

Subject: Law

Production of Courseware

e- Content for Post Graduate Courses



Paper : Access to justice

Module : Public Interest Litigation



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Component - I (A) - Personal Details

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Component - I (B) Description of Module

	Description of Module
Subject Name	Law
Paper Name	Access to Justice
Module Name/Title	Public Interest Litigation
Pre-requisites	Understanding the formal Access to justice system in India and concept of Locus Standi, Basic knowledge about fundamental rights and writ jurisdiction of Supreme Court and High Court.
Objectives	To understand the role of Public Interest Litigation in promoting access to justice.
Keywords	Public Interest Litigation, Group Rights, Locus Standi, Social Action Litigation, Access to Justice



Component - II

MODULE VIII - PUBLIC INTEREST LITIGATION

Structure

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4. Origin of Public Interest Litigation
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8. Procedure to file a Public Interest Litigation
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1. Introduction

The right to access the courts of justice is available to individuals who are aggrieved by the action of others. It is only when you are the affected or aggrieved person you are able to approach the court of law for redressal. This means that there is a mechanism to address the violation of individual rights. But the peculiar socio-economic conditions that are unique to India strictly following the rule of locus standi i.e., whose right is violated alone can approach the court would result in restricting the access to judicial process. For example what happens when an individual cannot afford to reach out to the courts? Does his right remain violated forever or is there any other recourse in such situations? Thus, blindly following the rule of locus standi would cause greater injustice. As a result, there is a need for creating new principles and strategies to tackle those cases where the individual representation is either inadequate or impeded due to social, political and economical constraints. Public Interest Litigation is one of such initiative by the Indian judiciary to meet those situations. Public Interest Litigation is a judicial doctrine that has tried not only to address the circumstances in which a person is poor, ignorant, indigent or illiterate and cannot afford to handle the litigation but also used in enforcing social rights. The justice delivery system is brought to his doorsteps through Public Interest Litigation. The focus is shifted from individual rights to group rights. Any public spirited person who has interest in pursuing the wrongs done to others or a group of persons, can access the courts of justice and fight for the rights of the disadvantaged and needy group of individuals.

2. Learning Outcomes

After reading this unit, the reader shall be able to:

1. Understand the Rule of Locus Standi and its relevance in seeking remedy in a court of law.
2. Comprehend the reasons for liberalizing the rule of Locus Standi and acceptance of Public Interest Litigation.
3. Expound the need for protection of group rights.
4. Learn the scope and aspects of Public Interest Litigation.
5. Explore the ways in which a Public Interest Litigation could be drafted and the procedure to be followed upon.

3. Meaning of Public Interest Litigation

One of the objectives of Indian legal system is to deliver justice to all. Public Interest Litigation is a tool used to achieve this goal in the society. Preamble to the Constitution of India envisages Social, Economic and Political justice. In order to achieve this Preambular Goal of Justice, the judicial activism has led to the birth of Public Interest Litigation.

Public Interest Litigation is a court proceeding filed by any public spirited person to voice out the interest of the general public. In this proceeding, the person fighting the litigation may not himself be the aggrieved person. The term 'Public Interest Litigation' is coined by use of two terms, 'Public Interest' and 'Litigation'.



The expression 'Public Interest' means an act beneficial to the general public. It means an action necessarily taken for public purpose. However, requirements of public interest may vary from case to case.

In *Stroud's Judicial Dictionary, Volume IV (Fourth Edition)*, 'Public Interest' is defined as

“A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of community have a pecuniary interest, or some interest by which their legal right or liabilities are affected.”

In *Black's Law Dictionary, (Sixth Edition)*, 'Public Interest' is defined as

“Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question, Interest shared by citizens generally in affairs of Local, State or National government...”ⁱ

The expression 'Public Interest' has not been defined either in Constitution of India or in any statute. However, this word finds mention in certain provisions of the Constitution of Indiaⁱⁱ and certain other statutesⁱⁱⁱ. The responsibility vests with the Legislature and the Judiciary to define the limits to interpret the word 'Public Interest'. It is the paramount duty of the Courts to ensure that only the genuine claims are entertained and Courts are not flooded with unnecessary frivolous petitions.

The expression 'litigation' means a legal action filed in a Court of Law with the purpose of enforcing one's right or seeking a remedy for the wrong committed by other person.

Therefore, 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 the community have pecuniary interest or some interest by which their legal rights and liabilities were affected.^{iv} It is filed by a person or an organization that has no personal gain or interest except to protect general interest or public interest.

To sum up, Public Interest Litigation means litigation filed to serve interest of public by a public spirited person. Four conditions to be fulfilled for existence of a Public Interest Litigation are as follows:



Some action, inaction or State of affairs

Which violates the rights of large number of people, or causes a large number of people to suffer a similar wrong

The right is sought to be enforced or the wrong redressed, through a petition to the Court

By a public spirited person or an association of persons acting on behalf of the others

Self Assessment Question 1

Q. a. Explain the meaning of Public Interest Litigation.

Q.b. What conditions need to be fulfilled for filing a Public Interest Litigation?

