

ABSTRACT

Statement of problem Theoretical Framework

The Constitution of India has not fixed the mind to be the central part of legal equilibrium for the common people. They have a sympathetic perception of it and they can raise the price of it. They love it and more they price it. All the poor people of India who are starved, deprived and backward need the protection of court for the safety of their fundamental right and securing their enjoyment of human rights. The Constitutional precedents can not be permitted to be transformed into weapons for defeating the hopes and aspirations of the people, the will of the people can only become articulate through the voice of their elected representatives if they fail to save the people and nation from destruction, then neither the court nor the constitution can save the country. Various social workers have recognized it and even now general public knows that the court as constitutional power of interruption which can be invoked to make better the extreme pain arising from repression governmental lawlessness and administrative deviance.

At the time of independence, the bulk of citizens were unaware of their legal right and there was hardly any link between the right granted by the Constitution of Indian Union and laws made by the legislature as well as the vast majority of illiterate citizens on the other. However this scenario has been changed when Supreme Court tackled problems of access to justice. Public interest litigation has now been developed in recent years and the Supreme Court is now seen as not only reaching out to provide relief to the citizens but also attempted to formulate policy which the state must follow.

Indeed, the fact is that in India millions of people are living without having basic requirements for their livelihood. Still now poor people are often exploited and subjugated the rich as they are economically poor, socially backward, illiterate, and politically not conscious and basically they are very unaware about their basic constitutional right. Though the Constitution of India has guaranteed the fundamental

Rights to all the citizens of India, but the poor section of society are not enjoying the constitutional privileges as they are socially, politically, economically poor."

For the purpose of protecting fundamental rights and obligation of the poor people, the court adopted the rule of public interest litigation as an instrument of social justice which means to solve the grievances against the violation of human rights of helpless poor people. In broader sense, 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 the community have an interest by which the rights are affected. The public interest litigation any member of the society on behalf of person or group of persons whose rights are affected by state action can move the court for enforcement of fundamental rights. The guidelines to be followed for entertaining letters/petition received in the court as "public interest litigation" are given below:-

- 1) Environmental pollution
- 2) Drugs
- 3) Maintenance of heritage
- 4) Cultural forest and wild life
- 5) Problem of riot-victims
- 6) Family pension
- 7) Bonded labour
- 8) Neglected children
- 9) Non-payment of minimum wages to workers 10) Exploiting casual workers
- 11) Mater of violation of labour laws
- 12) Petition from jail complaining of harassment, death in jail, speedy trial as a right
- 13) PIL against police for refusing to register a case 14) Death in police custody
- 15) Harassment or torture of villagers by co-village or by police
- 16) Petition against harassment of bride, bride burning, rape, murder, kidnapping etc.

In 1981 justice P.N. Bhagwati in S.P Gupta vs. Union of India case 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 person by reason 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 supreme court under article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons."

But it is humbly said that public interest litigation still is in experimental stage. Many deficiencies in handling the kinds of litigation are likely to come on front. For example in the directive principle of state policy in part IV of the constitution we can find that the constitutional goal of socio-economic order was setting out. But we can see that there was one feature of our national life which was ugly and shameful and which sought for urgent attention and that was the existing bonded labour in large part of the country. Without any check or control or improvement in this area the prevalence of bonded labour is still prevalent all over the country in spite of the promises made in the constitution.

Our society is facing another important problem that is related to women problem. Not only in India, in the whole world, women are often exploited in various forms. One such kind of form is Muslim divorce. After getting divorce they are facing a lot of problem in maintaining their livelihood. Due to divorce from husband the right of Muslim women is violated in various senses. The problem is that having sufficient means to maintain their live, his wife and his little children are often becoming negligible because husbands often refuse to maintain them after divorce and then the minor children have to live with the divorced wife.

