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## **PUBLIC INTEREST LITIGATION : AN INNOVATIVE STEP TOWARDS JUDICIAL ACTIVISM**

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### **INTRODUCTION**

The TajMahal, the eternal symbol of love in India, has withstood the brutal force of the elements for centuries. But this magnificent monument was almost destroyed by pollution. That is, until a lawyer by the name of M.C. Mehta filed a Public Interest Litigation seeking directions from the Hon'ble Court to direct authorities to take steps to stop pollution.

Another example of a PIL is the Oleum Gas Leak Case that established the concept of "absolute liability" in Indian law.

A Public Interest Litigation also known as PIL is a form of litigation that is filed to safeguard or enforce public interest. Public Interest is the interest belonging to a particular class of the community affects their legal rights or liabilities. It may include pecuniary interest.

### **What is a PIL?**

PIL has not been defined in any Indian statute. However, Courts have interpreted and defined PIL. The Hon'ble Supreme Court of India has, in the case of JanataDal v. H.S.Chaudhary, [(AIR 1993 SC 892) (see here)], held that lexically, the expression 'TM' means a legal action started in a court of law for the enforcement of public/general interest where the public or a particular class of the public some interest (including pecuniary interest) that affects their legal rights or liabilities.

PILs are considered to be the most effective as well as the most commonly used judicial tool to safeguard the environment due to their many advantages including but not limited to speedy results, nominal court fees, relaxed procedural rules and the wide variety of investigative techniques available to courts like special committees.

### **Who can file a PIL?**

Any individual or organisation can file a PIL either in his/her/their own standing i.e. to protect or enforce a right owed to him/her/them by the government or on behalf of a section of society who is disadvantaged or oppressed and is not able to enforce their own rights.

The concept of "Locus Standi" has been relaxed in the case of PILs so as to enable the Hon'ble Court to look into grievances that are filed on behalf of those who are poor, illiterate, deprived or disabled and are unable to approach the courts themselves.



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However, only a person acting in good faith and who has sufficient interest in the proceeding will have the locus standi to file a PIL. A person who approaches the Hon'ble Court for personal gain, private profit, political or any oblique consideration will not be entertained.

### **Where can a PIL be filed?**

PILs are extensions of Writ Jurisdiction. Therefore, PILs may be filed either before the Hon'ble Supreme Court of India under Article 32 of the Indian Constitution or any High Court under Article 226 of the Indian Constitution.

However, even a simple letter or a postcard addressed to the Chief Justice of India or the Chief Justice of a High Court may suffice. The court may then choose to take cognizance of the letter and convert it into a PIL as in the case of Rural Litigation & Entitlement Kendra, Dehradun vs. State of Uttar Pradesh [(MR 1989 SC 594) (see here)], where the Hon'ble Court converted a letter raising the issue of unauthorised and illegal mining in Mussoorie Hills into a writ petition under Public Interest Litigation.

### **Laws governing PIL in India**

Over the years, the courts in India have formulated various principles with respect to PILs:

#### **Relaxed rule of locus standi-**

PILs can be filed by any person for the welfare of others who are disadvantaged and are thus unable to approach the courts themselves. Thus, the general rule of locus standi has been relaxed in cases of PILs to protect and safeguard the interests and rights of these disadvantaged people.

#### **Relaxed procedural rules-**

Courts have treated even a letter or a telegram as a PIL as in the case of Rural Litigation & Entitlement Kendra, Dehradun vs. State of Uttar Pradesh [see here). Even the law regarding pleadings has been relaxed by the courts in cases of PILs.

#### **Intervention by the courts-**

Courts has also highlighted the fact that Article 14 & 21 of the Constitution of India and the International Conventions on Human Rights provide for a fair and reasonable trial. Thus, Courts must intervene when injustice is done to many.

#### **Question of maintainability-**

The Government may not be allowed to raise questions as to the maintainability of the PIL if the court is prime facie satisfied that there is a variation of any constitutional rights of a disadvantaged category of people.

#### **Principle of Res Judicata-**

The principle of res judicata or any principles analogous to it would depend on the circumstances and facts of the case and the nature of the PIL.

#### **Appointment of a Commission-**

In special circumstances, a court may appoint a Commission or other bodies to investigate. In the event that the Commission takes over a public institution, the Court may direct management of it.