4. Origin of Public Interest Litigation

4.1. USA

The concept of Public Interest Litigation originated in the United States of America in late Nineteenth century. The famous Gideon's case of U.S.A.^v formed the basis for the concept of Public Interest Litigation. The facts of the case were that Clarence Larl Gideon sent a scrawl letter to the Supreme Court of United States pleading before the Court that he was a pauper and the Florida Trial Court had denied his request to appoint counsel for his defense contrary to the American Constitution. The 9 judges of the Supreme Court treated the letter as petition and allowed his plea by relaxing the procedural law which created history. This case led to recognition of the first Legal Aid Office in New York City established in 1876^{vi} as a primary defender in criminal matters.

In 1960s, United States of America witnessed a period of social unrest during which many changes were made to the many institutions as well as significant reforms were introduced and practiced. One such significant institutional reform was evolution of Public Interest



Litigation. In the United States of America, this branch of law is included under the term -Public Interest Law^{vii}

In 1976, the phrase -public law litigation^ø was first prominently used by American Professor Abram Chayes to describe the practice of lawyers or public spirited individuals who seek to bring about social change through court-ordered decrees that reform legal rules, enforce existing laws and articulate public norms.^{viii} Public Interest law includes all efforts made to provide legal representation to the unrepresented groups and interests. Such efforts have been undertaken as the existing legal services system failed to protect the interest of significant section of the population and significant interest groups. These unrepresented or under-represented interest groups include not only the poor and the disadvantaged but also ordinary citizens who cannot afford lawyers to represent them when their interests are affected by any action. Thus, the legal aid laid the foundation for building the edifice of Public Interest Litigation in the world.

The concept of Public Interest Litigation in the United States of America has undergone many changes with the passage of time. It has passed through various changes and modifications in their common law based systems.

4.2. India

Public Interest Litigation is concerned with providing access to justice to all sections of the society. Public Interest Litigation in India has been a part of the constitutional scheme and not any ordinary statutory law. In order to appreciate the evolution of Public Interest Litigation in India, it is desirable to have a basic understanding of the constitutional framework and the judiciary in India.

After independence, the people of India adopted the Constitution on 26 November 1949 with a dream to establish a -Sovereign Socialist Secular Democratic Republic^ø. The founding fathers wanted to achieve a social revolution through the Constitution. The main tools employed to achieve such social change are the provisions relating to Fundamental rights (Part III of the Indian Constitution) and the Directive Principles of State Policy (Part IV of the Indian Constitution). The Fundamental Rights are attributed its true scope by providing a constitutional remedial mechanism for enforcement of these rights through an independent judiciary. The remedy to approach the Supreme Court directly in case of violation of Fundamental Rights is in itself a Fundamental Right under Article 32 of the Indian Constitution. Although the Directive Principles are not justiciable, they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. An independent judiciary can test not only the validity of laws and executive actions but also of constitutional amendments. It has the final say on the interpretation of the Constitution and its orders, supported with the power to punish for contempt, can reach everyone throughout the territory of the country. These provisions related to Fundamental Rights, Directive Principles of State Policy and independent judiciary together provides a firm constitutional foundation to the evolution of Public Interest Litigation in India.

Several reasons both political and legal contributed in development of Public Interest Litigation. Kesavandabharati introduced new Constitutional interpretation protecting basic Constitutional values, emergence of judicial review as a basic structure, proclamation of emergency and its aftermath political implications, and the role of Supreme Court in



protection of fundamental rights during the emergency; particularly the ADM Jabalpur judgment contributed in evolution of Public Interest Litigation. Importing due process through Maneka Gandhi and infusing reasonableness under Article 14, Supreme Court paved way for innovations in protecting the rights of the public.

Further, the splendid efforts taken by the two judges, Justice P.N. Bhagwati and Justice Krishna Iyer, of the Indian Supreme Court from 1970s to 1980s in respect to legal aid to provide easier access to justice played key role in bringing about the revolution of Public Interest Litigation.

In a report on legal aid in 1971, Justice P.N. Bhagwati observed that modifications may be brought in the present adversary system while retaining its basic features. These changes may be brought with respect to giving a judge a greater participatory role in the trial of a case. This is essential so as to bring the poor, as far as possible, on equal footing with the rich in the administration of justice.

Similarly the report of the Committee on Legal Aid presided by Justice V.R. Krishna Iyer, in 1973^{ix} dealt with the nexus between law and poverty and spoke of Public Interest Litigation in this context. It emphasized the need for an active and widespread legal aid system that enables the law to reach the poor rather than requiring the people to reach the law.

