



Introducing the framework of public interest litigation: Vehicle for social reformation

Sharona KP

Research Scholar, School of Gandhian Thought and Development Studies, MG University, Kottayam, Kerala, India

Abstract

Public interest litigation is an effective tool for addressing the issues of the disadvantaged sections of society, which offers a ladder to justice. The Supreme Court of India has provided to all individuals an easier access to the law and introduced in their work a broad perspective of public interest. It is an institutional initiative towards the welfare of the needy class of the society. In *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011) Supreme Court has laid down guidelines for preventing sexual harassment of working women in place of their work, which developed to the protection of women against sexual harassment at workplace Bill 2007 and later turned to the sexual harassment of women at workplace (prevention, prohibition and redressal Act) in 2013. This article will describe, with reference to the Indian experience that PIL has achieved its objectives with the case of *Vishaka* a landmark judgment that has given new light to all working women in India and the paper shows PIL as a social reformation for seeking justice to fight against the social evils of common man. Like the two sides of the coin, PIL also has some other side showing its darker side due to its improper functioning is also reflected here.

Keywords: public interest litigation, social transformation, *vishaka v. state of Rajasthan*, supreme court

1. Introduction

India, federal republic has a parliamentary system of government with a strong central administration and a president. The preamble express commitment to secure all citizens of India justice, social, economic and political: liberty of thought, expression and belief, faith and worship, equality of status and opportunity; and to promote among them fraternity assuring the dignity of the individual and the unity and integrity of the nation. In addition to that constitution guarantees fundamental rights and directive principles of state policy. Due to the limitations of legalism, the judiciary of India has been struggling over the last few decades to bring law into the services of the poor and depressed. Under the banner of the public interest litigation and the enforcement of fundamental rights, the courts have sought to rebalance the distribution of legal resources and increasing access of justice for disadvantaged. PIL was not a sudden phenomenon and now it dominates the public perception of the Supreme Court with a conscious attempt to transform the promise into reality.

A new era of the PIL movement was supported by Justice P.N. Bhagwati in the case of *S.P. Gupta v. union of India*. In this case it was held that "any member of the public or social action group acting bonafide can invoke the writ jurisdiction of the high courts or the supreme court seeking redressal against violation of a legal or constitutional right of persons who due to social or economic or any other disability cannot approach the court. By this judgment PIL became a potent weapon for enforcement of public duties.

2. Evolution of PIL

Public interest litigation is a new feature in India's judicial system. It came into existence in our country during the late 1970s and 80s and justice Krishna Iyer in 1975 sown the first seed of public interest litigation and used the terminology in the celebrated case of *Fertilizer Corporation Kamgar Union v. Union of India* and used the expression 'Epistolary

Jurisdiction'. Only in the time of post-emergency the concept of PIL took its roots. Before the introduction of PIL in India the court were inaccessible to the illiterate and poor people of the country. The PIL can be filed by a third party if the constitutional rights of an individual or groups of individuals are violated. In such a situation the individual or groups of individuals is not able to move court personally for justice because of poverty, helplessness, lack of awareness or socially and disadvantaged conditions. The most distinguishing feature of PIL in India is that the Supreme Court rules of locus standi or the eligibility of a person to invoke the jurisdiction of the courts are so relaxed that anyone asserting a violation of fundamental rights can file a claim in one of the appellate courts. Since PIL began in the late 1970s, thousands of suits have been instituted before the courts through the agency of public interest.

The PIL discourse in India has three phases, but these phases differ from each other according to the variables like as follows;

- Those who initiated PIL cases
- What is the focus of PIL
- Against whom the PIL is sought &
- Judiciary's response to cases.

Cases like rights of disadvantaged sections of society such as prisoners mentally challenged and women were focused in the first phase which has begun in late 1970s and continued through 1980s. Here the judiciary responded by recognizing the rights of such people and giving directions to the government. Here PIL truly stands as a tool to achieve social revolution which the founding fathers has expected when they propagated it. In the second phase during 1990s filing of PIL cases became more institutionalized where many lawyers and NGOs started bringing matters of public interests to the courts. The issues in the PIL expanded tremendously from right to education, sexual harassment at workplace, rule of law, corruption free administration etc. Here the petitioners

sought relief against private individuals, in relation to the policy matters and court took non-compliance with its orders more seriously and some cases went to the extent of monitoring governmental officers. The misuse of PIL reached to a disturbing level, and compelled courts to impose fine on plaintiffs for using PIL on private matters and courts also took resort to judicial legislation and moved to protect the interests of the middle class rather than poor and sought measures to control the misuse of PIL. In the third or current phase of 21st century a period where anyone can file a PIL for almost anything. E.g. Such as calling back of the Indian cricket team from Australia tour and also prevention of alleged marriage of an actress with trees for astrological reason which is a time for judicial introspection. In each three phases different issues were given importance. For e.g. the rights of prisoners, child labourers and women were given importance in the first phase; issues such as environment, corruption and good governance were the forefront of second phase; free market consideration were the highlight of 21st century.

