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Public Interest Litigation in Pakistan: Unveiling Its Features, Roles, and Potential for Ensuring Justice for All

Mubashar Tariq¹ Hafiz Muhammad Azeem² Muhammad Zahid Rafique³

Abstract: *The regular court system is failing to provide justice for all in Pakistan's legal landscape. However, a powerful tool exists to ensure justice for all: Public Interest Litigation (PIL). PIL acts as an effective legal weapon for the welfare of society and justice for all, and it even has the potential to push authorities for reforms that benefit everyone. However, to understand the true scope of PIL, there is a dire need to comprehend its special features, functions, and role within the Pakistani legal landscape. For this purpose, in this research, PIL's core features and procedures will be discussed through the jurisprudential analysis of the cases developed by the courts in Pakistan. Further, this paper will also explore its special role in protecting the rights of vulnerable communities. For this purpose, specific cases in the judicial history of Pakistan wherein PIL has played a positive role will be highlighted, including labor, environment, pollution, right to life, public parks, floodwaters, assets of Pakistan like its steel mill, and public procurement to reveal the true potential of PIL. The ultimate goal is to ensure its usage in the right form, in the right manner, for the right purpose, and at the right time to advance justice for everyone.*

Key Words: Public Interest Litigation, Potential of Public Interest Litigation, Features of Public Interest Litigation, Roles of Public Interest Litigation, Public Interest Litigation in Pakistan

Introduction

Access to justice is one of the tools to gauge a society's progress, especially for the poor and destitute. The right to access the law court must be accessible at every stage (Farrow, 2013; Rhode, 2000). However, we all know that not everyone has access to the courts due to various reasons such as illiteracy, lack of resources, absence of relationships with lawyers, court fees, litigation costs (Levin & Colliers, 1984), social pressure, and fear of consequences. Therefore, there is always a need for a helping hand to assist victims, especially the poor victims, in reaching the courts. In the modern legal landscape, this helping hand has a new name: Public Interest Litigation (The State v. M.D. WASA, 2000).

Litigation has always been seen as a vital approach to protecting rights and strengthening the rule of law in the social order (Lahav, 2015), especially for the poor and destitute when other means of influence are unavailable for them (Friedman, 1989). It is a measure of well-being (Eisenberg et al., 2012). They often encounter discrimination or are confronted with such challenges that they have to reach collective action (D. Hensler, 2016; Yeazell, 1989a) to the courts for assistance in their pursuit of societal justice. Legal and mechanical restraints, procedural complexities, expenses, and delays in litigation create obstacles that limit access to justice for marginalized segments of society. Economic and social deficiencies further contribute to injustice and exploitation for them. Therefore, they often have to make a collective effort to safeguard their rights (Yeazell, 1989b). This collective effort is also known as a class action (D. R. Hensler et al., 2016), which is a synonym for PIL.

¹ Assistant Professor, College of Law, University of Sargodha, Sargodha, Punjab, Pakistan.
 Email: mubashartariq@gmail.com

² Advocate High Court/Assistant District Public Prosecutor, Punjab, Pakistan.

³ Assistant Professor, College of Law, University of Sargodha, Sargodha, Punjab, Pakistan.
 Email: zahid.rafique@uos.edu.pk

The notion of PIL comes from the powers of the higher judiciary available in the Constitution (Constitution of Pakistan, 1973, A. 199 & 184(3)). It aims to provide an opportunity for everyone to have easier access to the law court for the defense of fundamental rights like life and liberty (Public Interest Law Association of Pakistan v. Federation of Pakistan, 2023). Although the Constitution provides adequate powers to the higher judiciary, how these powers are used depends on the person. In our society, many people are ignorant of their rights (Bhattacharya, 2014) guaranteed by the Constitution because of widespread illiteracy. Moreover, public functionaries in our culture often ignore the Constitution, along with the rules and regulations that have the status of law. This negatively affects the civil rights of the public and the society's interests. In such a situation, PIL is the solitary available remedy for any fellow of the public to bring issues to the attention of superior courts.

The legal community is deeply concerned about how conventional litigation can improve access to justice (Luppi & Parisi, 2012) in the presence of serious challenges like a substantial backlog of cases, widespread corruption, threats to judicial independence, and bureaucratic intricacies. The swift delivery of justice has become a formidable challenge (Zullah, 1992). This situation allows the well-off to exploit loopholes in the current adversarial legal system (Bakhsh et al., 2022). The current justice system leaves the underprivileged to bear the burden of a time-consuming and expensive traditional litigation process. This distressing scenario significantly obstructs the enforcement of constitutionally guaranteed human rights. Furthermore, many other procedural constraints like locus standi have also impeded these aggrieved factions from getting reliefs from courts (Nadeem et al., 2023). This underscores the importance of presenting the concept of PIL in Pakistan to bring flexibility to the harsh legal procedures (Hussain, 1993).