These two judges, Justice P.N. Bhagwati and Justice V.R. Krishna Iyer joined hands as Two Member Committee on Juridicare which released its final report in August 1977^x. The report emphasized the need for a new philosophy of legal service programme. It cautioned that such a programme must be framed in the light of socio economic conditions prevailing in our country. It further noted that the traditional legal services programme which essentially is court or litigation oriented cannot meet the specific needs and peculiar problems of the poor in the country. The report also included draft legislation for legal services and referred to Social Action Litigation, a synonym for Public Interest Litigation. Public Interest Litigation was seen as a strategic arm of the legal aid movement intended to bring justice within the reach of those who on account of their indigence, illiteracy and lack of resources, were unable to reach the courts.^{xi}

Soon after, these two judges took the lead in promoting the same by taking suo motto actions. The seeds of the concept of Public Interest Litigation were sown in India in *Mumbai Kamgar Sabha v. Abdulbhai*^{xii} (without using the term of Public Interest Litigation) where the Supreme Court observed that "Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the poor, the urban lay and the weaker societal segments for whom law will be an added torture if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause title create secret weapon to non-suit a part." Judiciary realized that technical difficulties in drafting legal pleadings results in denial of access to justice to a large section of the society because of their extreme poverty, ignorance, discrimination and illiteracy from time immemorial. There was an urgent need to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society. Hence, Judiciary while exercising its power of judicial review initiated, encouraged and promoted Public Interest Litigation in India.



Self Assessment Question 2

Q. a. Which American case formed the basis of Public Interest Litigation?

Q. b. Explain various factors that led to introduction of Public Interest Litigation in India?

4.3. PIL in USA and SAL in India

Given that the birth of Public Interest Litigation in India is connected to the evolution of Public Interest Litigation in the United States, it becomes natural to draw comparisons between the US experience and the Indian experience.

It was argued by Professor Upendra Baxi that Public Interest Litigation (PIL) in India should be labeled as Social Action Litigation (SAL) because of its distinctive characteristics. He contended that whereas Public Interest Litigation in the United States has focused on people participation in governmental decision making, the Indian Public Interest Litigation discourse was against State action and non-action and was focused primarily on the disadvantaged section of the society.^{xiii}

Writing in the early 1980s, Prof. Baxi highlighted another contrast. Unlike India, PIL in the United States sought to represent interests without groups, such as consumerism or environment. In India, the role of Public Interest Litigation is to bring about social change through the active role of judges wherein the individual represents group interests. It is more about interests within groups.^{xiv}

However, the character of the Public Interest Litigation in India has changed a lot. It is not limited to espousing the interests of disadvantaged sections of society or to redressing State repression and governmental lawlessness. In fact, the focus of Public Interest Litigation in India has shifted from poor to the middle class and from redressing State exploitation of disadvantaged groups to pleas for civic participation in governance.

Although there are still differences between how the Public Interest Litigation jurisprudence has unfolded in the United States and India, the distinction as to the subject-matter or the basic objective of the Public Interest Litigation is not that much as it used to be when an argument was made to label PIL as SAL.^{xv}

Self Assessment Question 3

Q. a. Why does Prof. Baxi want to call Public Interest Litigation as Social Interest Litigation?

Q.b. What are the changes that took place in the manner of filing Public Interest Litigation in India?



5. Scope of Public Interest Litigation

Public Interest Litigation is a new jurisprudence developed by the Supreme Court through judicial activism. It protects the rights and interest of the under privileged and the weaker section of the society who are oppressed, socially or economically or otherwise and are unable to approach the court themselves. It is developed for the purpose of ensuring social and economic justice for such under privileged and weaker classes.

In a fit and proper case if the court finds that the various ingredients of Public Interest Litigation are present such as the underprivileged and socially and economically oppressed segments of the society are unable to approach the courts, they are suffering legal wrong and injury, they are socially and economically being exploited and there is a need to be rescued by the court, the court will not be constrained to fold its hands in despair and plead its inability to help such underprivileged and oppressed class, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative even if the condition for the same are not fulfilled.^{xvi}

Public Interest Litigation is a cooperative litigation in which the petitioner, the State or public authority and the Court are to co-operate with one another in ensuring that the constitutional obligation towards those who cannot resort to the Courts to protect their constitutional or legal rights is fulfilled. In such a situation, the concept of cause of action evolved in the background of private law and adversary procedure is out of place. The only question that can arise is whether the prayers in the petition, if granted, will ensure such constitutional or legal rights.^{xvii}

Public Interest Litigation is not in the nature of adversary litigation. The purpose of Public Interest Litigation is to promote the public interest which mandates that violation of legal or constitutional rights of a large number of persons who are poor, down trodden, ignorant, socially or economically disadvantaged should not go unredressed. The Court can take cognizance of Public Interest Litigation where there are complaints that shock the judicial conscience, the Litigation is pro bono publico and does not smack of any ulterior motive and no person has a right to achieve any ulterior purpose through such litigation.^{xviii}

