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SP Gupta & Ors. vs Union of India

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Whether PIL is an effective tool to get the justice served? The main aim of this research paper was to critically analyze the judgment of the case S P Gupta v UOI, also known as the first judge's case. By analyzing the judgment, the researcher put forth the problem associated with PIL & how they have to be solved. Locus standi is a concept where the person whose rights have been violated can file a case or PIL. However, this old traditional concept is no more in use, but there is a concept of PIL which took birth in India in the year the 1980s & it gained much importance in the first judge's case where it was liberalized & any person who is acting in the public interest can file a PIL. If a person's rights are violated & then the person is in the position to get the rights enforced, then the other person cannot file a case on his/her behalf & get the rights enforced. There are many criticisms attached to the PIL. There were matters of Constitutional law & law of torts in the judgment pronounced by the bench. There was a conflict of independence of the judiciary, giving more importance to the executive. Right to know was also identified as a right within article 19, clause 1, Freedom of free speech & expression. The liberalized approach was misused by some people, which led to an increase in the cases before the judiciary & hence some cases were termed Publicity Interest Litigation. It can be misused by the political groups to fulfill their political agendas or goals through PIL if their goals are not achievable through the administrative process. However, this concept of PIL has helped society tremendously with the help of courts by entertaining the PIL filed through letters & posts. In this research paper researcher, with the help of the non-doctrinal method of legal research did an analysis of law & society.

Keywords: PIL, locus standi, violation of rights, article 19, fundamental rights.

INTRODUCTION

Can any person file a PIL

In this research paper, the researcher analyzes the case of *S. P. Gupta v UOI*¹ critically, also known as the first judge's case & comes to conclusions about PIL, further presenting some suggestions to solve the criticisms about PIL. PIL, abbreviated as Public Interest Litigation, is a concept started in the United States of America & was popularized in India by two judges of the Supreme Court. The traditional concept of *locus standi* was that only a person could file the writ in the courts whose rights have been compromised, but in the judgment of the first judge's case, this was liberalized & the PIL was more flexible onwards this judgment. The research question is whether PIL is an effective tool to get justice served to the affected people? When there is a liberalized approach made valid through the judiciary about PIL, there has been a misinterpretation of the word public interest. Therefore it has been misused by some people. However, there is also the good thing about the judgment of the PIL & it has helped society a lot. The main objectives of the research paper are to study the judgment of the first judge's case & to discuss the concepts laid out there, ultimately presenting suggestions about the studied thing. In the research paper, the researcher, with the help of authorities like case laws, books, internet articles, websites, and Indian statutes, critically analyzes the judgment & the important concepts attached to that. The researcher adopts the non-doctrinal method of legal research to write the research paper. *Locus standi* is an old traditional concept that says that the person whose rights have been infringed should come to seek remedy. Every person has the right to file a case & also to be filed a case. The primary notion behind the PIL is to enforce the rights of the public and has to be filed by a person who is working in the interests of the public or a publically spirited individual. There should be no private or political agenda behind the person who is filing a PIL.

PIL is a significant development that is crucial to maintaining democracy & this keeps a check on the government. The custodian of fundamental rights in India is the Supreme Court & keeping this in mind, SC has given judgments in various cases about PIL, which is very helpful

¹ *SP Gupta v UOI* AIR 1982, SC 149

for the people whose rights were violated. One of the most important developments is to entertain a PIL filed through posts & letters. PIL is an excellent tool to secure the rights of poor people. The first judge's case has various concepts attached to it, namely the constitutional law & the law of torts. The constitutional matter is regarding the appointment & transfer of the judges; the collegiums system developed in the course of 3 landmark cases for the appointment of the judges, giving primacy to the executive by the judiciary in the hands of the judiciary & for the judiciary, independence of the judiciary. The matter of law of torts is regarding the concept of locus standi. PIL has been misused by some people & taken as a source to gain popularity, and publicity, and used as harassment against some people. There is also criticism for the judiciary & considering it the second legislative house because sometimes the courts have given judgments that are in the nature of law, like SC issuing guidelines for the PIL. The SC by allowing PIL to be filed by any person working in the public interest has helped a lot of the poor people & has become a new strategy to achieve justice for the oppressed & exploited section of the population.

LOCUS STANDI

Locus standi is a concept that is about the person's right to bring an action before the court of law or to address it. In the law of Torts, every person has the right to sue & to be sued. The traditional concept of locus standi is that the person whose rights have been compromised can bring an action before the court of law. Legal capacity to challenge an act or law is the meaning of locus standi. If the person whose rights have been violated by some other person he can go to court, but if the administrative actions do the violation, one cannot get a judicial redress until the person shows some special injuries connected with the act by the body which is infringing the rights of the other.