Another big problem which our society is facing is about the role of police force. As we know the role of police force is for maintaining law and order, investigating into crimes etc. but problem is that they are playing inactive role. They are taking part in corruption, custodial violence, lock-up death, torture, encounters crimes against women etc. Even they are misusing the rules and regulations in regard of national security. Due to brutal behaviour of police several innocent people are sacrificing their life because of encounter. But in *Chaitany Kalbagh vs. state of U.P* court had issued suitable directions. Where seven persons were abducted by senior police officers, the court had directed personal enquiry by director of central bureau of investigation. But all these are not proper solution in the sense that in spite of court direction inaction of police force still continuing.

Public interest litigation has given rise to another set of problem as well. Sometime the opposite party gets an opportunity to ascertain the precise allegation and respond specific issue. The public interest litigation concerning to exhaustion of forest envelop is a case in print. As petition initially drafted and accessible, pertained to the capricious feeling of their

trees in Jammu and Kashmir. The PIL has now been bloated by the court to cover all forest throughout India. Therefore individual states will not be able to retort to the original persuasive as such, since it may not apprehension them at all. The report given by court allotted commissioners lift up problem concerning their evidentiary value. No court can initiate its decision on the specifics unless they are proved according to law. This implies the right of a rival to test them by cross-examination or at least counteract affidavits. In such occurrence the exaggerated parties may have scruple about the role of the court.

Even debate over restrictions of judicial activism, predominantly in the field of public interest litigation, has been strong in the political field too. The attempts by the judiciary through PILs to go into the area of policy making and policy implementation have caused apprehension in political circles. A private member bill public interest litigation bill, 1996 was nominated in Rajya Sabha. According to it the public interest litigation was disgustingly distorted. Moreover PIL cases were being given precedence over other cases, which had remained pending in the court for years. It was urged that if a PIL petition filed the petitioner should be put behind bars and pay the compensation.

Although the bill passed, debate in parliament exposed some of the criticism and doubtful that PIL had begun to create a centre of attention.

The trustworthiness of PIL process is now unfavourably exaggerated by the condemnation the judiciary is overstepping of its jurisdiction and for that it is unable to supervise the effective implementation of its orders. It has also been more and more felt that PIL is being distorted by the people agitating for confidential accusation in the clutch of public attention and looking for advertising rather than espousing public cause. The judiciary has itself documented and uttered these concerns sporadically. A further apprehension is that as judiciary enters into the policy making field, it will have to manner new remedies and device for ensuring successful observance with its regulate. A judicial system can undergo no greater lack of integrity than an awareness that its order can be flouted its impunity. This court must desist from passing order that can not be enforced, whatever the fundamental right may be. It serves no purpose to high outline mandamus or declaration that can stay put on paper. Although the Supreme Court passes interim orders for relief, rarely is a final decision given and in most of the cases, the transcribe is poor.

The Objectives of the present study are:

1. To focus on the effectiveness, abuses, pitfall and drawbacks of the public interest litigation as an instrument of social justice.
2. To solve the problem being faced by our society.
3. To achieving the goal set out in the preamble of the constitution.
4. To provide justice to the poor, downtrodden and disadvantage section.
5. To viaduct the gap between the haves and have not.
6. To sewerage workers.
7. To ensuring the right to equality, life and liberty for those who suffer from handicaps of poverty, illiteracy and ignorance.
8. To direct for implementation of the laws enacted by the legislature for the benefits of the have-nots.
9. To develop a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community.
10. To lead a broader interpretation of our constitutional provision wherever possible.
11. To establish a framework and principles of government to develop of our several communities.

Brief review of literature:**'Public interest litigation in India: A Renaissance in Social Justice' by Mamta Rao:**

This book gives a short account on the past, present and future of the public interest cases in India and abroad. This book traces the origin and development of public interest litigation in India, America and Britain with references at places to Pakistan, Bangladesh and Canada. The dynamics, trends, procedures, limitations and dilemmas of public interest litigation have also been contract with out of a huge of volume of case- law coming from Supreme Court and high court priority has been given to decisions of the Supreme Court on topics of importance. The book takes a look into-the background of public interest litigation and its acceptance in varying degrees in the different countries of the world including India. The dynamics, trends, procedure; innovations, limitations and dilemmas of public interest litigation have been well explained. The concept of locus stand, procedural and judicial innovations, the problems and the expectations from public interest litigation have all dealt with by the author in a new light. This very well researched and clearly written book is indeed to the scarce literature on the subject.