The court must be careful that the members of the public who approach the court are acting bonafide and not in personal garb of private profit or political motivation or other oblique considerations.^{xix} The court should not take cognizance in such matters merely because of its attractive name. The petitioner must inspire the confidence of the court and must be above suspicion.^{xx} The petitioner must point out that the legal rights have been infringed.^{xxi} Public Interest Litigation must indicate how public interest was involved in the case.^{xxii} No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a license to file misconceived and frivolous petitions.^{xxiii} Petitioner is not entitled to withdraw the Public Interest Litigation at his sweet will unless the court sees reasons to permit withdrawal.^{xxiv}

It is well settled law that when a person approaches the court of equity in exercise of its extraordinary jurisdiction, he should approach the court not only with clean hands but with



clean mind, clean heart and with clean objectives.^{xxv} The courts must do justice by promotion of good faith and prevent the law from crafty evasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good.^{xxvi}

Self Assessment Question 4

Match the following

- | | |
|-------------------------------|---------------------------|
| 1. Public Interest Litigation | a. Prof. Baxi |
| 2. Social Action Litigation | b. Letter as Petition |
| 3. Clearance Larl Gideon | c. Abram Chayes |
| 4. Public Law Litigation | d. Cooperative litigation |

6. Features of Public Interest Litigation

6.1. Liberalisation of rule of Locus Standi

Locus Standi is a Latin word which literally means 'place of standing'. It refers to a person's standing in the court of law. It means the right or capacity of a person to bring a legal action or to appear in a court of law. It is a legal capacity to invoke the jurisdiction of the court. Without locus standi, one cannot be heard in a court of law. The traditional view is that the person who approaches the court of law must show the court that he has suffered or likely to suffer an injury by reason of infringement of his legal right or legally protected interest.

The predominant feature of Public Interest Litigation is liberalization of the traditional rule of standing by the Supreme Court. In a Public Interest Litigation, any person can approach the court of law on behalf of those who are aggrieved persons. This dilution in locus standi was done for reasons such as poverty, ignorance, lack of knowledge and exploitation of vast masses, high cost of litigation, democratization of justice, redress of public injuries and avoiding plurality of litigation, curbing arbitrary State action and ensuring a responsible government.^{xxvii}

In *Fertilizer Corp. Kamgar Union v. Union of India*^{xxviii}, the Supreme Court noted, 'It may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding'. The term Public Interest Litigation was officially used for the first time in the concurring opinion of Justice Krishna Iyer in *Fertilizer Corp. Kamgar Union* case. Concurrence observed that 'Public Interest Litigation is part of the process of participatory justice and 'standing' in civil litigation of that pattern must have liberal reception at the judicial doorsteps'. Public Interest Litigation thus emerged as a means for the judiciary to hold the government accountable and to catalyze action against rights violations.

As observed by the Supreme Court, the seed of Public Interest Litigation that was sowed by Justice Krishna Iyer 'took its root firmly in the Indian Judiciary and blossomed fully with fragrant smell' in *S. P. Gupta v. Union of India*^{xxix}. The Supreme Court delivering its



judgment through Justice P. N. Bhagwati evolved a new rule that any member of public having sufficient interest and with bonafide intention can maintain a petition for redress of public wrong or public injury. Such a claim may be filed by any individual, citizens, non-citizens, any groups or non-political, non-profit and voluntary organisations. However, if the petitioner is found to have personal gain from such petition, the court should not admit such Public Interest Litigations. Court has however not liberalized the locus standi for criminal cases.

Liberalisation of Locus Standi can be studied in three phases: In the **first phase** which began in the late 1970s and continued through the 1980s the Public Interest Litigation cases were generally filed by public-spirited persons such as lawyers, journalists, social activists or academics. Most of the cases related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, mentally challenged persons, pavement dwellers, and women. The relief was sought against the action or non-action on the part of executive agencies resulting in violations of FRs under the Constitution.

The **second phase** of the Public Interest Litigation was in the 1990s during which several significant changes in filing of Public Interest Litigation took place. In comparison to the first phase, the filing of Public Interest Litigation cases became more institutionalized. Several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis. The breadth of issues raised in Public Interest Litigation also expanded tremendously from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government. It is to be noted that in this phase, the petitioners sought relief not only against the action/non-action of the executive but also against private individuals, in relation to policy matters and regarding something that would clearly fall within the domain of the legislature.