This concept is an old one where private law superseded public law since it was not yet born. In the case of *Fertilizer Corporation Karamgar v Union of India*², Justice Krishna Iyer expressed the reasons for the liberalization of locus standi & it should be done to meet the challenges of the time. He also said that the maxim *Ubi jus ibi remedium*, which says that

² *Fertilizer Corporation Karamgar v Union of India* (1981), AIR 344

when there is a right established by the law, subsequently there should also be a remedy to secure those rights when a breach is made on them & this, should be widened to give justice.

WHAT IS A PIL?

Public Interest Litigation, known as PIL in short, is a redressal system or a course of action available to the people whose rights have been infringed. The primary purpose of the PIL is to enforce the public's interests, and the public here means the group of individuals or individuals. PIL can be dealt with only in Supreme Court & High Courts. PIL has also termed as a vehicle used to create & enforce the rights of the individuals or the group of individuals. PIL is very crucial, and essential for democracy to sustain. Under this, the judicial process is more democratic as more people participate. PIL is not mentioned in the Indian Constitution, but it is inferred from Article 39A mentioned under part IV, Directive Principles of The State Policy.³ This article talks about equal justice & free legal aid. This article says that the state shall secure the operation of the legal system to promote justice & should provide equal opportunity. The state shall provide free legal aid through suitable legislation or schemes or any other way to ensure that the opportunity of justice should not be denied to any economically weak person or with other disabilities.⁴ The concept of PIL commenced in the United States of America in the mid-1980s. It started in India in the year 1980. The credit for bringing this PIL system to India goes to two people: Justice P N Bhagwati & Justice V R Krishna Iyer. They are known as the architects of the PIL in India & were the pioneers of the legal aid movement in India. In India, the seeds of PIL were first sown in the case of *Mumbai Karmgar Sabha v Abdul Thai*⁵. The PIL was reported first in the case of *Hussainara Khatoon & Ors v Home Secretary, State Of Bihar*.⁶ There are some guidelines given by the Supreme Court regarding the PIL. PIL can be filed in the courts by any public-spirited individual. People who cannot afford justice or expenses of the legal procedure, basically poor, can file PIL on behalf of any other individual. This can be filed if there is a violation of Human Rights. It is registered as a writ petition in High Court or Supreme Court. Justice Krishna Iyer said PIL is a

³ Constitution of India, 1950, art. 39A

⁴ Mahendra Pal Singh, *Constitution of India* (13th ed., Eastern Book Company 2021) 378

⁵ *Mumbai Karmgar Sabha v Abdul Thai* (1976), AIR 1455

⁶ *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* (1979), AIR 1369

tool filed on behalf of the poor people & it has changed their daily lives. His famous statement regarding the PIL is that it has changed the Supreme Court of India into Supreme Court for Indians. Further, he said PIL would be glorified as the noblest ally of little Indian when the history of the judiciary of India is written. When a PIL is being filed, the person filing it should not be politically motivated or should not be having any political agenda or plans. PIL should only be filed when no other alternative mechanism is available. There are certain conditions attached to PIL; the case should not be pending in any other court; if it is pending, then it is understood as there is some remedy available to the person & hence no necessity of entertaining the PIL. When the PIL is filed, Representation should be there; before filing it, the person should go to the concerned authority or any institution for that matter & try to get the problem solved; if the authority makes no necessary attention, then PIL is a remedy course. Public interest means interest which is the question in general & opposed to the private individuals. There are two main objectives of the PIL:

- It is to obtain justice for the economically weak, people lacking education, or people whose fundamental rights have been infringed.
- To voice people's grievances or problems through the legal process is the ultimate legitimate source of justice and the process to get justice.

The reason behind introducing this concept of PIL in India was that in the early 1970s, it was a time of emergency in India & there was a lack of justice for the people & people could not get justice due to high fees charged by the advocates, getting justice through judiciary did become expensive at those times. People did not know their rights, and lack of education was a significant problem; hence this concept was started in 1980. There are merits & criticisms for PIL. Merits are, it is more democratic as there are more people participation or public participation, it focuses on more significant public issues or grievances in the interests of the public, PIL is an inexpensive remedy even courts have entertained a PIL sent by the people through posts & letters. Through PIL, rights can be claimed against private or government actions. Criticisms are also there; sometimes it is misused by people to gain publicity or used as a source to get popularity among people, misuse has been done by some individuals or by a

