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Restrictions on Public Interest Litigations - A New Vista

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Abstract: ***In State of Uttaranchal v. Balwant Singh Chaufal the Supreme Court had come up with eight guidelines which were passed to curb the growing number of public interest litigations (PIL) in the High Courts and Supreme Court. This verdict has had a cascading effect on PIL and now the Courts are slowly curbing the tendency of looking at PILs as a panacea to all the ills in society. The new vista in PIL of self-restraint by the Court and discouraging of PILs is analysed in this article.***

Keywords: Supreme Court, PIL, restraint, bona fide, genuine, discourage

1. Background

In State of Uttaranchal v. Balwant Singh Chaufal [1], the Apex Court held as under: "In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

a) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
b) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.
c) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
d) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
e) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.
f) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
g) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
h) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

Pursuant to these directions, all the High Courts and the Supreme Court issued Public Interest Litigation Rules that regulated the filing, listing and hearing of PILs. These Rules were definitely restrictive when compared to the earlier scenario where the judges were the sole arbiters of whether a PIL should be entertained and what directions should be passed. Similar caution was sounded in In Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan [2] the Supreme Court reiterated the same, specifying that the concept of public interest litigation has evolved to bring justice to people who are "handicapped by ignorance, indigence, illiteracy" and observed that Courts are required to be cautious while entertaining such litigation. This article analyses whether the newly and self-imposed restraint is a boon or bane for PIL and the PIL Movement in India.

High Court PIL Rules

Depending on the High Court, the Petitioners were asked to file separate affidavits swearing to the lack of oblique motives, financial solvency to file and maintain the PIL, an undertaking not to withdraw the PIL and an undertaking to pay the costs of the PIL, if imposed to the relevant authorities without murmur.

It is interesting to note that the PIL Rules of the Jharkhand High Court came to be questioned and considered in State of Jharkhand v. Shiv Shankar Sharma, [3] where the Court held that "The above (Jharkhand High Court (Public Interest Litigation) Rules, 2010 were made pursuant to the directions of the Supreme Court in Balwant Singh Chaufal [4]. Rules were to be framed so that it is no more left to the individual Judges to devise their own procedure, but to ensure uniformity in entertaining a PIL, and to encourage genuine PIL and discourage PIL which are filed with oblique motive. In one of the directions, it was said as under:

> "*181.* … (2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the

rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter."

Therefore, the importance of these Rules can never be underestimated."

The Court went on to hold that "What is of crucial significance in a public interest litigation is the bona fides of the petitioner who files the PIL. It is an extremely relevant consideration and must be examined by the Court at the very threshold itself and this has to be done irrespective of the seemingly high public cause being espoused by the petitioner in a PIL. We are not for a moment saying that people who occupy high offices should not be investigated, but for a High Court to take cognizance of the matter on these generalised submissions which do not even make prima facie satisfaction of the Court, is nothing but an abuse of the process of the Court. The non-disclosure of the credentials of the petitioner and the past efforts made for similar reliefs as it has been mandated under the 2010 Rules further discredits these petitions. The petitioner in the PILs did not go with clean hands before the High Court. In our view, such a petition was liable to be dismissed at the very threshold itself. If the petitioner has a genuine reason to pursue the matter, he has his remedies available under the Companies Act or under other provisions of the law where he can apprise the relevant authorities of the misdeeds of the Directors or Promotors of the companies. But on generalised averments which are nothing but mere allegations at this stage, the Court cannot become a forum to investigate the alleged acts of misdeeds against high constitutional authorities. It was not proper for the High Court to entertain a PIL which is based on mere allegations and half baked truth that too at the hands of a person who has not been able to fully satisfy his credentials and has come to the Court with unclean hands."

