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Research Paper Law

Public Interest Litigation (PIL)

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ABSTRACT

The purpose of this paper was to review the meaning, purpose and procedure of Public Interest Litigation. The paper described the meaning, purpose and procedure of Public Interest Litigation. On the behalf of this study, it's concluded that Public interest litigation (PIL) has a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation.PIL, for instance, offers a ladder to justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows them to participate in government decision making. However, the Indian PIL experience also shows us that it is critical to ensure that PIL does not become a facade to fulfill private interests, settle Political scores or gain easy publicity.

KEYWORDS : Public Interest Litigation, PIL, Writs, Article 32 & 226 of The Constitution of India.

INTRODUCTION

PIL was started to protect the fundamental rights of people who are poor, ignorant or in socially/economically disadvantaged position. It is different from ordinary litigation, in that it is not filed by one private person against another for the enforcement of a personal right. The presence of public interest is important to file a PIL. Public Interest Litigation is a sociological strategy of the judicial activism shows comprehensive expansion of the judicial process in the complicated task of mediating between social reality and social change. This judicial strategy is being invoked as an instrument of social change and social development for promoting social welfare. Degraded bonded laborers, humiliated inmates of protective homes, women prisoners, the untouchables, children of prostitutes, victims of custodial violence and rape and many other oppressed and victimized groups are attracting remedial attention of the courts. At the same time the gap between commitment and performance has resulted in chronic over commitment of the judges to provide relief from all kinds of critical social ills afflicting the Indian Society. Almost anything under the sun is covered under the rubric, public interest litigation. Initially Public interest litigation was considered as a strategy to enable public spirited citizens and social activists to mobilize favorable judicial concern on behalf of the victimized and oppressed groups. It has become today a powerful weapon of the judicial activism for involvement in social political and economic affairs of the society.

Objective of the Study

The objective is to study the Public Interest Litigation (PIL) meaning, purpose and procedure.

Research Methodology

In the study the following research methodology is used:

Research Design

To examine the concept of Public Interest Litigation. It is a Theoretical study which was described the meaning, purpose and procedure of Public Interest Litigation.

Data Collection

The required secondary data will be collected through published material i.e. books, pamphlets, articles, newspapers and reports etc.

DISCUSSION

The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in Mumbai Kamgar Sabha vs. Abdul Thai AIR 1976 SC 1455 and was initiated in Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India AIR 1981 SC 298, wherein an Unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances.

The first reported case of PIL was in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In Hussainara Khatoon v. State of Bihar, 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. The same set pattern was adopted in subsequent cases. A new era of the PIL movement was heralded by Justice P.N. Bhagawati 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 the enforcement of "public duties" where executed in action or misdeed resulted in public injury. And as a result any citizen of India or any consumer groups or social action groups can now approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. In 1981 the case of Anil Yadav v. State of Bihar, 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 signaled the growth of social activism and investigative litigation.

Meaning and Definition

Public Interest Litigation:

The term "Public Interest" means the larger interests of the public, general welfare and interest of the masses ((Oxford English Dictionary 2nd Edn.) Vol.XII) and the word "Litigation" means "a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy." Thus, the expression `Public Interest Litigation' means "any litigation conducted for the benefit of public or for removal of some public grievance." In simple words, public interest litigation means. Any public spirited citizen can move/approach the court for the public cause (or public interest or public welfare) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution or before the Court of Magistrate under Sec. 133 of the Code of Criminal Procedure, 1973. 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." S. Ratnavel Pandian, J. in Janta Dai v. H.S. Chowdhary said, "Lexically the expression "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 a class of community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

Concept of PIL:

According to 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". Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi (standing required in law) to file a case and continue the litigation and the non affected persons had no locus standi to do so. And as a result, there was hardly any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other. However, all these scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the apex court of India into a Supreme Court for all Indians. And as a result any citizen of India or any consumer groups or social action groups can approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation. In 1981 Justice P. N. Bhagwati in S. P. Gupta v. Union of India, 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." The importance of Article 32 is referred to as the doctrine of "Constitutional Remedy" for enforcement of Fundamental Rights. Dr. B.R.Ambedkar described Article 32 as the heart and soul of the Constitution.

Procedure for Filing Public Interest Litigation:

(a) Filing:

Public Interest Litigation petition is filed in the same manner, as a writ petition is filed. If a PIL is filed in a High Court, then two (2) copies of the petition have to be filed (for Supreme Court, then (4)+(1)(i.e.5) sets. Also, an advance copy of the petition has to be served on the each respondent, i.e. opposite party, and this proof of service has to be affixed on the petition.