group to some person for harassment, there have been instances PIL has been filed by the pressure of public groups. PIL can be misused by political parties to achieve their goals through PIL if not possible to achieve their goals through the administrative process. Legislature makes the law in the country, but with the help of PIL, courts have issued guidelines, etc., by which the court is also termed as the second legislative house of the country & this is the growth of judicial activism. Dr. B.R. Ambedkar interpreted that without keeping a check on the three pillars of democracy they are the legislature, the executive & the judiciary they may do whatever they want; they will be free to make laws, execute them & interpret them, so there should be a check on the powers conferred therefore Article 32⁷ has been defined as the heart & soul of the constitution by Dr. B.R. Ambedkar. The concept of PIL has further strengthened the check on the authorities. There are cases pending before the courts in considerable quantity because of the lack of judges, good advocates, etc., but after making flexible the process of filing a PIL, there has been an uptrend in the cases, which is a point for causing more pendency before the courts & this can be dealt by the suggestions given by the researcher below.

SP GUPTA VS UNION OF INDIA AND ORS.

The seven-judge bench decided this case. It was first filed in High Court and then transferred to Supreme Court. The collegium system for the appointment & transfer of the judges of the High Court & Supreme Court of India was created in this case. It is a type of transfer case. The independence of the Judiciary in India was a crucial point here. Before the judgment of this case, traditionally locus standi was restricted only to the person whose rights had been violated or infringed. But after this case, it was open to anyone to file a lawsuit through PIL who acted for the public good or the public interest. Supreme Court further differentiating between the PIL & locus standi said if there is a violation of the public obligation; if followed the locus standi concept, it would be disrespect shown to the law because if there is no person who has suffered since the violation of law, then this violated public obligation will be uncontrolled & unchecked which is a bad thing for the democracy. This would result in abuse

⁷ Constitution of India, 1950, art. 32

of power & ultimately open the doors of corruption & inefficiency which may become tyrannical. Justice P N Bhagwati said in this case that the court would even respond to the letters sent by the person who is acting in the public interests & this makes the process of accessing justice through the judiciary more flexible & easy. He also said the liberalization of locus standi will be adequate to monitor the corridors of power & will prevent the violation of laws. He said some rules are given for a person who wants to approach the court under article 32 of the Indian Constitution. Still, one should not forget that justice cannot be denied to an individual due to some procedural technicalities & the procedures laid down are just handmaidens of justice. Therefore he said the court would accept a letter by any individual working for the public interest & the court will unhesitatingly set aside the procedural technicalities⁸.

In this case, the executive had more power to appoint the judges & to transfer them, which is also in line with articles 124 & 217 of the Indian Constitution. Justice Venkataramaiah said that even though the President needs to consult the other members of the authorities mentioned in Article 217, the President is not bound by the opinions of the functionaries & can ultimately make a decision separately. Therefore the President had the power to differ from the opinions given by the other judicial functionaries. Chief Justice of India did not have priority if a difference of opinions arose between the functionaries. Justice P N Bhagwati said that if CJI's statement is given more importance, CJI's opinion would have more primacy over the Governor's & CJ of HC's opinions. And at the end, the state would need to consider the opinion of CJI. The main thing about this case is the independence of the judiciary. If the power to appoint & transfer the judges who are an essential part of the judiciary whose work is to give justice, then the judiciary would no longer be independent. The appointment & transfers would occur according to the whims & fancies of the executive. Justice Venkataramaiah said, of course, the power to appoint & transfer is with the executive, but after they do it, it would no longer have the role to play in the judiciary's work. Therefore independence of the judiciary is maintained. The idea of the Collegium system came up in this

⁸ Prachi Bhardwaj, 'Remembering Senior Advocate SP Gupta and his crusade for Judicial Independence' (*The SCC Online Blog*, 18 January 2022) <<https://www.sconline.com/blog/post/2022/01/18/a-walk-down-the-memory-lane-on-sp-guptas-senior-advocate-90th-birthday/>> accessed 12 April 2022

case; Justice P.N. Bhagwati suggested having a collegium system for the appointment & transfer of the judges. He further said the collegiums system which will be formed should welcome the opinions of the collegium members with broader interest. It would be better if the member of the collegiums would know the best person to fit for the role of a judge & should know the qualities required for the judge who would, in turn, be more independent of investing in the judicial process to serve the deprived & exploited sections of the humanity.

