directed the officer above the rank of Jail Superintendent to intervene and make every attempt to settle the disputes.

Appearing for the petitioner Jan Sangharsh Manch Advocate Dr.Mukul Sinha submitted before the Court that the petitioner had received several complaints from the relatives of certain prisoners of the Central Jail at Sabarmati Jail, Ahmedabad that they were subjected to severe torture and inhumane treatment by the Jail Superintendent Mr. V. Chandrashekar who had in fact created an atmosphere of terror in the jail and had violated all the norms of a civilized society.

Narrating the specific incidents, Dr. Sinha pointed out that one Mr. Akbar, a convicted prisoner was severely beaten and his leg was fractured. Another prisoner Silvester who was one of the witness in the infamous Sohrabuddin fake-encounter case who brought from Udaipur on 20-3-2009 was brutally beaten. He was handcuffed on one hand and another hand was tied with the bars of the ventilator and was made to stand facing the wall and was brutally beaten on back with stick by the Jail Superintendent. It was also reported that his life was in danger. A Nigerian under-trial Mr. Louis was also severely beaten.Two prisoners Asraf Ismail Nagori and Rahim @ Ferozkhan Pathan convicted under POTA were denied medical treatment..

Apart from specific complaints of brutality and atrocity committed on prisoners, the jail authorities were completely unsympathetic towards the welfare of the prisoners. Knowingly and deliberately they flouted the directions given by the High Court by judgement and order dated 7-5-2004 in Special Civil Application No.16198/2003 (Reported in GLR-2004-Vol.2-1545). Mr. Chandrashekar after taking over the administration of Sabarmati Central Jail had curtailed all the amenities and welfare measures which the prisoners were entitled to under law.^[14]

On the basis of the aforesaid P I L filed by Jan Sangharsh Manch, a team was set up to observe the condition of jail inmates and comprehensive report was submitted as following:

1. Beating of the Jail inmates are admitted in an affidavit filed by Jail authority.
2. Draconian jail manual laid down by the British is followed till date, even though parts of it are contradictory to our Constitution.
3. Advocates and relatives of the inmates were not allowed to meet for a long time, which is a serious violation of Prisoners' Rights.
4. No FIR of the relatives has been registered till date.
5. Inspire of 22 prisoners suffering injuries, some of them being fractures, they were treated within the jail as our patients correctly, and they should have been admitted to civil hospital.

Gujarat jail tunnel digging case^[15]

On February 10, 2013; jail authorities had stumbled upon a 214-ft long tunnel allegedly dug by 14 of the Ahmedabad serial bomb blasts accused inside Barrack Number 4, known as 'Chhota Chakkar', of the Sabarmati Central Jail, to escape.

Sensing the gravity of the incident, the Gujarat government immediately handed over the investigation to the Detection of Crime Branch (DCB) Ahmedabad and at the same time formed a three-member state-level committee to probe the incident and fix accountability.

The committee was headed by senior IAS officer MS Dagur, IPS officer Shivanand Jha and state Forensic Science Laboratory (FSL) director JR Vyas.

A three-member high-powered committee which probed a failed jail break bid in Sabarmati Central Jail by digging a tunnel, submitted its report to the Gujarat Home Department on Friday, a top official

said.

"A report has been submitted by the committee on the tunnel digging case," principal home secretary SK Nanda told PTI on Friday.

"Though I have not gone through the report, the probe focused on negligence of prison authorities, as terrorists were able to dig a 214-ft tunnel without their knowledge," Nanda said. rat jail tunnel digging The reports and the various leading cases mentioned in the preceding lines automatically speak about the pathetic conditions of jail inmates where human rights of the prisoners were infringed by the jail officials. The report also speaks in the same case that the draconian law is still in the existence in jail manual which requires to be changed.

Suggestions

It is submitted that the Supreme Court and various High Courts protect the human value and have become a protector of human rights. It involves collaboration and co-operation between the Government and its instrumentalities for the purpose of making human rights meaningful for the weaker sections of the community.

Now a days PIL has been converted into a platform to get into limelight. It is true for the litigant as well as for the judges. As such there is a virtual race to earn publicity either by fighting a PIL or by deciding one. This is why the courts too have been forced to observe that PIL should not be made either personal interest litigation or political interest litigation. Going further, the courts have warned such litigants and, sometimes, even imposed fine on them.

As it is submitted that legal remedy is available to all the citizens of India but there are a few who is aware of their legal rights. In case of the inefficiency of the people PIL can be used as a tool of social justice for the redressal of weaker section of the society. But sometimes it becomes teeth less due to lack of responsibility on the state and real wrong doer. Therefore it is suggested that in public interest litigation besides awarding compensation etc., to the aggrieved, the officials committing the wrong should be personally held responsible. The orders and directions given in public interest litigation cases fix the responsibility on the state and the real wrong doer escapes accountability. In fact the action or inaction resulting in infringement of rights happens to be the consequence or the negligence or callousness on the part of an individual whether it is a Bhagalpur blinding, lengthy detention of under-trials, custodial violence etc.

The backlog of cases at the level of higher judiciary is simply awesome. In some cases the litigants get justice belatedly, in others they have little hope of getting justice in their lifetime while in a majority of cases; they seem to have lost the case even before it is finally disposed of by the Court simply because the judicial band wagon runs at a snail's pace. Over the years, a cluster of such pending issues develop into PILs and are fought often by person other than the aggrieved, e.g. a public spirited individual, a non- Governmental Organization etc.

The issue of backlog of cases are also a big problem which creates obstacles in achieving the object of PILs. Therefore, it is also suggested that if the efforts are aimed at clearing the back log of cases on the one hand and allowing only the genuine PILs, on the other; this off-spring of judicial innovation and activism, that is PIL, will emerge as more efficacious tool to redress the grievances of millions of our hapless brethren who, for the present, have no voice of their own specially those who are languishing in various jails of the country, except a public interest litigation, to raise at the feet of the goddess of justice.

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