Fallout of Chaufal's Case

The main fallout of the Chaufal Case was that bona fides of that Petitioners became a paramount factor. In Ansar Ahmad Mohammed Husain v. State of Maharashtra [5], the Court ruled that "There is no doubt, that public interest litigation is meant to be entertained, for bona fide causes, and not to aid either misguided individuals in their quest for publicity, or for wreaking vendetta on public officials or institutions. This Court had (undoubtedly before the era of public interest litigation) emphasised the need to keep out "busybodies" who "have no interest in matters of public interest" in Jasbhai Motibhai Desai v. Roshan Kumar [6] and stated, about such individuals, that :

> "*37*. … They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spooking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

Citing Environment & Consumer Protection Foundation v. Union of India [7], the Apex Court noted that "this Court had underlined the purpose of public interest proceedings, and observed as follows:

> "*29*. Why are the Action Plan and these directions necessary? We seem to be forgetting the power of public interest litigation and therefore need to remind ourselves, from time to time, of its efficacy in providing social justice. Many years ago, this Court noted in People's Union for Democratic Rights v. Union of India [8] that:
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> > '*2*. … Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. …'

A little later in the judgment, it was said:

> '*3*. … Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. They have been crying for justice but their cries have so far been in the wilderness. They have been suffering injustice silently with the patience of a rock, without the strength even to shed any tears.'
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> *30*. The advantage of public interest litigation is not only to empower the economically weaker sections of society but also to empower those suffering from social disabilities that may not necessarily be of their making. The widows of Vrindavan (and indeed in other ashrams) quite clearly fall in this category of a socially disadvantaged class of our society.
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> *31*. Placing empowerment in perspective, this Court noted in State of Uttaranchal v. Balwant Singh Chaufal that the first phase of public interest litigation concerned itself primarily with the protection of the fundamental rights under Article 21 of the Constitution of "the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts." We may add — the socially underprivileged groups. These are the people who have no real access to justice and in that sense are voiceless, and these are the people who need to be empowered and whose cause needs to be championed by those who advocate social justice for the disadvantaged.
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> *32*. This recognition formed the basis of the decision of this Court in Delhi Jal Board v. National Campaign for

Dignity & Rights of Sewerage & Allied Workers [9] wherein providing succour to the deprived sections of society was recognised as a "constitutional duty" of this Court. Referring to several judgments delivered by this Court, it was observed :

'*31*. These judgments are a complete answer to the appellant's objection to the maintainability of the writ petition filed by Respondent 1. What the High Court has done by entertaining the writ petition and issuing directions for protection of the persons employed to do work relating to sewage operations is part of its obligation to do justice to the disadvantaged and poor sections of the society. We may add that the superior courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being, what to say of fundamental rights guaranteed under the Constitution. It is the duty of the judicial constituent of the State like its political and executive constituents to protect the rights of every citizen and every individual and ensure that everyone is able to live with dignity.'"

Thus, it is seen while Chaufal tightened the screws and prevented ubiquitous and motivated PILs the broader jurisprudence of securing justice for the teeming population of the underprivileged remains the bedrock of PIL jurisprudence in the country. This bedrock is uneroded even now and the creative interpretation, active involvement and monitoring by the Courts, be it the Supreme Court or the High Courts continues unabated. At best, it may be summarised as the PIL jurisprudence entering a new and more robust phase in its quest to secure to the underprivileged minorities who continue to suffer. The point to be noted in this phase, the new robust phase, is that PIL cannot be a panacea for all the ills of modern society but will definitely serve as a sharp sword to be used with circumspection to nip illegality and injustice in the bud. It is true that many PILs have been pending for years together although the cause is genuine and bona fide. This is an unintended and collateral damage to the cause and cannot be attributed to the tough judicial stand in Chaufal's case. This issue is to be dealt with in connection with the larger issue of pending cases and the stance that a liberal approach to admitting PILs is the cause is a wrong reason and such an approach should be eschewed. Chaufal's case has to be viewed within the confines of the circumstances in which it was delivered and its effects can only be salutary and germane to the cause of PIL jurisprudence as a whole for the country.