In the **third phase** which began with the 21st century is a period in which anyone could file a Public Interest Litigation for almost anything. It seems that there is a further inclusion of issues that could be raised as Public Interest Litigation, e.g. calling back the Indian cricket team from the Australia tour and preventing an alleged marriage of an actress with trees for astrological reasons.^{xxx}

6.2. Epistolary Jurisdiction

Epistolary jurisdiction is unique feature of Public Interest Litigation. When jurisdiction of the court is invoked by writing letters or even a telegram, the court is said to exercise Epistolary jurisdiction. This procedural innovation was made by Justice P.N. Bhagwati in *S. P. Gupta v. Union of India*^{xxxv} where it was stated that it would readily respond even to a letter addressed by such individual acting pro bono publico and treat it as a formal writ petition for Public Interest Litigation purposes. The court further observed that it has to innovate methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. In *Ashray Adhikar Abhiyan v. Union of India*,^{xxxvii} the Supreme Court treated the letter written to the Honorable Chief Justice of India as a writ petition and intervened in the matter. The members of Ashray Adhikar Abhiyan complained that homeless persons who are found dead



are not given a decent burial and questioned the right of the deceased homeless person for a decent burial.

However, court does not treat every letter as a Public Interest Litigation. Court entertains letter written by an aggrieved person, public spirited person or a social action group. In order to avoid multiplicity of petitions and sometimes even frivolous petitions, the Supreme Court has set up Public Interest Litigation and Information Cell with full-fledged staff to deal with Epistolary jurisdiction. Letters are to be scrutinized by the Staff who is employed exclusively for this purpose. If the letter is for infringement of fundamental right, it is to be sent to Supreme Court Legal Aid Committee and if it is for any legal right, it is sent to Legal Aid Board. This Cell provides updates on the status of pending cases.

6.3. Non- adversarial nature

Adversary system means a system that involves two conflicting parties who come to the court who is a neutral, unbiased entity to prove their stand or point. In a non-adversarial system, there is absence of such two contending or conflicting parties. It is more of resolving the problem rather than blaming each other.

Another key feature of Public Interest Litigation is its non-adversarial nature in which the Supreme Court has transformed from traditional litigation involving two opponents. There is no winning or losing in a Public Interest Litigation. This change was brought to ensure that no injustice is caused where parties are not evenly balanced in social or economic strength. In *People's Union for Democratic Rights (PUDR) v. Union of India*^{xxxiii}, the court stated that "Public Interest Litigation, as we conceive it, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them."

The court, parties and lawyers are expected to participate in resolution of a public problem. In such cases judges take more active role in asking questions to both the parties to explore the solutions in a case. It is a matter of collective problem solving rather than of accusation against each other. The *PUDR* decision^{xxxiv} even went so far as to say that the State should "welcome" a PIL, "as it would give it an opportunity to right a wrong or redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or public authority."

6.4. Appointment of Commissions

In a Public Interest Litigation, the petition is filed directly in the Supreme Court or the High Courts under Article 32^{xxxv} or Article 226^{xxxvi} of the Indian Constitution respectively. Parties do not have a reasonable opportunity to present evidence on record before the start of the proceedings. Therefore, the courts have to manage the collection of facts, data and evidence on their own. This hardship of the courts is overcome by appointment of Commissions to carry out an inquiry or investigation into the matter and to submit its report to the courts. Supreme Court in the past have appointed District Judge, a professor at law, a journalist, an officer of the court, an advocate and sometimes even a social scientist as a Commissioner.^{xxxvii}

The rationale behind appointment of such Commission is to reduce the cost and burden on the public interest litigant to collect data and evidence. There is also need of impartial machinery



for assessment of facts and materials on record as State officials may tend to be biased in conducting such inquiry and investigation. Another reason is that the courts do not have a separate and independent body to carry out such investigations.

In *Sunil Batra v. Delhi Administration*,^{xxxviii} the Supreme Court used the services of two advocates to ascertain the truth of the complaint of torture done to a prisoner in Tihar jail. The advocates visited the prison, met the prisoners, reviewed relevant documents, interviewed necessary witnesses and prepared a lengthy report about the scenario in the prison. The Court appreciated the efforts of the advocates and also accepted their findings.

Self Assessment Question 5

Q. a. What is Locus standi and why did Supreme Court liberalize it?

Q.b. What is Epistolary Jurisdiction?

Q.c. Public Interest Litigation is part of the process of _____

7. Abuse of Public Interest Litigation

The judicial innovation to protect the interest of the underprivileged, disadvantaged and the needy through Public Interest Litigation has in later stages being abused by the litigants. The misuse of Public Interest Litigation started in 1990s when nature of filing of such petitions changed. People started using Public Interest Litigation as means to achieve their personal ends under the guise of Public Interest Litigation. Some petitions were filed with the sole objective to gain popularity in the society as Public Interest Litigation lawyer. Some were filed to fulfill the politically and financially motivated agendas. Some litigants who specialized in Public Interest Litigation were nothing but blackmailers. The very purpose and concept of Public Interest Litigation has been diluted by such frivolous petitions.

An attempt was made by the Government in 1996 by proposing 'The Public Interest Litigation (Regulation) Bill' to punish those who file frivolous PIL. However, the Bill could not receive majority support and lapsed. However, the judiciary has built its own mechanism through guidelines to treat self-created problem. Claims only of bonafide individuals are entertained by Supreme Court and High Courts instead of all Public Interest Litigations. Courts also impose exemplary costs in vexatious litigations.^{xxxix} The Supreme Court has cautioned High courts to be selective in qualifying petitions as Public Interest Litigation.