A Writ Petition Be Treated As Public Interest Litigation:

A writ petition filed by the aggrieved person, whether on behalf of group or together with a group can be treated as a Public Interest Litigation however,

- The writ petition should involve a question, which affects public at large or group of people, and not a single individual.
- Only the effected /aggrieved person can file a writ petition.
- There should be a specific prayer, asking the court to direct the state Authorities to take note of the complaint /allegation.

A Public Interest Litigation can be filed before the Supreme Court under Article 32 of the Constitution or before the High Court of a State under Article 226 of the Constitution under their respective Writ Jurisdictions. There are mainly five types of Writs – (i) Writ of Habeaus Corpus, (ii) Writ of Mandamus, (iii) Writ of Quo-Warranto, (iv) Writ of Prohibition, and (v) Writ of Certiorari.

(I) Writ of Habeas Corpus:

It is the most valuable writ for personal liberty. Habeas Corpus means, "Let us have the body." A person, when arrested, can move the Court for the issue of Habeas Corpus. It is an order by a Court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release. The writ cannot be issued against the detention or custody which is the result of judicial determinations. When a person has been subjected to confinement by an order of the Court which passed the order after going through the merits of the case the writ of habeas corpus cannot be invoked, however erroneous the order may be. Moreover, the writ is not of punitive or of corrective nature. It is not designed to punish the official guilty for illegal confinement of the detenu. Nor can it be used for devising a means to secure damages. An application for habeas corpus can be made by any person on behalf of the prisoner as well as by the prisoner himself, subject to the rules and conditions framed by various High Courts. In Bohar Singh v. State of Punjab AIR 1981 NOC 196 (Punj and Har) the Court held that a convict undergoing imprisonment under the judgment of a criminal Court which has become final, cannot prefer and maintain a writ of habeas corpus to assail his detention. A writ of habeas corpus would not lie against a considered judicial judgment of the High Court on the alleged tenuous ground of an infraction of Article 21 of the Constitution. No writ would lie against the judicial process established by law.

(II) The Writ of Mandamus:

Mandamus is a Latin word, which means "We Command". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs. The writ is issued to compel an authority to do his duties or exercise his powers, in accordance with the mandate of law. The authority may also be prevented from doing an act, which he is not entitled to do. The authority against whom the writ be issued, may be governmental or semi governmental, or judicial bodies. Its function in Indian Administrative Law is as a general writ of justice, whenever justice is denied, for delayed and the aggrieved person has no other suitable remedy. The writ is in the nature of civil proceeding and intended to supply the defects of justice. It is within the scope of mandamus to direct statutory corporations to perform their duties. The writ is issued to restore individual to public offices, which is the normal function of quo warranto and prevents the violation of natural justice by tribunals, the normal province of certiorari and prohibition. Thus mandamus overlaps all the other writs except, habeas corpus." In Anandi Mukta Sadaguru v. V.R. Rudani AIR 1989 SC 1607 the Supreme Court made the following important observation. "Whether the rights are purely of private character no mandamus can be issued, if the management of the college is purely a private body with no public duty mandamus will not lie. There are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. Mandamus is very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226.

(III) The Writ of Quo-Warranto:

The word Quo-Warranto literally means "by what warrants?" It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The Writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a Writ of quo-warranto against the person and declare the office vacant. The basic conditions for the issue of the writ are that the office must be public, it must have been created by statute or Constitution itself, it must be of a substantive character and that the holder of the office must not be legally qualified to hold the office or to remain in the of-

fice or he has been appointed in accordance with law. Dinesh Prasad v. State, AIR 1984 Pat 13. A writ of quo warranto is never issued as a matter of course and it is always within the discretion of the Court to decide, after having considered the facts and circumstances of each case, whether the petitioner concerned is the person who could be entrusted with such writ which is always issued only in the interest of the public in general. The Court may refuse to grant a writ of quo warranto if it is vexatious or where the petitioner is guilty of laches, or where he has acquiesced or concurred in the very act against which he complains or where the motive of the relater is suspicious. Writ of quo warrants is not a writ which issues as a matter of course and as a matter of right. Indeed it is in the discretion, of the Court to refuse or grant it according to the facts and circumstances of the case. The writ of quo warranto lies in respect of a public office of a substantive nature. It will not lie in respect of an office of private nature.