2.1 PIL is channeled through Two Avenues in India

If the complaint is of a legal wrong the appropriate forum is the High Court of the state under article 226 of constitution. If a fundamental right is alleged to have been violated the remedy may be sought from the High Court or directly from the Supreme Court under Article 32.

It is the strategic aim of the legal aid movement, which is intended to bring justice within the reach of the poor masses. According to Black's Law Dictionary Public interest litigation as litigation undertaken to redress public injury, enforce public duty, protect social collective or diffused rights and interests, or for vindication of the public interest. A legal action initiated in a court of law for the enforcement of public interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liberties are affected and which is beneficial to general people. Public interest litigation is not in the nature of adversary litigation but it is a challenge to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the society and to assure them social and economic justice which is the signature tune of our constitution.

2.2 Matters That Can Be Litigated Under PIL of Public Concern Are

- Environmental pollution, food adulteration, maintenance of culture and heritage, forest, wildlife, matters of harassment of persons belonging to scheduled caste/tribe and other backward classes.
- Seeking police protection, admission to medical or engineering colleges, early hearing of matters pending in High Courts (Private Concern).
- Individual petitions complaining harassment or torture or death in jail or by police, atrocities on women like harassment for dowry, rape and complaints of refusal by police to register the case comes under writ petitions.

3. Filing a PIL

Any Indian citizen can file a PIL but it should be for public interest and not for personal interest. A PIL can be filed before the Supreme Court under Article 32 and before High Court of a state under Article 226 of the Indian Constitution.

If the public interest litigation is filed in High Court then two copies of petitions have to be filed and for Supreme Court four and additional which is total five sets and advance copy of the petitions has to be served on each opposite party where the proof should be affixed on petitions. Public interest litigation can be filed against a state or central government, Municipal Authorities within the territory of India and not any private party. A court fee of rupee 50 should be affixed on petitions (for each number of opposite party). In between the proceedings the judge can appoint a commissioner to inspect the allegations. And after the filing of replies by opposite party the judge gives his final decision.

4. PIL as an instrument of social reformation

- Bringing courts closer to the disadvantaged sections of society such as prisoners, destitute, children & women, scheduled castes/tribes. By giving importance to the issues of such people PIL truly became a vehicle to bring social revolution.
- Expanding the jurisprudence of fundamental rights in India and resulted in the legal recognition of rights as important as education, health, privacy, and speedy trial.
- Promoting rule of law, demand fairness and transparency, fight corruption in administration and enhance all over accountability of governmental agencies.
- Through PIL judiciary triggered legislative reforms and filled in legislative gaps in important cases. The Supreme Court of India in the Vishaka case laid down detailed guidelines on sexual harassment at the workplace. Such guidelines were totally in consonance with the mandate of the Indian constitution which helped in enhancing sensitivity to the issues relevant.
- PIL has helped in cooling down a few controversial policy questions on which the society was divided like the reservation of scheduled caste/tribe or backward community in educational or employment institutions as well as the height of Narmada Dam.
- Helped the Indian Judiciary to gain public confidence and establish legitimacy in the society and therefore it became critical for the Judiciary to be seen by the public to be not only independent but also in touch with social realities.
- One of the major positive contributions of PIL is its extension outside Indian Territory that courts in Pakistan, Bangladesh, Nepal, have cited India PIL cases to develop their own jurisprudence.

New regimens of human rights for the right to speedy trial, free legal aid, education, housing has been evolved to activate the courts for their enforcement through PIL where anyone can approach the court on behalf of the oppressed classes by writing letter or sending telegram to draw the attention of court which is the epistolary jurisdiction. Monitoring of state institutions like jails, juvenile homes, asylums etc. and seek gradual improvement in their management and administration.

