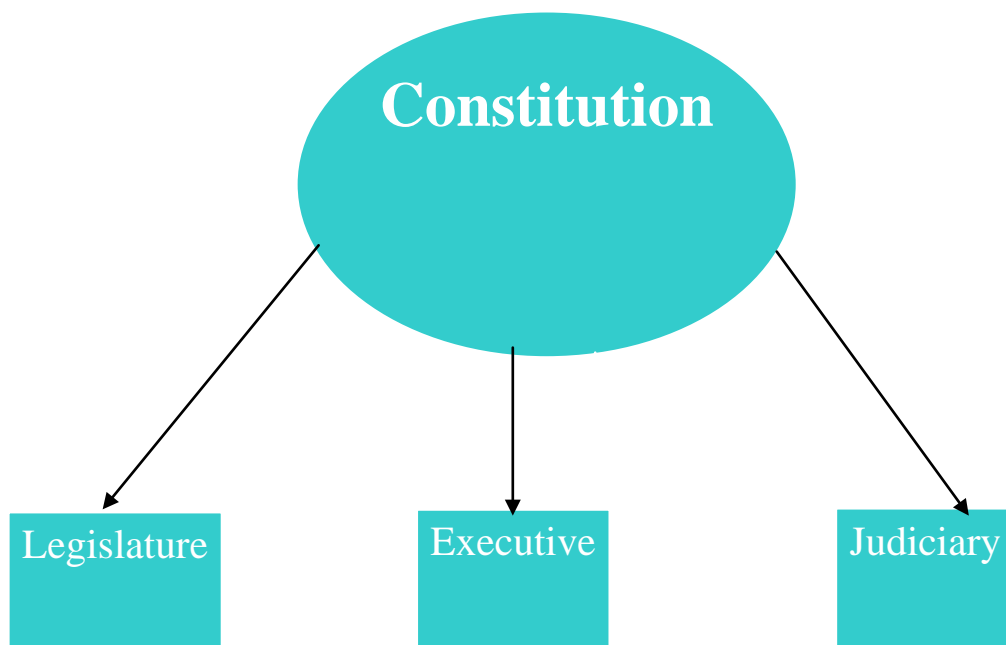


PUBLIC INTEREST LITIGATION: AN OVERVIEW

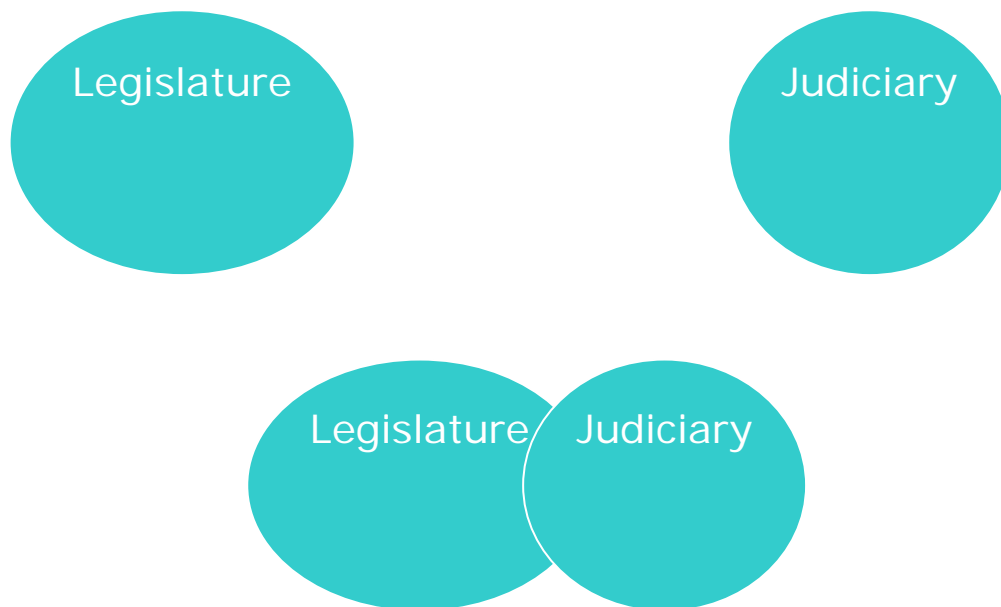
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Our Constitution is Supreme law of land in the country. It comprises three organs to regulate its main objectives, i.e., Legislative, Judicial and Executive.



