



Beyond Private Interest Litigation: Keeping Public Interest Litigation on the Right Track

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Abstract: Public Interest Litigation (PIL) serves as an effective mechanism to secure justice for the public. It works as a commendable legal instrument for fetching public welfare. It has the capacity to compel the system to implement beneficial policies for all. PIL possesses its distinctive characteristics from the private interest litigation (PL). PIL operates primarily for public interest, whereas, the PL focuses on personal grievances. This paper underscores to maintain the distinction between these two legal recourses. This study explores the potential misuse of PIL for private interests: it has analysed leading case laws from both the Indian and Pakistani jurisdictions. Through this analysis, this article illustrates how PIL is often attempted to be misused. In the end, this study has provided certain recommendations for our courts to follow when they entertain PIL cases. It concludes that PIL is a collaborative effort of all us to give voice to the voiceless. It should never be allowed to be misused. The courts have a primary role in this regard to play in maintaining the integrity and proper use of PIL.

Keywords: Public Interest Litigation, Misuse of Public Interest Litigation, Private Interest Litigation, Public Interest.

1. Introduction

Justice is the primary gauge to measure of social developments of the disadvantaged citizens. However, there are several other obstacles that may hinder destitute ones from the justice. It may include lack of education, financial limits, and the unnecessary expenses of court proceedings. Moreover, occasionally societal pressures and fear of retaliation can also deter them from following the legal remedies available to them. These issues underscore the importance of legal empowerment. For this purpose, there is a special instrument that is legally available to empower poor persons: it is called Public Interest Litigation (PIL). The judicial system of our country is also accepting this new mode and method to help those who are oppressed, downtrodden, or have no means to knock on the doors of courts (N. U. Khan, 2020). PIL has now been judicially recognized because courts have taken judicial notice of the fact that many people have no resources and sources to access justice. The delivery of justice is the duty of the state. Welfare of the state is now a fundamental approach of every organ of the state. (Tariq et al., 2024).

PIL is being used so that the law will help the public who are struggling in society, even if the one who is representing the public does not have a personal reason to do so. It is a new way and available for everyone and

anyone to stand up for justice, the rights of others, and to seek help from the courts in enforcing and safeguarding their rights (Bliss, 2023). But sometimes, people misuse PIL for their own self-interested reasons. It causes wastage of time of the court besides misuse of public exchequer. It creates doubt in the mind of courts whether the litigant came for public interest or private interest. It also causes fair-minded and rightful people fear to use PIL (Jain & Lamba, 2024). Therefore, it is important to use PIL conscientiously and not for personal gain. As the PIL is now considered as a powerful tool to protect and safeguard the welfare, at the same time, there is also a potential that it can be misused in the hands of evil-minded litigants. This poses a risk for its integrity. We are required to ensure that this tool remains in good hands. For this purpose, primarily active judicial supervision is an essential requirement. This supervision will be able to discourage its misuse as a tool for coercion, to blackmail, or for other hidden motives (Singh & Singh, 2017). In this paper, we will examine the instances where PIL was misused so that genuine usage of PIL can be highlighted.

This research is important for several reasons: first of all, it raises awareness about the workings of PIL and its potential for misuse; secondly, through examination of leading cases this research will contribute to shed more light on the limitations of PIL. Furthermore, through certain essential recommendations this study provide practical guidelines for courts of law in dealing with these cases. This research is conducted with an aim to secure the integrity of PIL so that work of public welfare through its proper usage is not stopped.

2. Research Methodology

This study employs qualitative techniques, including the doctrinal method, to comprehensively understand the phenomenon of PIL and its difference with PL. This research has theoretically analysed the available literature on the subject and investigated it to highlight a holistic awareness of the subject matter. The doctrinal method is primarily used. It is a valuable tool in legal research as it involves the systematic analysis of jurisprudential principles, statutes, case law, and other legal sources to elucidate the legal concepts and their practical applications (MD, 2019; VanGestel & Micklitz, 2011).

Through doctrinal analysis, this research will attempt to develop a test or a criterion to distinguish between genuine PIL and frivolous PIL. This criterion will establish objective parameters governing PIL on the basis of legal principles, precedents, and judicial interpretations. By proposing a test to identify genuine PIL, this research seeks to address existing apprehensions regarding the misuse or abuse of PIL for ulterior motives. The findings of this research will contribute to increase the effectiveness and integrity of PIL. It will aid the social justice and public welfare objectives.