DECISION DIRECTION

The Supreme Court of India recognized the right to information as being included in the fundamental freedom of free speech & expression given under article 19, clause 1 of the Indian Constitution. Also, the SC narrowed down the scope of protection from disclosure of government documents. The concept of Public Interest in S P Gupta v UOI is that advocates from different states wanted to know the correspondence in-between the CJI of SC, CJ of HC & Law Minister. These advocates who filed the writs, there was no violation of their rights but they were acting in the public interest & hence filed the writ petition. The respondents in the case said that disclosure of the correspondence is injurious to public interest & is not a matter of public interest. SC said for the functioning of the democracy there should be a constant check on the government to ensure its proper functioning. Therefore SC said the *Right to Know* is a right of the public & is in the public interest which is implicit under article 19, clause 1 freedom of free speech & expression. Right to know is a right where the public has the right to know the information & further disseminate it & it is for the public interest. In the case of *State of UP v Raj Narain*⁹, the SC upheld the judgment given by the HC that it can order to disclose official documents & it has authority to decide whether a document is in a matter of public interest or not. The court held that the matter of appointment of the judge was a matter of public interest and therefore it should be disclosed if not it would be detrimental to the public interest & therefore denied the claim made by the respondents.

OTHER CASES OF PIL & JUDGMENTS

⁹ *State of UP v Raj Narain* (1975), AIR 865

In the case of *Sunil Batra v Delhi Administration*,¹⁰ a writ petition of habeas corpus was filed by the relative or friend on behalf of the person who was in detention. Prof. U. Baxi in his paper has referred to PIL as Social Interest Litigation¹¹. The concept of PIL was discussed in this case because the lawyers filed writ petitions in the different High Courts of the country & were referred to as writs of great constitutional importance affecting the independence of the judiciary, It was filed against the circular of the Ministry of Law & Justice & sought the disclosure of correspondence between Law Minister, CJI of India & CJ of Delhi High Court¹². Justice P N Bhagwati said that any person of the public having sufficient interest could file a PIL as an extrajudicial remedy¹³, for the question of the extended approach of the locus standi he said it is necessary for the maintaining rule of law which in turn helps to realize the constitutional objectives.¹⁴

In the case of *Bandhua Mukti Morcha v Union of India*¹⁵ Justice P N, Bhagwati J observed that people whose rights have been violated & cannot approach the court for the enforcement of such rights because of a lack of awareness about the rights, lack of finance should not be affected. Any person acting for the bonafide public interest can file a writ. He further stated that the fundamental rights should not only be meant for the rich who can afford judicial redress, but should also be for the poor or socially disadvantaged people from the society¹⁶. Also, the court held that the court should entertain a PIL from the person who is acting for the bonafide interests of the public. It should not be a case like people out of poverty, socially or economically disadvantaged, or with a disability should be affected.¹⁷ In *Mahinder Kumar Gupta v Union of India*¹⁸ court held that an association could not file PIL, it should be registered for the locus standi for filing a PIL. If there is a person whose rights have been violated & he can approach the court or he is in a condition for enforcing the rights then in this

¹⁰ *Sunil Batra v Delhi Administration* (1980), AIR 1579

¹¹ Baxi, Upendra, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 (6) Third World Legal Studies

¹² S.P. Gupta (n 1)

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Bandhua Mukti Morcha v Union of India* (1984) AIR 802

¹⁶ Mahendra Pal Singh (n 4)

¹⁷ *Bandhua Mukti Morcha* (n 15)

¹⁸ *Mahinder Kumar Gupta v Union of India* (1995) 1 SCC 85

matter another person cannot have a locus standi to file a PIL in the court on the behalf of the aggrieved party¹⁹. Hon'ble court says that the person who files a writ petition before the Hon'ble courts must not only come with clean hands but also with a clean heart, an objective & mind.²⁰ There were PILs that were not entertained by the courts such as seeking the removal of the word Sindh from the National Anthem of the country²¹and challenging the appointments of the judges.²²

PUBLICITY INTEREST LITIGATION

Public Interest Litigation is sometimes also termed Publicity Interest Litigation because some people use it to gain more popularity in the name of public interest. There were many such PILs that were dismissed & termed as Publicity Interest Litigation by the judges along with the fine. Such one PIL was filed by an Advocate seeking directions for the Center & state governments to control the black magic, superstition & religious conversion. The petitioner said that the PIL was filed for the benefit of SC/ST, backward people as some people were economically weak & their rights were being violated. The court did not entertain the PIL, and termed it as Publicity Interest Litigation which is too harmful kind²³. There was a writ petition filed in the Kerala High Court challenging the photo of Prime Minister Narendra Modi on the Covid vaccination certificate. Justice P.V. Kunhikrishnansaid that this PIL wasted judicial time because the PM is elected by the people's mandate, no matter to which political party the PM belongs but he/she is still the PM of the people. He also termed this petition a Publicity Interest Litigation²⁴.