8. Procedure to file a Public Interest Litigation

8.1.1. Drafting of the Petition

Public Interest Litigation has become an indispensable part of Indian Legal process. In order to achieve, the best result, it is very important to understand the proper manner to draft a Public Interest Litigation. As we have discussed earlier (8.5.2 Epistolary Jurisdiction), the courts do not insist on any specific style and manner for filing a Public Interest Litigation.



However there are more chances that a well drafted Public Interest Litigation stands a fair chance in the court of law and shall give a desirable outcome in the public interest.

Below is the format for drafting a Public Interest Litigation:





IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION

CIVIL WRIT PETITION NO. ____ OF 20__

In the matter of:

____ (Name)

____ (Address)

.....Petitioner(s)

Versus

____ (Name)

____ (Address)

.....Respondents(s)

A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To,
Hon'ble The Chief Justice of India and
His Lordship's Companion Justices of
The Supreme Court of India.

The Humble petition of the Petitioner above named

MOST RESPECTFULLY SHOWETH:

Para 1: Description of Petitioner (s), credentials, mention of bonafide public interest

Para 2: Description of violation of fundamental rights of the people or certain identified group

Para 3: Description of respondents involving their acts or omissions

Para 4: Facts and circumstances in chronological order establishing the violation of fundamental rights by the respondents

Para 5: Grounds

Para 6: Mention that you have not filed any petition on the same subject matter in any other courts

Para 7: Mention that Supreme Court is the most appropriate forum

Para 8: Mention that you have acted with diligence and have not unduly delayed the matter before the court

Prayer: It is therefore respectfully prayed that this Hon'ble Court may be pleased:

- (i) Pray for the appropriate writ as per the facts and circumstances of the court
- (ii) Costs
- (iii) Pass such other orders and further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.

For which act of kindness, the petitioner shall as in duty bound, ever pray.

Filed by: Petitioner-in-person
(Name and Signature)

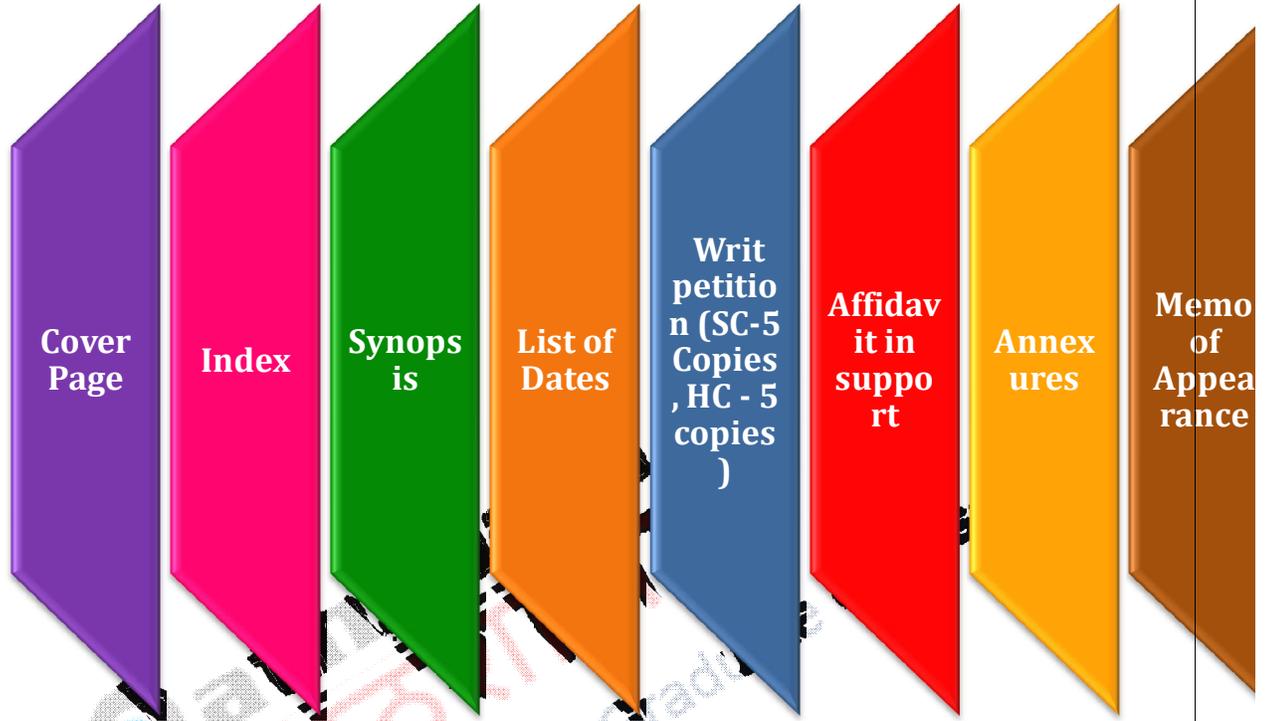
Place:

Date:



List of documents

Following are the list of the document that are required to be attached to the petition;



8.1.2. Court Fees

A court fee of rs. 50, per respondent (i.e. for each number of opposite party, court fees of RS. 50) has to be affixed on the petition.