3. Characteristics of Public Interest Litigation

PIL fundamentally permits anyone to bring a case to court on behalf of the public and for the public good. It is not like typical case which has its focus on private grievances. PIL confronts broader issues. These issues are those which have a tendency to affect the rights and interests of a community or group. These may be financial, legal, or even social in nature (Bakshi, 2018). After Independence, the Pakistani judiciary mainly followed traditional Anglo-Saxon principles including the principle 'aggrieved person' which initially confine judicial activism. Resultantly, this adherence favoured the elite over the deprived. However, in the late 80s, the judiciary began to actively protect the rights of common people from the incompetent and dishonest public functionaries. PIL was the main tool (Ullah, 2013).

In Pakistan, there is a scholarly believe (M. S. Khan, 2014), that two important decisions of the Supreme Court of Pakistan: 1) Benazir Bhutto case and 2) Darshan Masih cases in 1988 and 1990, have played a big role in starting PIL (*Benazir Bhutto v. Federation of Pakistan 1988; Darshan Masih v. The State 1990*). These cases showed that main goal of PIL is always to make sure that everyone, especially those who are underprivileged or marginalized parts of our society, receive fair treatment. It gives them power to fight for their rights in an unusual way.

PIL stands apart from traditional court proceedings due to its unique features. One key aspect is its broadened permission to the concept of "locus standi" (Antony, 2023). In PIL cases, persons or groups of persons or anyone alone can represent the community or the public good in the court, even if he or they have not been personally affected by the issue or have no personal matter. Today, in our country the courts have recognized that the traditional rule of locus standi does not apply to PIL (*Imran Khan v. Election Commission of Pakistan 2013*) because it aims to enforce the rights of citizens at large. Furthermore, in PIL cases informal procedures are used, with an aim to make flexible and quicker resolution of disputes as compared to regular court proceedings. Courts are now even more willing than before to adopt flexible approaches in these matters. Additionally, in these cases

the typical adversarial court styles have also been changed. They are embracing a more inquisitive role. They are actively investigating cases to achieve true justice for the poor. Moreover, PIL increases accessibility to courts. In these cases, petitions can be filed directly in any higher court. Besides courts they can even take notice of public interest issues on the basis of letters, postcards, or even news reports. This unwinds combination of relaxed procedural requirements, active judicial involvement, and easy access to courts have made PIL a powerful and responsive tool for the deprived and underprivileged to tackle their matters of public interest (See, *Al-Jehad Trust v. Manzoor Ahmad Wattoo 1993*; *Sh. Riaz ul Haq v. Federation of Pakistan 2013*; *Syed Mubashar Raza Jafri v. Employees Old Age Benefits Institutions, 2014*; and *Syntron Limited v. Huma Ijaz 2014*).

3.1 Public Interest Litigation (PIL) vs. Private Interest Litigation (PL)

PIL and PL differ considerably in their scope, purpose, and in their beneficiaries (Zhongshun, 2017). PIL is initiated to tackle those issues which have a broader impact on society at large or those which involve a significant section of the population. It aims to promote public welfare. It is also used to protect constitutional rights, and to enforce existing laws for the benefit of the general public. Whereas, PL revolves around private grievances or personal disputes (Bharat, 2017). It involves personal interests, rights, or obligations. PIL primarily benefits that portion of the general public who lack resources or means to assert their rights by themselves through conventional litigation. It seeks to improve the collective interests of society. It always claims justice for marginalized communities. On the other hand, PL primarily benefits the parties themselves who are directly involved in the litigation, such as persons and corporations, etc (Jindal, n.d.). Their private rights or interests are at stake. PIL cases can be initiated by any person or anyone or any organization who is acting in the public interest (Ali & Aziz-ur-Rehman, 2021). They often face relaxed procedural requirements for their legal standing (Abbas, 2021; Hussain, 1993). However, in PL cases which are typically initiated by the aggrieved parties directly affected by the dispute, required to prove their legal standings in courts on the specific relief which they claim. The following table illustrates the main differences between PIL and PL.