5. PIL-A gap between promise and reality

The development of PIL has also has its drawbacks. Many of the public interest litigation activists have made it a tool of harassment that frivolous cases could be filed without investment of heavy court fees. Public interest litigation has occupied an important in the administration of law.

Nowadays it has become publicity oriented with high private and political interest. The other side of PIL includes:

- Overuse of PIL and diluting original commitment
- Unanticipated increase in the workload of superior courts
- PIL cases only handling symbolic justice
- Friction with fellow organs of government
- Abuse of process
- Substituted by private or publicity
- Judicial populism and its danger
- Inefficient use of limited judicial resources

E.g. to cite the other side of PIL-the courts were approached to call back the Indian Cricket team from Australia after the controversial Sydney Test Match. Other interesting petition was on regulating the treatment of wild monkeys in Delhi. Some public spirited lawyers approached courts against Richard Gere's public kissing of an Indian actress, Shilpa Shetty on a reality shows and many other matters related to the marriage of former Miss World Aishwarya Rai and astrological obstacles.

6. Case illustrations-one of the most important Supreme Court judgment *Vishaka v. state of Rajasthan*

Vishaka state of Rajasthan is one of the notable successes of judicial action in redressing the violence against women as a landmark judgment in India's tradition of Public Interest Litigation.

6.1 Background

This case arose out of gang rape of Bhanwari Devi, a member of a group of women called Sathins, A local government enterprise doing village level social work. She raised her voice against the one year old child marriage in the rural areas of Rajasthan. Members of local community authority first harassed her with threats and imposing boycott on her family's socio-economic conditions. Then on September 22nd 1992 she was brutally raped by five men in the presence of her husband.

Numerous obstacles were faced by her when she attempted to seek justice: police were reluctant to record her statement and conduct an investigation, and doctors refused to conduct a proper medical examination. The National Commission for Women initiated a detailed inquiry and reported beyond any doubt that Bhanwari Devi was gang raped. The inability of criminal justice system to provide tangible remedies for restoring the dignity of victim, Naina Kapur, a lawyer who had attended the case decided to focus on initiating a PIL in the Supreme Court to challenge sexual harassment at workplace. This PIL situation brought to light the state's disregard the sexual harassment which a woman faced while she was committed in performing the duties of government. The petition was filed in 1992 in the names of five NGO against the state of Rajasthan, child welfare department, social welfare and union of India.

6.2 Judgment

Benches of three judges of Supreme Court delivered Vishaka judgment on August 13, 1997 with Chief Justice J.S. Verma, described Bhanwari Devi's gang rape as an example of hazards which a working women may be exposed. In addition the Court invoked the constitutions Directive Principle requiring the state to secure just and humane conditions of work and also specified mandatory guidelines for combating sexual harassment at workplace and directed strictly towards

the employers with the list of six steps for harassment prevention where a description of complaint procedures in all workplace for the preservation and the enforcement of the right to gender equality. The importance of third party member who is familiar with the issue of sexual harassment should be included in the committee.

6.3 Response & its importance

Various governmental institutions including Sports Authority of India, CBSE, Ministries of Defense, Agriculture, & HR have established internal sexual harassment complaint committee. On March 3, 2006, the Rajya Sabha responded to Vishaka Judgment by introducing the Working Women (Prevention of Sexual Harassment at Workplaces) Bill which revealed how judicial response to rights violations through PIL can spur the legislative branch into action. This case highlighted the importance of coordinated mobilization and public receptivity to its success. It was a well-timed action which took place during the time of gender discourse. The role of media by providing their extensive coverage to bring out popular opinion plays in the outcome of PIL case.

7. Conclusion

"The judicial activism gets its highest bonus when its orders wipe some tears from some eyes"—these are the words expressed by Justice Krishna Iyer. Public Interest Litigation plays vital role in the Indian democracy by propagating Justice and provides a voice to the disadvantaged and underprivileged and also it will serve as a model for other developing nations to address the needs of the society and thus contributing to the prosperity of democratic institutions, but focus should be on ensuring the fundamental and legal rights of societies valid interest. The successful promotion of gender justice through PIL will depend on the mobilization and coordination of women's rights advocates. In Vishaka case, strengthening collaborations between ground-level activists, lawyers, working with media, and through maintaining advocacy are all necessary for the success of PIL in a sustainable manner for achieving widespread Justice in India. PIL as a reflection of aspiration, can help the Indian legal system to promote advancement.

8. References

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