The scope of this book has been further inflamed by adding a new chapter on appliance of PIL to present legal questions like release of Bonded Labour; Protection of Environment versus Economic Development is equally educative. This very well researched and logically written book is really a valuable addition to the meagre literature on the subject. As a whole, the book is an invaluable asset, not only to the legal alliance but also to the general public to learn the process of asserting their rights against State action. The expedition for social justice and the invasion of injustice are best served by the application of the principal of public interest Litigation.

This book also takes a look into the conditions of Public Interest Litigation and it's receiving in unreliable degrees in the different countries of the world including India. The dynamics, trends, procedure; innovations, limitations and dilemmas of Public Interest Litigation have been well explained. The scale of this book has been further blown up by adding a new chapter on 'Law Relating to Legal Aid and Lok Adalats'. The work has been lengthily revised for its new second edition and latest decisions of the Supreme Court and the High Courts have been included. The Courts have entertained PIL to uphold the self-respect of human beings, defend human rights particularly of the weaker section of the society and provide social justice as enshrined under the Indian Constitution and International Conventions. The courts have also developed a new area of compensatory jurisprudence. In protecting the rights of women, the prisoners and under trials, children, public health and safety, rule of law, the courts have also provided compensation to the victims.

The Supreme Court's pronouncement in PUCL v. Union of India has broadened the horizon of PIL. However, in some of its recent decisions of 2004, the Supreme Court has also sounded a note of caution in entertaining PIL. The court has in clear terms held that, when there is material to show that a petition styled as public interest litigation is nothing but a camouflage to foster personal disputes, the petition should be thrown out. The court has laid down detailed guidelines for treating a petition as public interest petition.

Public Interest Litigation' by s. Jain:

This is a revolutionary work in the field of Public Interest Litigation (PIL). The instigation of judicial activism by some active judges of the Supreme Court in the early eighties has opened new frontiers in the field of human rights. The Supreme Court and High Courts have started giving remedies to the distress ample by comforting the rules so as to give justice to all. In prickly contrast to USA and UK public interest litigation emerged in India for the sake of

teaching millions so as to offer easy access to justice. The judiciary is now not indifferent to the depressed and deprived people. The judicial activism through PIL helped not only the prisoners, widows and poor and children but had confident the legislators to make laws in the field of legal aid. The dowry wounded and persons belonging to SC and ST also expected social justice through PIL. All these topics have been covered in this book. The book also contains an in-depth study of the reforms made through PIL in the areas of administrative effective and executive defiance so as to protect the helpless masses. It is a tremendously researched work and would show a milestone in the development of PIL through judicial activism. The book also deals with social action litigation and social justice as well as PIL against state. The book has specially covered the aspects of PIL as a means by which justice percolates down to the masses and victims of injustice

Public Interest Litigation and Environmental Protection by G Chandra:

In this book G Chandra has discussed PIL as a ray of trust in the dim space of injustice and highlight on the concept and nature of public interest litigation. The air of judicial enforcement rushes in to all emptiness caused by administrative abandonment. It is Public Interest Litigation that confronts that one and invites resolution by the other. Environmental control is also the subject matter of PIL. It covers environment, ecology, dreadful conditions of forests in forest cover area: air, water pollution; vehicular, industrial, noise pollution, smoking and public health. This book is first of its kind on PIL and environmental Protection...This book contains study of three decades in which environmental litigation works effectively with the help of Public Interest Litigation. The Author-s study is evolution of environmental jurisprudence in Indian scenario. The emergence of Public Interest Litigation has relaxed the traditional rule of standing considerably brought into existence the citizen standing. The author-s suggestions regarding PIL in environmental issues are incorporated in the present book.