PIL is basically a procedural deviation from the ordinary course of law. It aims to overcome obstacles in the way of justice for the underprivileged and destitute. PIL is considered one of the means of promoting social justice and stabilizing democracy. It is seen as an emerging notion with the potential to back underprivileged sections of society by allowing them to seek recourse to courts to uphold their rights (Dalvi, 2023). Despite constitutional safeguards, a knowledge gap about PIL exists in our society, especially among illiterate and economically disadvantaged people. There is not much research paper available on PIL in Pakistan, wherein its features, roles, and potential for ensuring justice for all are revealed. Therefore, there is a dire need to highlight the characteristics of PIL within the broader context of Pakistani legal philosophy to achieve the constitutional goal of justice for all (M. H. Khan, 1993). That is why we are writing this research paper. This research paper will explore the law of PIL in Pakistan. It will cover its basic concept, aspects, features, purpose, scope, role, and procedure, which has never been covered before.

Research Methodology

The research methodology for this paper mainly uses a multi-faceted approach to comprehensively understand and explore the features, roles, and potential of PIL in Pakistan. The work will begin with an exhaustive review of existing literature, including legal texts, books, case laws, research papers, dissertations, etc., to understand the brief historical background of PIL, its legal framework, and its significant impact through historical cases in Pakistan. Subsequently, a thorough analysis of PIL cases from Pakistan's judicial history will be conducted. At this stage, special focus will be placed on an important and diverse range of issues such as forced labor, environmental protection, pollution cases, public health, public assets, etc. The main research methodology will be a jurisprudential analysis through which the underlying principles and theoretical frameworks of PIL practice in Pakistan will be explored. However, a comparative study with other jurisdictions, with special reference to Indian case laws on PIL, will also be conducted. In the end, the findings will inform readers regarding PIL's efficacy, and recommendations will be made for enhancing its role in the advancement of justice for all in Pakistan.

Origin of PIL in Pakistan

After Independence, the judiciary mostly adhered to the deep-rooted Anglo-Saxon principles of judicial limitations. It abided by the 'aggrieved person' principle. This restraint, influenced by English traditions, discouraged judicial activism. As a result, justice was more accessible to the elites of the community instead of the underprivileged people of Pakistan (Ullah, 2018). However, in the late 80s, PIL emerged as a response



to widespread violations of essential rights by public functionaries. The judiciary actively protected the rights of the common people against incompetent, dishonest, and unproductive public functionaries in Pakistan. The right to life, accompanied by other rights, became a tool in PIL. Moreover, the relaxation of the obstructive instructions of locus standi also afforded a pathway to PIL (Khan, 1993; Public Interest Law Association of Pakistan v Federation of Pakistan, 2023).

Researchers of PIL in Pakistan generally concur that the groundbreaking Supreme Court PIL cases were the Benazir Bhutto and Darshan Masih cases (Benazir Bhutto v Federation of Pakistan, 1988; Darshan Masih v the State, 1990). According to these cases, the main goal of PIL is to promote social justice for the poor and underprivileged, in addition to classes of individuals who are facing tyranny or are incapable of chasing their rights through the prescribed justice system due to numerous physical and socio-economic limitations. The key feature of PIL is the right to pursue "justice" directly by the use of constitutional courts. Other related but significant aspects of PIL included the relinquishment of court fees, the facility of legal aid, the use of inquisitorial procedures, and a varied range of unrestricted remedies (M. S. Khan, 2014).

The origin of PIL in Pakistan is subtly tangled with constitutional law. The discretionary power for PIL is derived from constitutional provisions related to fundamental rights by using a proactive interpretation of the same. Although the formal introduction of the PIL approach in Pakistan took place in the above two cases, its roots are traced back to the early development of human rights judicial jurisprudence in Pakistan (Dr. Barkat Ali & Dr. Hafiz Aziz-ur-Rehman, 2021).