Table 1: Difference between PIL and PL

| Feature | Public Interest Litigation (PIL) | Private Interest Litigation (PL) |
|--------------------------------|--|---|
| Focus | It is used to address the issues of rights and interests of the general public good: such as social justice issues, environmental protection issues, and fundamental rights issues. | It is used to addresses private nature and personal issues or grievances: such as financial disputes, breach of contract, personal injury, and property rights, etc. |
| Standing (Locus Standi) | Here the principle of locus standi is relaxed: anyone can file it if the public interest is at risk. | Here the principle of locus standi is strictly followed: only those who are directly affected party can file it. |
| Procedures | Here the procedures which are followed by the courts are informal in nature: courts prioritize expeditious resolution of disputes and with flexibility, they also relaxed some rules of evidence, and they use inquisitorial approach. | Here the procedures which are followed by the courts are formal in nature: they are bound to follow the legal procedures, and the rules of evidence to decide the case, they used adversarial approach. |
| Outcomes | Here the outcomes are broader in nature: they are societal benefits, it may include policy changes, and reforms, etc. | Here the outcomes are specific in nature: they are for the individual plaintiff or plaintiffs, it may include financial |

compensation, rectification of wrongs, and their enforcement of rights, etc.

Reason for Differences

The main reason to allow this difference is to encourage public participation in PIL, and to facilitate speedy action on the public issues.

The main reason to not allow relaxed rules as in PIL is to prevent frivolous litigation and to ensure that lawsuits are legitimate one and decided once for all.

3.2 Misuse of Public Interest Litigation

PIL being a powerful tool for social change is not without its vulnerabilities and exposures to misuse. One of the main concerns is its potential for abuse and misuse. This is also a reality that frivolous petitions are now being filed in courts in the name of PIL for personal gain, self-promotion, or political agendas (Jain & Lamba, 2024). They may clog the judicial system. They may also distract resources, time and energy of court from genuine public interest cases. Furthermore, it is also a reality that above discussed relaxed procedural standing requirements are able to be exploited by those persons who have hidden motives (Singh & Singh, 2017). It means PIL can be used as a tool to harassment or coercion through litigation. To ensure PIL remains in good hands as a force for good, we need a vigorous judicial oversight. This is one of the ways to discourage the use of PIL for illegitimate purposes and to protect the integrity of this important legal instrument for the public good only.

Aggarwal (2021) argued that the benefits of PIL have contributed substantially to its growth. However, with its evolution, it has also revealed its own shortcomings and some drawbacks. Due to its extended and diverse range of applications, in courts instances of abuse have also risen. It is now increasingly being utilized as a convenient means for harassment in frivolous cases. Therefore, it is essential to recognize that it must be used with great care, caution and discretion. The judiciary must exercise its extreme vigilance to ensure that beneath the guise of serving the public interest, there are no other hidden agendas of personal vendettas or publicity shows. The courts of law must not permit its processes to be manipulated for ulterior motives (Kirpal, 2000). Furthermore, it has given rise to other challenges such as an unforeseen surge in the workload of higher courts; the insufficient judicial infrastructure to handle factual inquiries; the disparities between stated intentions and actual outcomes; the misuse of legal procedures; the conflicts with other branches of the government, and the risks associated with judicial populism (Deva, 2009).

3.2.1 Pakistani Cases

The following are instances in our country's jurisdiction where courts detected the misuse of PIL and rejected the claims of petitioners.

3.2.1.1 Privatization of Habib Bank Limited Case

In this case the court raised a query: "Do the petitioners have locus standi to challenge the privatization of HBL?" The court dismissed the petitions and held that the law courts have to guard against frivolous petitions. It is a matter of common observation that, in the guise of public interest litigation, such matters are being brought before the Courts which are neither of public importance nor related to the enforcement of a fundamental right or they are related to public duties (*Dr. Akhtar Hussain v. The Federation of Pakistan 2012*).

3.2.1.2 Advocate General Appointment Case

In this case, the petitioner challenged the appointment of the Advocate General. He claimed that the Governor could only appoint someone as Advocate General if they were qualified to serve as a Judge of the High Court and had a retirement age of 62 years. However, the incumbent Advocate General was ineligible for the position as he was 73 years old. The court held that the positions of High Court Judge and Advocate General were distinct. If the framers of the Constitution intended to prescribe an upper age limit for the appointment of the Advocate General or set a retirement age for them, they would have explicitly stated so in the constitution. The court observed that in matters of PIL, courts should reject mischievous petitions which are attempted to challenge lawful executive actions for ulterior motives or to gain so called popularity. Such petitions consume the valuable time of courts and

they also hinder the resolution of other cases. Consequently, the court dismissed the petition with costs (*Mazhar Rasool Hashmi v. The Govt. Of Punjab 2023*).