The powers of all the three organs of the mechanism has been bifurcated by the Constitution and a boundary line has been clearly stated in the law for their proper functioning. These organs are not allowed to encroach upon the powers of each other but some time it has been felt by the legislature that Judiciary is interfering in the area of their operation.

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Judicial Activism

This interference has been titled by eminent of law as” Judicial Activism” The present concept of PIL is the ramification of this Judicial Activism .

ORIGIN OF PIL

Prior to the 1980s, only the aggrieved party could approach the courts for justice. However, post 1980s and after the emergency era, the apex court decided to reach out to the people and hence it devised an innovative way wherein a person or a civil society group could approach the supreme court seeking legal remedies in cases where public interest is at stake. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were among the first judges to admit PIL's in the court. Filing a PIL is not as cumbersome as any other legal case and there have been instances when even letters and telegrams addressed to the court have been taken up as PIL's and heard by the court.

The seeds of the concept of PIL were initially sown in India by Krishana Iyer, J. in 1976 while disposing of an Industrial dispute in regard of the payment of bonus to workers in Mumbai Kamgar Sabha Vs. Abdual Bhai. After the germination of the seeds of the concept of the PIL in our judicial system, this rule of PIL was nourished, nurtured and developed by the Apex Court of this land by a series of outstanding decisions. It was again affirmed by Apex Court in Fertilizers Corporation Kamgar Union Vs. Union of India in 1981.

In 1982, the Supreme Court conceded that unusual measures were warranted to enable people the full realization of not merely their civil and political rights, but the enjoyment of economic, social, and cultural rights, and in its far- reaching decision in the case of PUDR

[People's Union for Democratic Rights] vs. Union of India [1982 (2) S.C.C. 253], it recognized that a third party could directly petition, whether through a letter or other means, the Court and seek its intervention in a matter where another party's fundamental rights were being violated. In this case, advertent to the Constitutional prohibition on "begar", or forced labour and traffic in human beings, PUDR submitted that workers contracted to build the large sports complex at the Asian Game Village in Delhi were being exploited. PUDR asked the Court to recognize that "begar" was far more than compelling someone to work against his or her will, and that work under exploitative and humiliating conditions, or work that was not even compensated by prescribed minimum wages, was violative of fundamental rights. In Indian law, public interest litigation means litigation for the protection of the public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a false litigation by a busy body.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed **suo motu**(by its own) or cases can commence on the petition of any public-spirited individual.

MEANING OF PUBLIC INTEREST LITIGATION:-

IN 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(Financial) interest or some interest by which their legal rights or liabilities are affected."

Peoples Union for Democratic Rights v. Union of India (A.I.R.. 1982 , S C 1473). The court now permits Public Interest Litigation or Social Interest Litigation at the instance of " Public oriented citizens" for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps.

WHO CAN FILE:-

Any public-oriented person can file a Public Interest Litigation case (PIL) on behalf of a group of persons, whose rights are affected. It is not necessary, that person filing a case should have a direct interest in this Public Interest Litigation. For example: A person in Haryana can file a Public Interest Litigation for malnutrition deaths in Orissa. Someone can file a PIL in the Supreme Court for taking action against a cracker factory that's employing child labour. Any person can file a PIL on behalf of a group of affected people. However, it will depend on the facts of the case, whether it should be allowed or not.

In a recent case of honor killing in Haryana and UP the Supreme Court suo-moto called upon the Govt of both of the States to take action against It is a recent example of PIL.

The Supreme Court (SC), through its successive judgments has relaxed the strict rule of 'locus standi' applicable to private litigation.

A PIL can be filed when the following conditions are fulfilled

1. There must be a public injury and public wrong caused by the wrongful act or omission of the state or public authority.
2. It is for the enforcement of basic human rights of weaker sections of the community who are exploited, ignorant and whose fundamental and constitutional rights have been violated.
3. It must not be false litigation by persons having vested interests.