Features of PIL

In PIL, the term 'litigation' refers to a legal prosecution, which includes proceedings introduced in a court with the goal of implementing a right or pursuing a remedy. Basically, it means a prosecution introduced in a court to implement the right of the public due to their general interest (Dr. Ambedkar Basti Vikas Sabha v. Delhi Vidyut Board, 2001). This involves situations where the community or a group of people have a financial or some other advantage that affects their lawful rights or responsibilities (Bakshi, 2020). The Council for Public Interest Law, created by the Ford Foundation in the USA, explained PIL as a law about providing legal representation to those groups and interests that did not have representation before. This is because the usual legal services system does not reach important parts of the populace and substantial interests. These groups take in environmentalists, customers, and ethnic and cultural minorities, among others (Walia, 2009).

PIL has unique features that make it different from traditional litigation. One key aspect is the expanded locus standi (Antony, 2023), whereby it permits persons or associations to go to court in the best interests of the public, in spite of if they do not have a private interest (Province of Sindh v. Lal Khan Chandio, 2016). The courts have a clear stance within the domain of PIL that the rule of locus standi has no relevance because these cases are related to the implementation of the rights of the citizens (Imran Khan v. Election Commission of Pakistan, 2013).

This expanded standing overcomes traditional legal barriers. PIL also uses an informal procedure: flexibility and speedy case determination (Syed Mubashar Raza Jafri v. Employees Old Age Benefits Institutions, 2014). In PIL matters, courts believe that they should take more flexible approaches regarding the formal procedural requirements in court proceedings (Syntron Limited v. Huma Ijaz, 2014). Another distinctive feature of PIL is that courts have shown a tendency to shift from their traditional adversarial role and, in these cases, adopted an inquisitorial approach to achieve true justice (Sh. Riaz ul Haq v. Federation of Pakistan, 2013). Petitions can be filed in any higher court, and the courts can also take notice based on letters, postcards, or even newspaper reports (Al-Jehad Trust v. Manzoor Ahmad Wattoo, 1993). All these features make PIL more accessible and responsive in case of public interest matters (Gupta, 2023)

Objectives of PIL

Regarding its objectives, PIL aims to promote public interest and justice (Dalvi, 2023). It protects the civil rights and welfare of marginalized and helpless sections of humanity who may lack the means to approach courts independently. It empowers these sections and ensures their grievances are heard and addressed

directly by the higher judiciary (A. A. Malik, 2023). PIL plays a vital role in safeguarding fundamental rights preserved in the Constitution and ensuring the protection and upholding of citizens' rights (Qureshi et al., 2023).

The courts have provided various foundations and objectives behind the philosophy of PIL. One pertaining to PIL is its usage as a check on the actions of public functionaries. These functionaries need to be aware that their actions are challengeable before the higher courts by invoking their extraordinary Constitutional jurisdiction under the umbrella of PIL. The courts have held the view that, with the expansion of the novel notion of PIL in recent ages, a person can now beg before the jurisdiction of the higher courts if they are not "aggrieved." Therefore, PIL also serves as a warning for public functionaries (Province of Punjab v. Muhammad Yaqoob, 1992).

The procedure of PIL in Pakistan

The quest to make justice available to people, especially for those who are unaware of their rights, is always a challenging journey. However, PIL has proven effective in this regard. Higher courts have achieved this by relaxing their rules and by deviating from following the normal procedure during proceedings under PIL. Basically, the procedure of PIL comes from the authority vested in the higher judiciary by the Constitution of Pakistan (1973, Articles 199 & 184(3)). Its objective is to offer a pathway for all and sundry to achieve more accessible justice, mainly for the protection and preservation of their fundamental rights, such as life and liberty (Public Interest Law Association of Pakistan v. Federation of Pakistan, 2023). Here, a detailed procedural analysis of PIL is not the main theme of this research paper; therefore, it is only referenced here.

However, petitioners sometimes face difficulties in proving themselves as aggrieved persons to utilize the above-referred constitutional jurisdiction. The courts hold the view that a person cannot be considered an 'aggrieved person' unless they establish a direct or indirect injury to themselves and a substantial interest in the subject matter (Jan Muhammad v. Government of N.W.F.P., 1993). To meet the requirements of an 'aggrieved person' in PIL, the party is required to reveal a personal interest in the act of a lawful duty due to them, where the non-performance of the same would outcome in the harm of some own benefit or gain (Ardeshir Kowasjee and ten others v. Karachi Building Control Authority (KMC) Karachi, 1999). The courts argue that the concept of 'aggrieved' in PIL is wise, as it helps curb litigation for the sake of litigation by those who may not be genuinely aggrieved (Tasbhai Motibhai Desai v. Roshan Kumar, 1976).

