



A PANACEA IN THE MIRE: PUBLIC INTEREST LITIGATION *

Introduction to PIL and its recourse to corruption

“I will not let anyone walk through my mind with their dirty feet.”
— Mahatma Gandhi

PIL, short for, public interest litigation means which is in the interest of the public. It involves the issues, which talks about public at large but not related to private issues per se. Initially, only the aggrieved party was able to knock the doors of the court if his/her rights were abrogated. Whereas, gradually with the introduction of the PIL, any person who may not necessarily be the aggrieved party can file on behalf of anybody, May it be the court itself or any other person, but it should be in the interest of public at large and should not just keeps affinity with an individual.

Public interest litigation is a concept, which was actually initiated when the need to protect the rights of the socially and economically backward people was ascertained. Krishna Iyer initially sowed the seeds of the concept in India in 1976 through the judgment of **Mumbai kamagarsabha v. abdulthai**¹. The following concept has caught the attention of all concerned. This is a notion, which tends to relax the strict traditional rule of *locus standi*, which states that only the person who has been affected can file a case.²

In India, corruption has always been a well discussed and a rampant issue. Law, as an instrument of social change, has always aimed to curb corruption although has often failed abruptly so far. It has been found that, though, many laws have been enforced in the same direction but not much change is being felt when it comes to practical application. In all the media reports, we come across the news about corrupt MP's, Ministers and other political leaders umpteen number of times.³ At the same instance, the escalation in the rate of red tape in the bureaucratic procedures, the decayed process in all the Government and some non- Government offices gives a stern task to the common man to live commonly. It is indeed the need of the hour to curb corruption so that it does not eat up the whole philosophy of fairness itself.

Public Interest Litigation is a fortification tool for the public's breach of rights. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other

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¹“ What is PIL” by Vineet Kothari and sreshthagupta; retrieved from <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=a4a599a3-ee92-41da-aa0b-b4201b77a8bd&txtsearch=Subject:%20Jurisprudence> on 20th December 2014

² (AIR 1976 SC 1455)

³ Infra note 12

private party. It acts as a panacea for the aggrieved people for fighting against the advent of corruptive activities in the society.⁴ Supreme Court in the landmark judgement of 2-G spectrum case has stated clearly that all the citizens have right to file PIL against any public servant if in case of discharge of duties in a trite manner.

This paper contemplates upon the imperativeness of PIL in curbing corruptive activities in the mainstream, its procedure along with its loopholes, some relevant case laws and what we as law researchers think about the same.

The procedure of filing PIL in India and its loopholes

The importance of PIL is increasing with the enhancement in awareness amongst the people about their rights as well as the rights of the others. Therefore, with the escalation in its demand, the Supreme Court of India, also found it to be the need of the present epoch to establish a set procedure for filing a PIL in the court of law. This step has been taken in order to avoid all its misuses, chaos etcetera. Moreover, it is supposed to be a boon for the common people and its procedure is said to be established in the easiest ways including collecting relevant documents, writing to the relevant authorities, being aware of your demands, hiring a good lawyer or taking good advice for drafting and so on and so forth.

A PIL can be filed in the high court as well as in the supreme court of India depending on the nature of the act. For instance, in the cases of simple complaints like that of against a jail authority for his misconduct, it can be dealt by the high court. However, in the cases of graver offences like custodial death, the Supreme Court can directly deal it.⁵ The process to file a PIL is the same as that of the writ. It is different from a writ in only in the aspect of interest of public at large.

Filing contains:

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 = 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.⁶

As per the Supreme Court guidelines, letter-petitions can only be filed as an ordinary PIL in the following cases:⁷

1. Bonded labour
2. Neglected children matters
3. Non-payment of minimum wages to the workers and exploitation of casual labours and complaints of violation of labour laws but only except in the cases of individuals.
4. Petitions from jails for harassment, pre-mature release, release after completion of 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right.

⁴ “Public Interest Litigation for inquiry into the corruption in jail”, retrieved from http://www.lfhri.org/index.php/index.php?option=com_content&view=article&id=216:lfhri-files-public-interest-litigation-for-inquiry-into-the-corruption-in-jail&catid=30:public-Interest-litigations&Itemid=53 on 20th December, 2014

⁵ Guidelines of supreme court of India retrieved from supremecourtindia.nic.in/circular/guidelines/pilguidelines.pdf

⁶ “Public Interest Litigation”, by Vishal P. Bhatt retrieved from <http://www.legalserviceindia.com/article/1171-Public-Interest-Litigation.html> on 29th December, 2014

⁷ Supra note 5

Only in the above cases then, with the prior permission of the honourable judge of the high court will the petition be forwarded to the bench, otherwise the cell, which constitutes the first part of the whole procedure won't pass it on. Nevertheless, in cases where it is found to be not of the public importance, it will only be filed with the prior permission of the registrar appointed by the chief justice of India. The supreme court of India have also mentioned about when a petition cannot be a part of the public interest litigation such as in the cases of tenant-landlord matters, payment gratuity matters etc.⁸

So far, we have seen that PIL is a helping tool in dealing with the problems at a public level still it has its own **drawbacks and loopholes**. There is no doubt that the abuse of PIL is also increasing with its wider use and manifestation. People take it as a tool to harass because frivolous cases could be filed in the court giving birth to the increased court burden and heavy court fees. In addition, it provokes people to portray personal and individual problems as public affairs that make it possible for the individuals to show their own interests camouflaged as public interests.