2. Conclusion and Suggestions

In Central Electricity Supply Utility of Odisha v. Dhobei Sahoo, [10] where the Court held "we have thought it imperative to revisit certain authorities pertaining to public interest litigation, its abuses and the way sometimes the courts perceive the entire spectrum. It is an ingenious and adroit innovation of the Judge-made law within the constitutional parameters and serves as a weapon for certain purposes. It is regarded as a weapon to mitigate grievances of the poor and the marginalised sections of the society and to check the abuse of power at the hands of the executive and further to see that the necessitous law and order situation, which is the duty of the State, is properly sustained; the people in impecuniosity do not die of hunger; the national economy is not jeopardised; the rule of law is not imperilled; human rights are not endangered; and probity, transparency and integrity in governance remain in a constant state of stability. The use of the said weapon has to be done with care, caution and circumspection."

It has been noted that between 2020 and 2025, this care, caution and circumspection has taken a driver's seat and PIL, while being recognised as tool of social engineering for the interpretation of rights, is being used sparingly as compared to earlier times. The heyday of PIL being the cure for all ills is over and it is now the phase where there is a creative interpretation of rights only when the petitioners are able to point out a watertight and fit case for interference.

In Networking of Rivers, In re, [11] the Court held "Under the constitutional scheme, there is a clear demarcation of fields of operation and jurisdiction between the legislature, judiciary and the executive. The legislature may save unto itself the power to make certain specific legislations not only governing a field of its legislative competence as provided in the Seventh Schedule of the Constitution, but also regarding a particular dispute referable to one of the articles itself." The Court has increasingly become conscious of judicial overreach and division of powers. It is hesitant to interfere unless a judicial remedy in the lis is made out clearly. Judicial overreach is frowned upon internally and there is a self-recognised concept of judicial discipline. The doctrine of checks and balances and the rule of law have become integral parts of the system around which no judge acts or goes in contravention of.

Having found that that PIL jurisprudence has reached a new stage, some recommendations and suggestions for PIL to maintain the status of a tool of social engineering in the climate of restraint after Chaufal are the following:

1) PILs should be vetted and screened by a PIL Screening Committee [12] with the Judicial Registrar as a member before filing by the respective High Courts and Supreme Courts. This not only goes a long way to establishing the bona fides of the PIL petitioners but also in ensuring that the valuable time of the Courts are not wasted and ensuring that PILs are not finally dismissed on technicalities,
2) Apart from Letter Petitions which can be filed exclusively by NGOs and the indigent, Court Fees on PILs should be increased as compared to normal writ petitions. This will discourage the filing of vexatious and mischievous PILs, act as a deterrent to the PIL Court birds and curb the number of PILs to the only genuine causes,
3) Publicity should be given by media and news channels to PILs that have come to an end and not at the stage of admission. It is observed that in most cases the PIL is filed for an initial burst of publicity when the PIL is filed and later not followed up seriously,
4) Chief Justices of the respective High Courts should be on the Bench that entertains PILs along with at least two other judges. The increase in Bench strength for PILs will ensure quicker and stricter disposal and ensure that PILs that do not agitate genuine causes are nipped in the bud.

PILs may be heard by the special PIL bench once or twice a week,

5) There should be a limit on the number of petitions that can be filed by a single advocate as PIL to prevent publicity interest or personal interest litigations and
6) The guidelines given in Chaufal's case must be reviewed and suitably changed to ensure that only genuine PILs cross the threshold of the PIL screening committee suggested in first point above.

References

[1] (2010) 3 SCC 402.
[2] (2014) 5 SCC 530.
[3] (2022) 19 SCC 626.
[4] Ibid. n. 1.
[5] (2022) 16 SCC 605.
[6] Jasbhai Motibhai Desai v. Roshan Kumar, (1976) 3 SCR 58.
[7] Environment & Consumer Protection Foundation v. Union of India, (2017) 16 SCC 780 : (2017) 16 SCC 787 (2).
[8] People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235.
[9] Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers, (2011) 8 SCC 568 : (2011) 2 SCC (L&S) 375]
[10] (2014) 1 SCC 161.
[11] (2012) 4 SCC 51.
[12] High Court of Karnataka, vide its PIL Rules of 2018 has a Screening Committee for Letter PILs.