On the other hand, the courts have also relaxed the prerequisite of being an aggrieved individual in PIL matters (Rana Mehmood Ali Akhtar v. Chairman E.G.M.I., 2019). In a verdict, Syed Haider Ali Pirzada, J. of Karachi High Court, highlighted that PIL is not meant to satisfy the interest of any specific person but to provide effective relief to society. Reformed procedural rules allow the initiation of PIL through formal petitions, letters, or even telegrams. The test is when the conscience of the court is shocked by the act or omission under question, and then the Constitution is invoked. Through PIL, public injuries can be addressed and redeemed, even if the initiator is not personally harmed (Khurram Khan v. Government of the Punjab, 2009).

Role of PIL in Pakistan

PIL has played a very constructive part in shaping the legal landscape of this country and reforming the jurisprudence related to the fundamental rights of its citizens. Research has shown more than 206 reported judgments on this topic alone from 1989 to 2023, out of which 55 are from the Supreme Court of Pakistan. PIL has expanded its scope within the legal landscape of Pakistan, covering cases from the right to life to public procurement matters and from election matters to the enforceability of the right to movement. The following is a brief analysis of a few instances where PIL has played a positive role.

Forced Labour Case

The first judgment highlighted in the research is the case of Darshan Masih, which the Court took up based on a telegram received. Hence, the requirement of the petitioner in person or through his advocate was



relaxed. It was a historic case on the topic of forced labor, from which the court issued necessary orders to the authorities dealing with this issue (Darshan Masih v. The State, [1990](#)).

Environmental Hazards and Pollution Case

Then, there is a case wherein the court initiated the proceedings based on a news item from a newspaper. The case was related to environmental hazards and pollution. The court issued necessary orders to safeguard the environment in the province of Balochistan (Human Rights Case (Environmental Pollution in Balochistan), 1994). PIL is a favorite tool for addressing environmental issues (Hassan & Azfar, [2004](#)).

Right to Life Case

The next one is another landmark case in the jurisprudential history of this country, wherein the court broadened the scope of the right to life and referred to it not as mere existence but as a quality life. The matter was taken up by the court based on a letter received regarding the danger posed by the installation of a grid station. The court issued necessary directions to public functionaries to ensure the security and assurance of life as a quality life (Shela Zia v. WAPDA, [1994](#)).

Public Park Case

PIL has also been used to protect public parks. In a case where authorities attempted to convert a public park into a golf club, the court intervened through PIL. The court held that the park is a necessity for the overall public, and the matter is of their interest. The court deemed the petition maintainable under its jurisdiction, as defined in Article 184(3), and issued necessary directions to secure the park for public entertainment (Moulvi Iqbal Haider v. C.D.A., [2006](#)).

Pakistan Steel Mill Case

PIL has also been used to ensure that the assets of this country are not being misused. This fact can be analyzed in a case where the validity of the agreement to sell Pakistan Steel Mill was questioned before the superior court under the umbrella of PIL. Although the authorities raised objections to the maintainability of the matter, the court, extending the benefits of PIL to the petitioners, refused to dismiss it (Watan Party v. Federation of Pakistan, [2006](#)).

Political Party Case

Even political parties have also used PIL to ensure their rights in certain cases. This occurred in a case where a petition was filed by a fellow of a political party to ensure the safe entry into this country of the head of his political party after an exile. The court reinforced that every national has the right to enter this country, dependent on the law. The court held the petition maintainable and declared that the chairman of the political party has the right to enter this country. The matter was pursued through PIL. Hence, PIL is a very valuable tool for everyone, including political personalities (Pakistan Muslim League N v. Federation of Pakistan, 2007)

Floodwaters Case

PIL has even been used in matters of natural calamities and emergencies if a question of justice is involved. In a case where the diversion of floodwaters was come in the knowledge of the superior court, through a letter written to it, the court took up the case to ensure that the distribution of funds to the families affected by the floods must be made on the basis of equality and justice (Marvi Memon v. Federation of Pakistan, [2011](#)).

Karachi Law & Order Situation Case

PIL has even been used by the court in law-and-order situations in particular cities. When the law and order situation in Karachi was very disturbed and depreciated, the court also intervened, through PIL, to pass necessary directions to the concerned authorities to wake them up from their deep sleep. This was done so that the rights of the citizens of Karachi, especially their right to life and right to property, could be safeguarded (Watan Party v. Federation of Pakistan, [2011](#))

Election-related Case

The jurisdiction under PIL was even expanded in cases of alleged corrupt political election practices. The society used PIL to enforce election-related provisions provided in the constitution to ensure free and fair elections in this country. There were many objections regarding the maintainability of the case; however, the court widened the space of PIL and held that it is maintainable as the question involved public interest matters, and the election was a fundamental right of citizens of this country. The court delivered necessary guidelines to the Election Commission of Pakistan to ensure free and fair elections (*Workers Party v. Federation of Pakistan*, 2012).