¹⁹ *Simranjeet Singh Mann v Union of India* (1993), AIR 280

²⁰ *Ashok Kumar Pandey v State of W.B.*, (2004) 3 SCC 349

²¹ *Sanjeev Bhatnagar v Union of India* (2005) 5 SCC 330

²² *B. Singh v Union of India* (2004) 3 SCC 363

²³ 'Publicity Interest Litigation that too of a harmful kind', says SC, dismissing PIL seeking to control black magic, religious conversion by intimidation, threats' (*The Leaflet*, 9 April 2021) <<https://theleaflet.in/publicity-interest-litigation-that-too-of-a-harmful-kind-says-sc-while-dismissing-a-pil-seeking-to-control-black-magic-religious-conversion-by-intimidation-threats-and-deception-life-and-liberty/>> accessed 12 April 2022

²⁴ Hannah M Varghese, 'Why Are You Ashamed Of Prime Minister's Photo In Vaccination Certificate? He Is Our PM' : Kerala High Court Asks Petitioner' (*Live Law*, 13 December 2021) <<https://www.livelaw.in/top-stories/why-are-you-ashamed-kerala-high-court-on-plea-seeking-removal-of-prime-ministers-photograph-from-vaccination-certificate-187518?from-login=810772>> accessed 12 April 2022

CONCLUSION

After taking into account all the referred authorities cited, the researcher has come to the conclusion that the PIL is an effective tool to get justice. There have been various instances where justice was served to affected sections or people of the society whose rights were infringed. Judgment given in the matter of judicial appointments & transfers was vacated in 2 cases namely *Supreme Court Advocates On Record Association v Union of India*²⁵ & *The Supreme Court of India v Civil Advisory Jurisdiction*²⁶, primacy was given to the judiciary over the executive. These were the 3 landmark cases that created the Collegiums method. The decision of the judges over entertaining the PIL filed through letters & posts was a very crucial step in the concept of PIL which increases the trust in the judiciary, by this decision the SC has proved once again that it is the custodian of fundamental rights of the people. Filing a PIL is flexible through this judgment but there are criticisms attached to this, there are some loopholes found in the judgment & but they can be dealt with some suggestions given by the researcher below. There are numerous cases pending before the courts in millions which would take more than 360 years to clear the backlog of 3.3 crore cases. According to a report, 4.5 crore cases are pending in Indian courts currently. PIL is an excellent way to secure the rights, but it should not be used to harass someone, or the court is not a place where someone can spare their leisure time.²⁷ If the concept of PIL were not enunciated in India, then the law would just become a joke on paper & the promise of unreality. PIL will help to achieve the constitutional goals quickly. In this case, by allowing PIL to be filed by any person working in the public interest, the SC has helped a lot of the poor people & has become a new strategy to achieve justice for the oppressed & exploited section of the population. PIL is a source of light in the darkroom of injustice for the poor people to live a life with all rights & dignity.

²⁵ *Supreme Court Advocates On Record Association v Union of India* (1994), AIR 268

²⁶ *The Supreme Court of India v Civil Advisory Jurisdiction* (1999)

²⁷ Kenneth Mohanty, EXPLAINED: CJI Ramana Says 4.5 Crore Cases Pending, Here's What Has Been Fuelling Backlog In Indian Courts' (*News 18*, 18 July 2021) <<https://www.news18.com/news/explainers/explained-cji-ramana-says-4-5-crore-cases-pending-heres-what-has-been-fuelling-backlog-3977411.html>> accessed 13 April 2022

SUGGESTIONS

There are three aspects which the researcher, after critically analyzing the judgment of the case & the researcher comes up with suggestions on it.

Pendency: - After allowing the PIL filed by the person working for the public interest, the pendency of the cases has been piled up. Therefore the judiciary should form a cell & the cell should look upon the writs filed, and scrutinize the PIL so that there would be no waste of time for the judiciary.

Publicity Interest Litigation: - People knowing the right to file a petition even though the person's rights have not been violated, go ahead & file the petition for the sake to gain publicity which may have been politically motivated & this is a loophole in the judgment by allowing any people to file the petition working in the public interest & this makes it private litigation. Public interest should be more clearly defined & stringent punishment should be made for the person who wastes the precious time of the courts.

Publicity of Public Interest Litigation: - Even though the concept of locus standi has been liberalized, many people in society are not aware of their rights due to some personal aspects & are constantly suffering the harm others make. There should be campaigns to educate people to know the fundamental law and know about redressal. Law is for the people of society. The people of India have gifted themselves the Constitution; therefore, people have a right to know the law & this has to be done by the learned people who are aware of the law & rights. Students at the school level should know the law clearly; they should be taught.