Public Interest Litigation in India: Concepts, Cases, Concerns by Videh Upadhyay:

This book provides a complete perspective on the principles and practice of public interest litigation. In this book Videh Upadhyay has explain the legal principles at work in public interest litigation. Then this book examines all the public interest litigations in the Supreme Court and the high courts in separate themes, including public interest litigations on civil liberties, socio-economic rights, labour rights, large infrastructure projects, environment, economic policy, judicial accountability and political accountability in detail. Finally, some of

the rising concerns and controversies relating to the practice of public interest litigation, including aspects relating to its abuse and how it interplays with judicial activism in the country are discussed. Some fresh themes and perspectives including public interest litigation in the globalization era and emerging trends within different public interest litigations are also provided.

Public Interest Litigation in Asia by Po Jen yap:

This book has an input to the growing discourses on public law in Asia. Surveying many important jurisdictions in Asia as well as mainland China, Hong Kong, India, Malaysia, Singapore, South Korea and Taiwan. The book addresses new developments and experiences in the field of public interest litigation. The book offers a relative perspective on public law, asking vital questions about the role of the state and how confidential citizens around Asia have increasingly used the forms, procedures and matter of public" law to go forward public and political aims.

In addition to addressing exact jurisdictions in Asia, the book includes a obliging and foreword that highlights local trends in Asia. In the jurisdictions profiled, transnational public interest litigation trends have commingled with local dynamics.

Public Interest Litigation by Lembert m surhone:

This book focuses on what is public interest litigation? 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. Such cases may occur when the victim does not have the necessary resources to start litigation or his freedom to move court has been concealed or encroached upon. The court can itself take cognizance of the matter and precede suo motu or cases can" commence on the petition of any public-spirited individual

Public Interest Environmental Litigation in India, Pakistan and Bangladesh by

Jona Razzaque:

This book examines the growth and expansion of public interest environmental litigation (PIEL) in India and analyses the changes that are influencing the development of PIEL in Bangladesh and Pakistan. The necessity for this book lies in the fast squalor of environment and the need of well-organized environmental management in the three countries of the South Asian region. Here, we compare the legal systems of the three countries from the environmental point of view, discuss new ideas and directions and critically analyze the legal provisions that would help to apply environmental norms. These offer the legislators a chance to find out what can be applied in their own region, thus developing their existing legal mechanisms.

People, Law and Justice: Casebook on Public Interest Litigation (Vol. I) by S"

Ahuja:

This book examines all the reported and unreported cases of Public Interest Litigation (PIL) from its beginning in 1979 to April 1994. The author stresses that the law is not autonomous, but embodies the priorities of those concerned in establishing and maintaining a legal system. The book shows how PIL provides a means whereby the terms of the legal discourse may be challenged; equally the author shows how PIL suffers, paradoxically, by being a part of the very system it seeks to question.

Criminal Law, Criminology, and Criminal Justice: A Casebook by William J"

Chambliss:

This casebook analyzes existing case law and discusses the various arguments for and against the decisions of the court. The goals of this book are to provide understanding the social, political, and economic forces at work in the formation and understanding of criminal law and to make the material easier to get to via the sociological viewpoint and such educational aids."

Defending Interests: Public- Private Partnerships in WTO Litigation by Gregory C Shaffer:

This book examines the growing communication between confidential enterprises and public officials to challenge foreign trade barriers. Structure on more than one hundred interviews with previous and current trade officials and private attorneys in the United States and

Europe, Gregory Shaffer calls attention to the ways in which well-organized private parties are using the World Trade Organizations legal system to go forward their own profitable ambitions, and how public officials increasingly are dependent on their help. Shaffer assesses the historical, political, legal, economic, and cultural factors that have affected the formation of these ad hoc public-private partnerships, as well as trends in the European Union toward U.S.-style practice. He considers the implications of these public-private trade litigation networks for the effectiveness and equity of the WTO system and the stability of U.S.-E.U. relations.

Civil Litigation: Civil Litigation by Colette Reid:

This book covers every stage of the civil litigation process - with checklists, precedents, and relevant forms. Throughout, the Manual provides succinct, practical advice – giving a thorough grounding in the subject and tackling difficult issues of practice and process. I have found in this book that Civil Litigation as an editor.