Public Procurement Case

The PIL is always available to ensure that public money is not misused. In a case where public procurement was questioned before the court through PIL, it held that for PIL, the jurisdiction of the court is not a closed shop limited to adversarial proceedings. The rule of locus standi should not be used to bar citizens from knocking on the doors of courts to ensure the safety and enforceability of their fundamental rights (*Raja Mujahid Muzafar v. Federation of Pakistan*, 2012).

Conclusion and Recommendations

In conclusion, PIL has proven itself to be a potent instrument within the legal framework of Pakistan, as it offers a ray of hope for those seeking justice and for those for whom justice is beyond the reach of the regular court system. This research work, through a careful examination of its features, procedures, and pivotal roles, which it has already played within the courts of Pakistan for safeguarding the rights of vulnerable communities, underscores its unparalleled potential for social welfare and for the reforms of our society. Through highlighting landmark cases of various domains, such as forced labor issues, environmental protection and pollution cases, and public infrastructure and public procurement problems, this paper illustrates how PIL is having.

PIL is a straightforward term; it refers to legal proceedings initiated by an individual in the interest of the overall community. It is a legal action taken to protect public interests, not personal ones. This occurs through judicial activism exercised by the courts. However, for this form of litigation, the litigant must convince the court that their motive is not self-serving but for the greater good of the community. PIL is a form of activism within the courts, advocating for the public at large. In this jurisprudence, PIL enables individuals to seek relief from the courts without personal consequences (Siddiky, 2023).

PIL safeguards the public interest. It covers all those essential matters that are beneficial to the general populace. It plays a vital part in attaining justice and ensuring the rights of the community, particularly those that may have been neglected due to issues like destitution, various incapacities, illiteracy, negligence, etc (Parvin & Ashabi, 2023). It has been demonstrated to be a highly effective tool not only in tackling environmental concerns (Zhang, 2023) and climate change issues (Odote, 2013) but also in dealing with economic issues (Weisbrod et al., 2023).

PIL is now the preferred method for presenting human rights cases directly before higher courts in order to avoid the lengthy time and cost associated with litigation in lower courts and to ensure adequate and effective justice (Dalvi, 2023). It is a supportive or collective effort by a single person, sometimes by a group or organization, and the judges to secure the adherence of statutory rights, profits, and privileges for the underprivileged, oppressed, and weak sections of the social order (*People's Union for Democratic Rights & Others v. Union of India & Others*, 1982). It is the creation of recognition of the constitutional responsibility of the court (*Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India & Others*, 1981). It is part of the development of participative justice (*Fertilizer Corporation Kamagar Union, Sindri & Others v. Union of India & Others*, 1981). It aims to make basic human rights meaningful rights (*Ramsharan Autyanuprasi & Another v. Union of India & Others*, 1989). It serves as a persuasive instrument to uphold human rights and maintain the rule of law (Talukder, 2011).

The commendable expansion of the jurisdiction of the higher courts in the PIL context often remains mere words unless the implementation and enforceability of the fundamental rights of the people of this country are ensured (Warraich et al., 2023). Although the judiciary has played a very positive role



(A. A. Malik, 2023) in the jurisprudential development of PIL, guaranteeing enforceability is still a question that needs monitoring. Despite the significant Darshan Masih case in 1990, recent reports on forced labor cases in Pakistan (N. Malik, 2016; Zaidi et al., 2013) suggest that a stringent and vigilant approach is still needed to enforce PIL decisions effectively. It is now incumbent upon the judiciary to develop a mechanism that not only ensures governmental compliance but also monitors the actual implementation of its orders in PIL.

Moving forward, it is imperative to use and employ the potential and power of PIL cautiously. Its usage must always be for noble objectives while keeping the principles of fairness and equity in due regard. The above research shows that PIL has emerged not merely as a legal tool but also as a beacon of hope for the downtrodden and vulnerable segments of our society, for those who cannot reach the doors of justice under the regular court system. The research also shows that to reach our destination, which is a more just society, PIL possesses all essential features and potential; what is required is to use it fairly and justly.

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