9. Supreme Court Guidelines

Supreme Court of India has laid down certain guidelines that are to be followed for entertaining letters/petitions received in the court as Public Interest Litigation. (Based on full Court decision dated 1.12.1988 and subsequent modifications).

Areas covered under Public Interest Litigation

Letter-petitions falling under the following categories alone will ordinarily be entertained as Public Interest Litigation:



Bonded Labour matters

Neglected Children

Labour law matters dealing especially with minimum wages

Prison and Prisoners' conditions

Petitions against police for refusing to register a case, harassment by police and death in police custody

Petitions relating to treatment to women

Petitions dealing with harassment to SCs and STs and economically backward classes

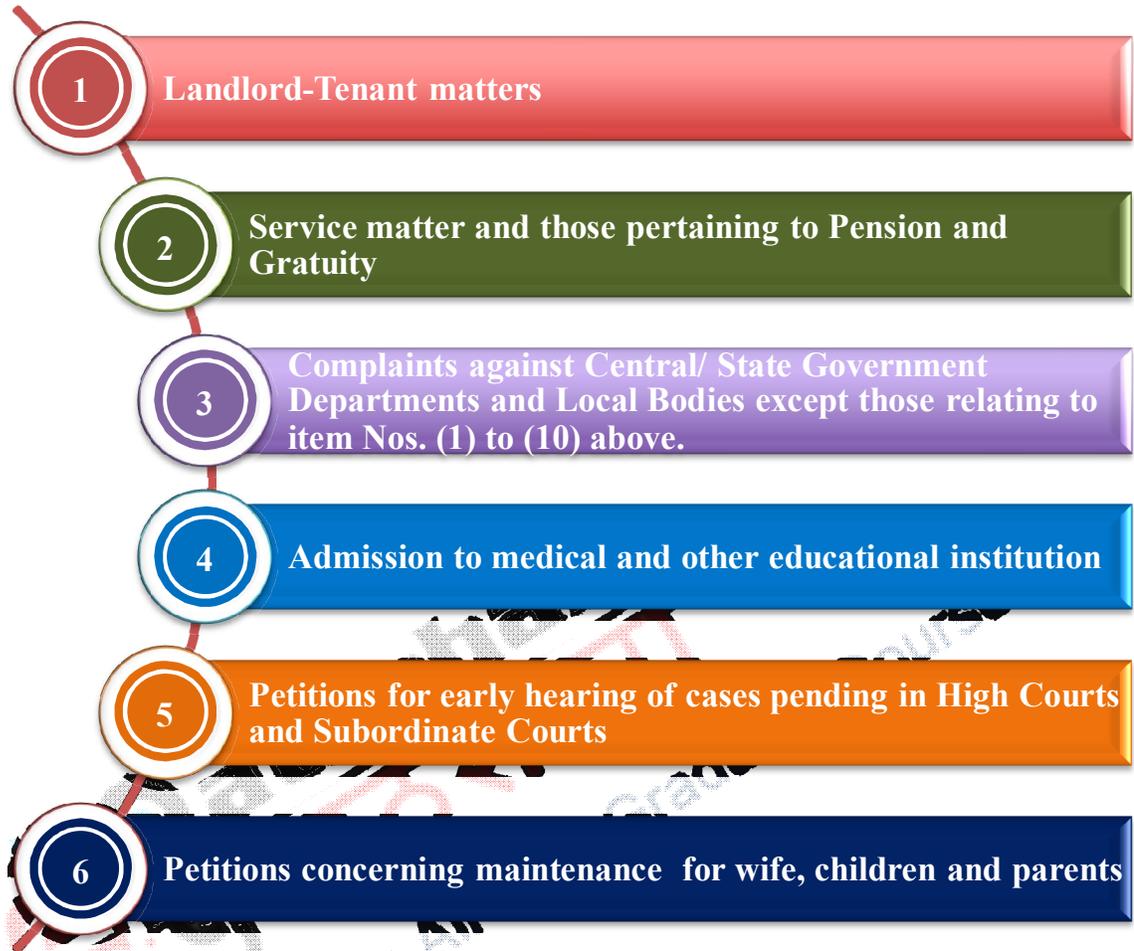
Petitions pertaining to environmental protection

Petitions from riot –victims

Family Pension

Areas not covered under Public Interest Litigation

Cases falling under the following categories will not be entertained as Public Interest Litigation:



Self Assessment Question 6

Q. a. A Court fee of Rs. _____ per _____ has to be affixed on the petition

Q.b. In what matters does the Supreme Court accept letters as Public Interest Litigation?