At many instances, it is also seen that the Government intervening into the cases filed against their mal practices as happened in **Mudgal case in 1951**. This has to be administered by the Court in order to put halt over stifling prosecution.

Therefore, PIL needs to be scrutinized properly and be checked from time to time in order to maintain it as a boon rather than a bane for the people.

Public Protection litigation- a tool to tackle corruption

The well read Sociologist, Max Weber exhaustively pondered upon the imperativeness of rationalizing the politics and inclusion of bureaucracy. With the advent of bureaucratic set-up, the corruptive activities have taken place in the political spheres. Judicial Activism having orifice in the Article 13 of the Indian Constitution, has affirmatively tried to curb such practices.

Before switching to how PIL tackles corruption, there should be clarity over what is corruption? 'It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish'.⁹

The discourse is being carried forward concerning the nature of PIL and how it acts as a catalyst in redressing the justice to the people whose rights have been abrogated. According to Justice PN Bhagwati, "PIL is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights significant to the deprived and susceptible sections of the community and to assure them social and economic justice which is the upfront tune of our Constitution."¹⁰

Justice PN Bhagwati emphasised upon the reupholstering power of PIL. It paves way to unfold the veil of corruption, constructs a fine fabric to clean the society, and develops transparent people's law. The Constitution of India is not intended to be the arena of legal quibbling for men with long purses. It is constructed for the common citizen that is for the law they can appreciate.¹¹ Constitution of India gives recourse through the monocle of Article 32 and Article 226 in Supreme Court and High Courts in the country respectively. Furthermore, it can also be filed in

⁸ Ibid.

⁹ "Corruption in India: existing laws and how to tackle corruption", by Vidhya Mishra retrieved from, <http://www.wisdomblow.com/?p=569> on 21st December, 2014

¹⁰ "Public interest Litigation", Retrieved from <http://www.lawyersclubindia.com/articles/PUBLIC-INTEREST-LITIGATION-3111.asp#.VJapRv8sA> on 21st December, 2014

¹¹ "Public Interest Litigation and the role of the courts", retrieved from highcourtchd.gov.in on 22nd December, 2014

the court of magistrate under section 133 of Criminal procedure code. The check on corruptive activities has to be administered by the organ of Judiciary. Judiciary acts as a mid wife between people and bureaucrats in mitigating the disputes related to malpractice.

The landmark case came in 2012 in lieu of PIL filed under 2-G spectrum scandal with regard to prosecution of the former IT minister, A Raja for his alleged corruptive actions in issuance of licences of coal blocks. The Bench of Justices G S Singhvi and Asok Kumar Ganguly asserted that all citizens had a right to seek sanction to prosecute a public servant accused of corruption.¹² In addition, every competent authority should take appropriate action on the citizen's representation for sanction of prosecution of such public servant in furtherance with the guidelines set by the Supreme Court in the Vineet Narain verdict in 1998.¹³

“Justice without force is impotent, force without justice is tyranny”

-Pascal in Pensees

Repeatedly court has taken The Prevention of Corruption Act, 1988 into consideration to review PIL's filed against the ill practice of Bureaucrats. The interest of the public has to carapace, as it is the foremost duty of the public servants. The poor people are always prone to victimization and suppression. Through PIL, it becomes easier to enhance approachability to judicial recourse and get the proper way of tackling corruption. It is a justified force, which ensures the legibility of every task; it slams the public servants for the non-accountable services.¹⁴ Any public-spirited citizens can file PIL,

In **People's Union for Democratic Rights v. Union of India**¹⁵, Supreme Court has asserted that on the behalf of socially and educationally backward aggrieved people, any public-spirited citizen can file PIL in the court for getting recourse in terms of eliminating corruptive activities from the official bureaucratic set-up. This is a kind of liberal interpretation enumerated by the court for the betterment of the redressing system.

Most of the PIL's until date have been filed for the environment-legal issues, public health's issues, different medical purposes and for the escalation of the free legal aid. Nevertheless, the issue of increasing corruption activities has been brought into the mainstream arena through judicial help and enhancing legal aid programmes. Corruption is making a vicious circle over the working of a democratic political country, it is taking away the shine of the fine fabric, and it is encroaching upon the trust of the people and polluting the effective functioning of the system. Through Public Interest litigation there could be a creation of flawless and transparent undertaking of bureaucracy. In addition, through this government could be easily informed about the complaints and discomfort faced by the citizens of the country.