(IV) The Writ of Prohibition:

Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. This Writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. It is a Writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this Writ proceedings in the lower court etc. come to a stop. The Writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, prohibiting the latter to continue proceedings in a particular case, where it has no legal jurisdiction of trial. While the Writ of mandamus commands doing of particular thing, the Writ of prohibition is essentially addressed to a subordinate court commanding inactivity. Writ of prohibition is, thus, not available against a public officer not vested with judicial or quasi-judicial powers. The Supreme Court can issue this Writ only where a fundamental right is affected. Prohibition is a judicial writ issued from a superior jurisdiction to an ecclesiastical or similar tribunal or an inferior temporal Court including under the latter description, administrative authorities having a duty imposed on them to proceed judicially to, prevent those tribunals from continuing their proceeding in excess of or abuse of their jurisdiction of violation of the rules of natural justice or in contravention of the laws of the land. Amarendra v. Narendra, 50 CWN 449. The writ of prohibition is available only when the inferior Court or tribunal has not made a decision. But if the Court or tribunal has made a decision, in that case, writ of certiorari will lie. The grounds for the issue of the writ of prohibition may be enumerated in the following ways: (1) Absence of jurisdiction; (2) Abuse of jurisdiction; (3) Violation of natural justice; (4) Fraud; (5) Contravention of the law of the land. The distinction between mandamus and prohibition has been well drawn by Shankar Saran, J., in the case of Chotey Lal v. The State of Uttar Pradesh AIR 1951 All 228 "Mandamus is neither a writ, of course, nor a writ of right but it will be granted if the duty is in the nature of a public duty and specifically affects the rights of an individual, provided, there is no more appropriate remedy." Lord Goddard in Rex v. Dunsheath (1950) 2 All ER 741 has observed that the "person against whom it is issued must be either under a statutory or legal duty to do something or not to do something; the duty itself of being imperative nature." The writ of prohibition, on the other hand may be issued against a Minister, an executive authority or semi-public bodies of non-judicial character in order to control their acts of judicial or quasi-judicial nature. As it is well settled that the writ of prohibition can only lie against a body exercising functions of a judicial or Quasi-judicial character.

(V) The Writ of Certiorari:

Literally, Certiorari means to be certified. The Writ of Certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration. The Writ of Certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. In other words, while the prohibition is available at the earlier stage, Certiorari is available on similar grounds at a later stage. It can also be said that the Writ of prohibition is available during the tendency of proceedings before a sub-ordinate court, Certiorari can be resorted to only after the order or decision has been announced. There are several conditions necessary for the issue of Writ of Certiorari, which are as under: (a) There should be court, tribunal or an officer having legal authority to determine the question of deciding fundamental rights with a duty to act judicially. (b) Such a court, tribunal or officer must have passed order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law. The order could also be against the principle of natural justice or it could contain an error of judgment in appreciating the facts of the case. The jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the Court is not entitled to act as a Court of appeal. That necessarily means that the findings of fact arrived at by the inferior Court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact; however grave it may appear to be. Jagadish Prasad v. Smt. Angoori Devi, AIR 1984 SC 1447. Certiorari is thus said to be a corrective remedy. This is, of course, its distinctive feature. The very end of this writ is to correct the error apparent on the face of proceedings and to correct the jurisdictional excesses. It also corrects the procedural omissions made by inferior courts or tribunals.

(b) The Procedure:

A Court fee of Rs. 50, per respondent (i.e. for each number of party, court fees of Rs 50) has to be affixed on the petition. Proceedings, in the PIL commence and carry on in the same manner, as other cases. However, in between the proceedings if the Judge feels that he may appoint the commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems, etc. After filing of replies, by opposite party, or rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

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 nearly 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.

Characteristics of Public Interest Litigation:-

The true nature of PIL is that in it a selfless citizen or an organization having no personal motive of any kind except either compassion for the weak and disabled or deep concern for stopping serious public injury approaches the Court either for—

(1) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system, or
(2) Extending benefit of the statutory provisions incorporating the Directive Principles of State Policy to those who are denied of the same and for the amelioration of their condition, or
(3) Preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest.

The following characteristics of PIL are notable:—

(1) Petitions in PIL are filed on behalf of a group or class of persons.
(2) Petitions are on behalf of such group or class of persons, who on account of their social, economic or other constraints cannot approach the Court for any legal remedy.
(3) Action is initiated in PIL against irresponsible, illegal acts of Government.
(4) It is a new concept of jurisprudence which is developing its own mechanism for justicing.
(5) It is a law proposed and propounded by the Judges.
(6) It gives rise to such causes of action where legal damage has been caused to the public at large or a section of it.

(7) Any public spirited person or member of an organization, who initiates public interest litigation, must have bona fide interest in social welfare, his intentions must be free from malice and he should not start the action under the influence of extraneous considerations.

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 and multifaceted use Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous 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 rampant than its use and genuine causes either receded to the background or began to be viewed with the suspicion generated by spurious causes mooted by privately motivated interests in the disguise of the so-called public interests.

Conclusion:-

Public Interest Litigants, all over the country, have not taken very kindly to such court decisions. They do fear that this will sound the death-knell of the people friendly concept of PIL. However, bona fide litigants of India have nothing to fear. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to then opposite parties. It is actually a welcome move because no one in the country can deny that even PIL activists should be responsible and accountable. In any way, PIL now does require a complete rethink and restructuring. Anyway, overuse and abuse of PIL can only make it stale and ineffective. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints.

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