Q.c. In what matters Supreme Court would not accept letters as Public Interest Litigation?

9. Summary

Litigation is the most sought method in enforcing the rights. However, challenging the State for enforcing social and group rights requires different strategies. The legal remedies that are available for enforcing individual rights often may be inadequate in dealing with rights of the public. Recognizing this, the Indian Judiciary developed Public Interest Litigation to protect the rights of the community, downtrodden and disadvantaged groups. Public Interest Litigation being non-adversarial necessitated evolving new



remedies such as appointment of commissions, appointment of amicus curie and accepting letters as petition for proving complete justice. As a result there is a litigation explosion and the Judiciary has to prevent its abuse, came up with several guidelines regulating the use of Public Interest Litigation. In prescribing these guidelines the Supreme Court has shown remarkable wisdom striking balance between Public Interest Litigation and Personal Interest Litigation.

ⁱDr. B.L.Wadehra, Public Interest Litigation (Universal Law Publishing Co. Pvt. Ltd., Delhi, Second Edition 2009) 44

ⁱⁱ Article 302 of the Constitution of India: Power of Parliament to impose restrictions on trade, commerce and intercourse Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest

ⁱⁱⁱ Section 124 of Indian Evidence Act, 1872: Official communications: No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure.

^{iv} Janata Dal v. H.S. Chowdhary, AIR 1993 SC 892

^v Gideon v. Wain Wright , 372 NS 335 (1963)

^{vi} The Legal Aid Office provided for legal assistance to the German immigrants in USA. The German Society of New York assisted these immigrants.

^{vii} Supra note 1 at 142

^{viii} Abram Chayes, -The Role of the Judge in Public Law Litigationø 89 Harvard Law Review 1281 (May 1976)

^{ix} See, Processual Justice to the People: Report of the Expert Committee on Legal Aid (May 1973)

^x See, Report on National Juridicature: Equal Justice-Social Justice (August 1977)

^{xi} See Ashok S. Desai and S. Muralidhar, -Public Interest Litigation: Potentials and Problemsø (Oxford University, Press, 2000)

^{xii} AIR 1976 SC 1455

^{xiii} See Upendra Baxi, -Taking Suffering Seriously: Social Action Litigation in the Supreme Court of Indiaø (1983), Third World Legal Studies, Volume 4, Article 6

^{xiv} Id

^{xv} Surya Deva, -Public Interest Litigation in India: A Critical Reviewø Reprinted from Civil Justice Quarterly, Issue 1, 2009, Sweet & Maxwell, London

^{xvi} State v. Union of India, AIR 1996 Cal 181

^{xvii} Peoples Union for Civil Liberties v. Union of India, AIR 1996 Cal 89

^{xviii} P.M.Bakshi, -Public Interest Litigationsø (Ashoka Law House, New Delhi, Edition:1998)13

^{xix} S.P.Gupta v. Union of India, AIR 1982 SC 149

^{xx} Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109

^{xxi} Mohammad Anis v. Union of India, 1994 Supp 1 SCC 145

^{xxii} Gyani Davender Singh Sant Sepoy Sikh v. Union of India, AIR 1995 SC 1847

^{xxiii} Dr. B.K. Subbarao v. Mr. K.Prasaran, (1996) Cri. LJ 3983

^{xxiv} S.P. Anand v. S.D.Devegowda, AIR 1997 SC 272



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- ^{xxv} K.R. Srinivas v. R.M. Premchand, 1994 (6) SCC 620
- ^{xxvi} State of Maharashtra v. Prabhu, 1994 (2) SCC 481
- ^{xxvii} Dr. Mamta Rao, -Public Interest Litigation ó Legal Aid and Lok Adalatsø (Eastern Book Company, Lucknow, Second Edition, 2004) 67,68
- ^{xxviii} AIR 1881 SC 344
- ^{xxix} AIR 1982 SC 149
- ^{xxx} Supra note 15
- ^{xxxi} AIR 1982 SC 149
- ^{xxxii} AIR 2002 SC 979
- ^{xxxiii} 1982 AIR 1473
- ^{xxxiv} Id
- ^{xxxv} Article 32 of the Constitution of India - Remedies for enforcement of rights conferred by Part III:
(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- ^{xxxvi} Article 226 of the Indian Constitution- Power of High Courts to issue certain writs -
(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose
- ^{xxxvii} Supra note 2at 280
- ^{xxxviii} AIR 1980 SC 1579
- ^{xxxix} See Janata Dal v. H.S. Chowdhari (1992)4 SCC 305, Kirshna Swami v. Union of India (1992) 4 SCC 605, B. Singh v. union of India AIR 2004 SC 1923.