3.2.1.3 Aurat March Case

In this case, the petitioner seeks to ban Women's March, on the basis of arguments that it was against socio-cultural norms. However, the court held that there was nothing objectionable in the specific slogan as cited by the petitioner. The court held that the slogan merely aimed to convey the idea of women with autonomy over their own lives and actions. Women rights are also human rights. In a democratic country, women are entitled to be granted full range of freedoms as are guaranteed by the law and constitution. Furthermore, on the issue of PIL, the court observed though the petitioner sought to portray the matter as in the public interest, however, the court must differentiate between genuine PIL motivated by public welfare and litigation motivated by a desire for publicity or private agendas. In the end, the court dismissed the petition while imposing costs.

3.2.1.4 Broadcasting of Cricket League Case

In this case, the legality of a partnership/joint venture agreement between Pakistan Television Corporation Limited and two private entities for the broadcasting rights of a cricket league was questioned. The petitioner company argued that PTVC, without consulting them or other available broadcasters could not directly contract with one company. The petitioners assert that their case falls in PIL. But the court observed that whenever one asserts that his case is PIL one must unequivocally demonstrate his or her genuine intent of serving public interest, rather than taking advantage of court for personal agendas. The court should not use their power of judicial review to protect private interests at the expense of public welfare (*Independent Media Corporation Pvt. Ltd. V. The Federation of Pakistan 2022*).

3.2.1.5 Procurement of Police Uniform Case

In this case, the petitioner challenged the procurement of police uniforms approved by the Provincial Government and police force. He alleged that there is a violation of public procurement laws. However, in the court upon review, it was found that the tender process adhered strictly in accordance with law. The court held that the introduction of new police uniforms was a policy matter; it does not warrant intervention by the High Court. The Court also condemned the petitioner for misusing the PIL and dismissed his case with the special costs of Rupees Ten Thousand (*Mian Shabbir Asmail v. C.M. Punjab 2017*).

3.3 Indian Cases

Following are instances of misuse of PIL in the Indian jurisdiction where courts detected and rejected the claims.

3.3.1 Building License Issued for Construction Case

In this case, a Vigilance Group initiated the PIL with the allegations that the approval of a building license for a multi-storeyed construction project in Bangalore lacked legality and validity. They demand to dismantle the already build structure. However, the court dismissed the petition and expressed its apprehensions about the misuse of PIL. Even though recognizing its efficacy and use in reforming societal issues, the court highlighted in this case certain instances where PIL had been exploited by petitioners. The court stress the need for judicious utilization of this tool. It also cautioned against its frivolous use motivated by personal vendettas or professional rivalries. It also stressed the importance of prudent decision-making in these cases to prevent the use of courts from abusing their own powers. However, the court encouraged for a judicious approach for the PIL cases, and held that its usage should only be for the benefit of a large segment of the populace, especially those who are lacking access to legal recourse in normal circumstances (*R & M Trust v. Koramangala Resi. Vigilance Group & Ors 2005*).

3.3.2 Service Matters

In matters regarding service issues, the courts of law have unequivocally ruled that PIL is not admissible. The court, in a case, emphasized that if they will allow PILs initiated by unrelated parties to be entertained by the Service Tribunals, then it would undermine the very primary objective of the Tribunal (*Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and Others, 1998*).

3.3.3 Covid-19 Case

In this case, the petitioner approached the High Court to make COVID-19 test compulsory for all candidates in the

Tamil Nadu Legislative Assembly. They urged the court to issue a writ of Mandamus. The petition argued that this step was essential to protect the other voters from possible infection. However, the court considered that his petition was baseless and dismissed it. Moreover, the petitioner was barred by the court from filing any such type of additional petitions for the period of one year (*SPV Paul Raj v. The Chief of Electoral Officer and Anr 2021*).