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### **PILs regarding constitutionality or validity of a statute or a statutory rule-**

Ordinarily, the High Court should not entertain such a petition by way of a PIL.

#### **Complete Justice-**

Under Article 142 of the Constitution of India, the Hon'ble Supreme Court of India has the discretionary power to pass a decree or order as may be necessary to do complete justice. However, while high courts may pass orders to do complete justice, they do not have powers akin to those granted to the Hon'ble Supreme Court under Article 142.

#### **Misuse of PILs-**

Courts are extremely cautious to ensure that PILs are not misused as the misuse of PILs would defeat the very purpose for which it was conceived i.e. to come to the rescue of the poor and the downtrodden. The courts have, time and again, reiterated this fact as in the case of *KushumLata v. Union of India* [(2006) 6 SCC 180] (see here)}. However, courts have held that even if the petitioner had approached the court for his own private interest due to his personal grievances, the court may treat it necessary to inquire into the subject of the litigation and its state of affairs in furtherance of public interest.

#### **Formulation of various concepts-**

In environmental law cases, the courts have formulated and evolved several concepts including the Polluter Pays Principle, the Precautionary Principle, the Public Trust Doctrine and Sustainable Development.

### **What are some essentials of drafting a PIL?**

The following are some of the essential steps that should be followed when drafting a PIL:

#### **Collection of information-**

The first step of drafting a PIL would be to collect all relevant information pertaining to the issue.

#### **Collation of documents-**

All documents regarding the case including photographs if any, must be collated.

#### **Court in which it is to be filed-**

The Petitioner must decide in which he/she/it wants to file the PIL, whether before the Hon'ble Supreme Court or the High Court of that State.

#### **Form of the PIL-**

A PIL can be in the form of a Petition or even a letter or postcard. In the event that the PIL is to be filed before the Hon'ble Supreme Court of India, the letter/postcard must be addressed to the Chief Justice of India. In the event that the PIL is to be filed before a High Court, the letter/postcard must be addressed to the Chief Justice of that particular High Court.

#### **Public Litigation Guidelines-**

When drafting a PIL, one must look at the Public Litigation Guidelines applicable for the particular court before which one intends to file the PIL. The same are usually available on the websites of the respective courts.



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### **Details to clearly stated-**

The following details must be clearly stated:

1. Petitioner's name, postal address, email address, phone number, occupation, annual income and PAN number.
2. Proof of identity of the Petitioner must be annexed.
3. Facts of the case.
4. Nature of the injury.
5. Any personal interest that he/she/it may have.
6. Details of any litigation involving the petitioner which could have a legal nexus with the issue involved in the PIL.
7. The class of persons for whose benefit the PIL is being filed and how they are incapable of accessing the courts themselves.
8. In the event that any representations have been made to any authorities regarding the issue, the details of the same.
9. Any person/body/institution that may be affected by the PIL must be joined as a party.
10. The Petitioner must also state that he/she/they are able to pay costs, if any, that may be imposed by the court.

### **Appearance in court-**

The Petitioner may either appoint an advocate or choose to appear in person.

### **What is the procedure for filing a PIL?**

Details on the procedure of filing PILs in the Hon'ble Supreme Court and a High Court are summarized in the table below:

	Supreme Court	High Court
Number of copies of the PIL to be filed	5	2
Service of copy upon Respondent(s)/ Opposite Party(ies)	To be served in advance	To be served only when the Hon'ble Court issues notice regarding the same
Court Fees to be affixed on the Petition	Rs. 50/- per Respondent/ Opposite Party	Rs. 50/- per Respondent/ Opposite Party

A PIL can be filed in the same way as a writ petition.

Public Interest Litigation (PIL) guidelines are available on the website of the Hon'ble Supreme Court of India (see here). It states inter alia that certain letter-petitions that fall under certain categories alone will ordinarily be treated as PILs including petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wildlife and other matters of public importance.



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## CONCLUSION

A PIL is an important judicial tool especially for the protection of the rights of those who are unable to approach the courts themselves. They are one of the most commonly used forms of litigation, especially in environmental cases. The courts have tried to make rules regarding PILs simpler so as to not discourage the filing of PILs in public interest and on behalf of the poor, disable or deprived classes of persons. However, there are several instances in which people have tried to further their own private interests under the guise of PILs. Thus, courts must continue to remain extremely cautious to ensure that PILs are not misused.