AGAINST WHOM:-

A Public Interest Litigation can be filed only against a State and Central Government, Municipal Authorities, and not any private party. However a "Private party" can be included in the Public Interest Litigation as a "Respondent", after making the concerned State authority a party. For example, in the case of a private factory in Delhi, causing pollution, then people living in its locality or any other person can file a PIL against the Government of India, the State Pollution Board and also against the private factory.

However, a PIL cannot be filed against the private party alone; the concerned State Government, and State authority has to be made a party

Instances of PIL:-

Shiram Food & Fertilizer case AIR (1986) 2 SCC 176 SC through Public Interest Litigation directed the Co. Manufacturing hazardous & lethal chemical and gases posing danger to life and health of workmen & to take all necessary safety measures before re-opening the plant.

In the case of M.C Mehta V. Union of India (1988) 1 SCC 471 - In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of

Ganga water. Supreme court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

Parmanand Katara V. Union of India - AIR 1989, SC 2039 :- Supreme Court held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

Council For Environment Legal Action V. Union Of India - (1996)5 SCC281 : Public Interest Litigation filed by registered voluntary organization regarding economic degradation in coastal area. Supreme Court issued appropriate orders and directions for enforcing the laws to protect ecology.

PRESENT SCENARIO:-

In the past, many people have tried to misuse the privilege of Pil's and thus now the Court generally requires a detailed narration of facts and complaint, & then decides whether to issue notice and call the opposite party. However, as there is no statute laying down rules and regulations for a PIL; the Court can treat a letter as a Public Interest Litigation. The letter should bring the true & clear facts, and if the matter is really an urgent one, the court can treat it is a PIL, but still it depends upon facts and circumstances, and court has the entire discretion.

A Bench of Chief Justice S.H. Kapadia and Justices K.S. Radhakrishnan and Swatanter Kumar also slapped a fine of Rs. 2,000 on the contemnors, payable within one week.

PIL- A Boon

1. In Public Interest Litigation (PIL) vigilant citizens of the country can find an inexpensive legal remedy because there is only a nominal fixed court fee involved in this.
2. Further, through the so-called PIL, the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare and environment.

Abuse of PIL:

However, the development of PIL has also uncovered its pitfalls and drawbacks. As a result, the apex court itself has been compelled to lay down certain guidelines to govern the management and disposal of PILs. And the abuse of PIL is also increasing along with its extended use.

Many of the PIL activists in the country have found the PIL as a handy tool of harassment since false cases could be filed without investment of heavy court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs.

Just as a weapon meant for defense can be used equally effectively for offence, the lowering of the locus standi requirement has permitted privately motivated interests to pose as public interests. The abuse of PIL has become more common than its use and genuine causes either lowered to the background or began to be looked with the suspicion generated by false causes mooted by privately motivated interests in the misuse of the so-called public interests.

STEPS NECESSARY:

With the view to regulate the abuse of PIL the apex court itself has framed certain guidelines (to govern the management and disposal of PILs.) The court must be careful to see that the petitioner who approaches it is acting bona fide and not for personal gain, private profit or political or other considerations. The court should not allow its process to be abused by politicians and others to delay lawful administrative action or to gain political objectives. Political pressure groups who could not achieve their aims through the administrative process or political process may try to use the courts (through the means of PILs) to further their closely vested aims and interests.

CONCLUSION: -

Public Interest Litigation is working as an important instrument of social change. It is working for the welfare of every section of society. It's the sword of every one used only for taking the justice. The innovation of this lawful instrument proved beneficial for the developing country like India. PIL has been used as a strategy to combat the atrocities prevailing in society. It's an institutional initiative towards the welfare of the needy class of the society. In *Bandhua Mukti Morcha v. Union of India*, Supreme Court ordered for the release of bonded labourers.

In *Vishaka v. State of Rajasthan*, Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work

To my mind PIL is still in experimental stage in India. Many deficiencies in handling the kind of litigation are likely to come on the front. But these deficiencies can be removed by innovating better techniques. In essence, the PIL develops a new Law of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. In the end I hope once expressed by Justice Krishna Iyer,

“The judicial activism gets its highest bonus when its orders wipe some tears from some eyes”

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