3.3.4 Broadcasting Deaths Case

In this case, the petitioner submitted that his case falls within the PIL and he asserts that the news channels should be refrained from broadcasting the death toll caused by the pandemic because it was causing panic among the general population. However, the Court rejected the petition. The court relied on the right of the freedom of speech and expression. Additionally, the court remarked that such reporting of the actual number of deaths during the pandemic does not constitute negative news or any kind of panic. The case is not of PIL (*Lalit Valecha v. Union of India 2021*).

3.3.5 BALCO Case

In this case, the Union lodged a PIL while opposing the decision of the government to divest (sell a part of ownership) in BALCO. The Union has mainly argued that this divestment would negatively affect public welfare in multiple ways, including its impact on workers, on their economic consequences, and also on social issues such as environmental concerns. The court dismissed the petition. It observed that PIL is not a cure for all issues. Originally, it was designed to protect and safeguard the fundamental rights of the vulnerable part of our society and also for the disadvantaged. It allows a public-spirited person to file a petition on their behalf because they could not access courts due to poverty or other social and economic obstacles. However, there has been a rise in its misuse. Therefore, it is also very important to clarify its boundaries. It provided certain guidelines for use of PIL (*Balco Employees Union v. Union Of India & Ors 2002*).

4. Recommendations

In Paragraph 181 of the *Balwant Singh Chauhal Case*, the court has outlined a strategy that our courts could adopt in PIL matters:

1. The Courts should promote only and only genuine and sincere PIL matters.
2. They should effectively discourage and prevent use of PIL for ulterior motives.
3. The courts should not allow individual judges to devise their own procedures for dealing with such cases.
4. Each High Court should establish comprehensive rules for the PIL
5. The courts should conduct a preliminary verification of the credentials of petitioner(s) before entertainment of PIL.
6. The courts should also ascertain the accuracy of the contents of the petition in writing before acceptance of PIL.
7. The courts should verify and must be fully convinced that the matter involves a public interest.
8. The courts should also ensure that it is aimed to highlight a genuine public issue, harm or injury to them and the same is not motivated by any personal gain, private agendas, or ulterior motives.
9. The courts should also discourage petitions filed by troublemakers for their own improper motives through the imposition of exemplary costs upon them.
10. The courts could also use any innovative method to deter these frivolous petitions filed for any extraneous reasons.

5. Conclusion

PIL has emerged as an innovative approach during the late 1970s and early 1980s in India and Pakistan. Its main aim was to give voice to that significant portion of our societies who are poor, marginalized, and who are lacking the means to access the higher courts for their grievances. Hence, it became the avenue through which a voice was provided to this sizable yet voiceless segment of our society (*State of Uttaranchal v. Balwant Singh Chauhal & Ors 2010*). The procedures were relaxed, where even a simple letter or postcard could suffice to initiate these proceedings. And because of these relaxed requirements it is also being referred to as epistolary jurisdiction (*The State of Jharkhand v. Shiv Shankar Sharma 2022*).

It is serving as a means of providing legal representation to those groups who were historically underrepresented in our legal system, such as the poor, disadvantaged, and the ordinary citizen. It is a ground-breaking strategy and it

should be aimed at facilitating easier access to justice for the marginalized segment of our society. It should be used to empower them to combat exploitation and injustice. It is not like traditional litigation between the two parties: it is initiated for the protection or enforcement of the rights of the public at large. It is used for their progress and development and for their public interest. PIL is basically a collaborative effort of all: the petitioner, the state, or public authorities, and the court to secure the constitutional rights of vulnerable communities and to provide them their due social justice. Simultaneously, it is also very important that it is based on genuine public interest; here comes the job of the courts to ensure the credibility of petitioners and the seriousness of the issues. PIL should never be allowed to be misused for personal campaigns or political plans (*Mian Shabbir Asmail v. C.M. Punjab PLD 2017*).

To conclude, PIL requires careful and vigilant supervision in courts. The judiciary must be extra attentive to ensure that these cases are genuine. PIL should be utilized primarily for legitimate public issues. It should not be allowed for personal vendettas or any private interest. Therefore, it is essential for the court to follow the above-mentioned recommendation in PIL cases. Furthermore, the courts must not accept any attempts to misuse and abuse its processes for ulterior motives. PILs moved to gain unlawful advantages should be promptly dismissed with punitive costs. (*Ashok Kumar Pandey v. State of West Bengal 2004*).

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