Public Interest Litigation in India: A Critical Review by Surya Deva:

In this book I have found 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. PIL could also contribute to good governance by keeping the government accountable. This book shows that PIL could achieve these important objectives.

Mahendra P. Singh - Shukla's Constitution of India, 10th edn (Lucknow: Eastern Book Co, 2001):

This book shows that the judiciary is the "sole" and "final" judge of what constitutes basic structure of the Constitution. Over a period of time, various provisions have been given the higher pedestal of basic structure or basic features of the Constitution, e.g. independence of judiciary, judicial review, rule of law, secularism, democracy, free and fair elections, harmony between FRs and DPs, right to equality, and right to life and personal liberty.

Supreme Court of India: Practice and Procedure-A Handbook of Information (New Delhi: Supreme Court of India, 2007):"

The handbook issued by the Indian Supreme Court reads: [PIL] is meant for enforcement of fundamental and other legal rights of the people who are poor, weak, ignorant of redressed system or otherwise in a disadvantageous position, due to their social or economic background.

Jamie Cassel's,"Multinational Corporations and Catastrophic Law" (2000):

This book has suggested that in recent years the Supreme Court has been influenced by liberalization and corporate business interests at the cost of human rights.

Arun Ray Mohapatra - Public interest litigation, Radha Publication, 01-2003:"

I have gone through this book and found that the whole book focuses on public interest litigation from the perspective of human right. This book seeks to explore present day's burning issues of labour, women and environment and try to asses the effectiveness of pil in the Supreme Court with regard to the protection of civil right.

Dr. Ashutosh - Rights of Accused,Universal Law Publishing,2009

This book is about the study of rights of accused in the criminal justice administration vis-a-vis people belonging to the poverty class who on account of their powerlessness and noiselessness are not in a position to exercise those rights which makes them more vulnerable to insecurity in life and consequently they are not able to exploit the economic opportunities. Hence they are exposed to ill-treatment by the institution of state and society. Unless and until democracy uses its mighty weapon of "Rule of law" and to restore equality before law and balance of economic structure, so as to remove of economic tension from the body politic of the community, the problem of poverty, which is the world's greatest challenge, cannot be successfully met.

Ran Hirschi - Towards Juristocracy: The Origins and Consequences of the New Constitutionalism

This book declines into a shallow and well-worn critique of entrenched rights, where any deviation from social democratic policies is seen as necessarily evil. Hirschi makes little attempt to actually engage with the principled arguments behind judicially-protected

liberalism; rather, he sees only hegemony and poor-hating neoliberalism. A strong discussion would have resulted if he was willing to set aside, or at least acknowledge, the point in the political spectrum he assesses constitutions from, instead of presenting his view of the welfare state and collective rights as self-evidently and objectively superior.

However, the book does serve as a good introduction to the constitutional histories of Canada, New Zealand, South Africa and Israel; Hirschi tends to separate his analysis from a more balanced historical summary within each chapter. As a general call for a broader, global approach to the field of constitutional law, the text succeeds, and I am eager to answer his call for more comparative research; as a specific critique of the four constitutions, I find it quite lacking.

Farrukb Dall - Public Interest Litigation and Public Rights

Public interest litigation (PIL) is a new force for social justice. PIL is a very important and useful Legal Avenue against violation of public rights and protection of people interest, thus, a significant and increasingly influential form of legal action. PIL is a powerful agent of social Change, most common in countries having strong traditions of judicial independence such as USA and India.

The study seeks to answer the following research Questions:

1. What is public interest litigation?
2. What are the nature and scope of public interest litigation?
3. What is the background of the origin of PIL in India?
4. What is the present condition of PIL in India?
5. What is the role of Supreme Court to provide justice through PIL in India?
6. What are the problems being faced by our society.
7. What are the mechanisms of the protectors of law?
8. What is the role of PIL as an instrument of social justice?

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