Discourse over Public Interest Litigation undergoing approach of judiciary

Endowing to the theory of Roscoe Pound, law is a social engineer. In the same line, PIL could be analysed to engineer the new pattern of corruption less society. It can help in formulating growth of the Indian administration. There have been several instances since the provenience of independent India wherein various scandals have occurred alleging certain corruptive activities

¹²“Public interest litigation for political corruption by M Rafiqul Islam retrieved from <http://www.thedailystar.net/public-interest-litigation-for-political-corruption-16030> on 26th November 2014

¹³ Ibid.

¹⁴ ‘Public Interest Litigation’, by A.G. Noorani, Economic and Political weekly volume 17, retrieved from <http://www.jstor.org/stable/4371696> on 21st December, 2014

¹⁵ AIR (1982) SC 1473

under the rule of different parties and alliances. The corruption charges maintained in the Mudgal case (1951), in the Mundra deals case (1957-58), Malaviya Sirajuddin scandal (1963), and Pratap Singh Kairon case (1963) levelled against the congress ministers and Chief Ministers but then also nobody has ever resigned.¹⁶ Here judiciary has considerably failed to trace any impact of its authority in curbing the corruption in the bureaucracy albeit several PIL's being filed.

However, in the recent times, the judiciary has taken a different move to tackle corruption as many sensitized people have brought the alleged charges of corruptive activities against several ministers in the regime. **In November 2013, the PIL has been filed against Virbhadra Singh**, the former Union steel Minister. The petition stated that there were several primary documents like those that income tax returns and affidavits filed during nomination papers involving the Congress leader to "dubious transactions" and reserves involving large sums of money when he was in the Union government.¹⁷ The Judiciary through this PIL chose path of investigating into these matters and made it a point before the Government of not repeating the same further. **In June 2014, the PIL was filed for the alleged corruption in allocating the public parking lots** against the Chief Minister and Urban Development Department in Mumbai. The government officials tweaked the whole case as the social activist, Pravin Wategaonkar, who called for right to information of the documents involved in the allocation, has found certain loopholes in the procedures and also when enquired about the same from the Chief Minister, no reply has been given for 14 months. The Bombay High Court ordered Chief Minister to reply within the stipulated frame of time for the clearance of all the dues involved in the case. The PIL alleges that the CM and the UDD minister in connivance with each other had been charging exorbitant amounts for sanctioning proposals for allotment of public parking lots.¹⁸

Likewise, several PIL's are being filed for unveiling the mal-functioning of Government and its allies.

Suggestions and analysis

Public Interest Litigation is a boon in the mire of corruption and mal-practices spilling all over the bureaucratic set-up. There has been an increase in the ill treatment of the common people in the arena of legal space. India being a democratic country is moving on an erroneous track in the terms of mitigating the matters related to sleaze and corruption. Public Interest Litigation is a Social Interest Litigation as discussed in the discourse over Fundamental Rights and Directive principles of State Policies. It is an instrument of social change and social engineering, which has to determine the problems of the public and provide a legible recourse to the same.

In Bandhua Mukti Morcha v Union of India¹⁹, Supreme Court has specifically asserted that Government has to ascertain the needs of the poor and impoverished citizens and stifle the ill-practice against them done by the corrupt bureaucrats in the society.

In several ways, PIL is a helping tool to Tackle Corruption,

¹⁶ Supra note 1

¹⁷ "PIL against Virbhadra Singh on Corruption charges", The Times Of India dated November 21,2013 retrieved from <http://timesofindia.indiatimes.com/city/chandigarh/PIL-against-Virbhadra-Singh-on-corruption-charges/articleshow/26116909.cms> on 21st December, 2014

¹⁸ "PIL alleging corruption in allocation of parking lots: Bombay High Court seeks Government reply", Urvi Mahajan, DNA dated 26 June, 2014 retrieved from <http://www.dnaindia.com/mumbai/report-pil-alleging-corruption-in-parking-allotment-bombay-high-court-seeks-government-reply-1997865> on 21st December, 2014

¹⁹ (AIR (1984) SC 802)

- Whenever any matter comes before the court, the whole case should be dealt with in the aegis of protection of common people.
- There should be a panel appointed by the Supreme Court to envisage the suggestions for the Government to placate the plight of the common people.
- The Supreme Court or any court for that matter, keeping all the biases at a bay should assess every PIL carefully.
- Corruption is a synthetic disaster, which has to be demolished from the roots itself and the public-spirited people, who are active in bringing these types of matters to the courts should be encouraged by the same by hosting seminars and legal aid camps and make process more flexible.
- Certain legislations or mechanisms should be crafted to protect the courts from the overarching authority of the government officials so that the PIL must not go in vain.
- PIL is a key to curb corruption, as it is the will of the people to revolt against the mal practices of the higher officials and bureaucrats.

Public Interest Litigation is a new developing face of Indian society and it will bring a social change and reupholster the legal fabric of the country. Therefore, the hypothesis of the paper is addressed reasonably through the discourse led by the key contention.

“The surest way to corrupt a youth is to instruct him to hold in higher esteem those who think alike than those who think differently.”

— **Friedrich Nietzsche**

