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## Frivolous PIL and luxury litigation

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### Abstract

Public Interest Litigation is a constitutional remedy guaranteed to every citizen of India. In recent times, there is substantial amount of misuse which is on a steep rise especially post the Covid-19 era. This misuse is happening in the form of frivolous PIL and luxury litigation. This paper attempts to study the development of PIL in respect to the current rise of frivolous PIL and its misuse. A historical perspective has also been given alongside the study of relevant case laws which has shaped the attitude of the courts in respect to matters and petitions which are described as “luxury litigation”. The paper also makes attempts to provide suggestion on what could possibly be done to get away with this practise.

**Keywords:** Luxury litigation, PIL, frivolous PIL, petition

### 1. Introduction

Frivolous Public Interest Litigation in ordinary words can be considered as a misuse of a public interest litigation filed in the Court of laws. Motivated or frivolous on the account of personal motives and interests which are usually inspired for individual gains under the cover of public cause or PIL have come up as a major hindrance in the development of judicial system in recent times, often blurring the lines between a “public” interest litigation to a “private” interest litigation. The threat to positive judicial activism comes from negative public interest litigations. In a recent case before Supreme Court, the petitioner was fined to the tune of Rs 2lac for indulging into “luxury litigation”<sup>[1]</sup>. Luxury litigation could be referred to all the questions of law pertaining before the Court which are motivated from a personal point of view, once held is followed by a cost as a penalty to the litigant. In plain words, all frivolous PILs when followed by a penalty are termed as “luxury litigation”. For a better understanding of a frivolous PIL, it is important to know the brief history and the concept of PIL in India.

PIL<sup>[2]</sup> has been borrowed from the American jurisprudence meaning a litigation undertaken to secure public interests demonstrating the availability of justice to socially – disadvantaged parties. The concept was introduced by Justice PN Bhagwati in the case of Hussainara Khatoon Vs State of Bihar, but it was the case of SP Gupta Vs Union of India which defined PIL in Indian context. There is not a different statute for PIL in the Indian Constitution but the concept can be said to be suited to the provisions of Article 39A which states about protection and deliverance of prompt justice with the help of law. PIL can be filed against any member of public for any matter of public interest for redressing an injury or public wrong. A PIL can be filed before the Supreme Court under Article 32 and the High Court under Article 226 in the form of writ petitions, and the Magistrate Court under the provisions of Section 133 of the Criminal Procedure Code.

### 2. Frivolous PIL: History & course of actions

In a speech<sup>[3]</sup> dated September 2008, the then Prime Minister of the country Manmohan Singh stated that the concept of PIL had gone too far by the filling up of casual PILs. The late CJI SH Kapadia stated about heavy fines for people indulging in frivolous PILs. In the year 2011, the demand for genuine PILs had taken such grounds that even the Supreme Court was constrained to issue guidelines<sup>[4]</sup> to check PILs. Concurrently, the then law minister MR Veerappa Moily held meetings with Justice Bhagwati and other legal experts to seek more clarity on the issue. One of the main considerations of the ministry was to discourage vendetta based PILs and empower courts by imposing exemplary costs and making such act an offence punishable under law. This was further reiterated by the bench led by Chief Justice JS Kehar in 2017 stating that liberal access to justice has led to indiscipline and came down heavily on the litigants who try to take liberties with the truth, warning them to be aware of consequences to follow.

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### 3. Frivolous PIL and relevant case laws

#### 3.1 SPV Paul Raj V. The Chief of Electoral Officer and Anr (2021) <sup>[5]</sup>

On the account of Tamil Nadu Legislative Assembly Election, the petitioner for protection the 6, 29, 43, 512 voters from Covid-19 prayed in the High Court to apply its power under Article 226 of the Indian Constitution to issue a writ of Mandamus for compulsory medical tests of contesting candidates. The court held the petition to be completely frivolous and having no basis. The petitioner was banned by the court for filing petitions for a period of one year and the petition was dismissed with costs. Court also asked petitioner to be more responsible before filing such petitions to the court.

#### 3.2 Lalit Valecha v. Union of India (2021) <sup>[6]</sup>

A PIL was filed in the Delhi High Court praying to curb the spread of negativity directing the media houses to follow code of ethics and regulations while reporting sensitive content. The ground given by the petition was of Article 19 of the constitution which states about reasonable restrictions further stating that right to freedom of expression is not absolute. The petition was dismissed with court elaborating that reporting number of deaths in public isn't a negative news.

#### 3.3 Pratyush Prasanna and Anr v. State of NCT of Delhi (2021) <sup>[7]</sup>

The petitioner was fined Rs 50000 for not doing his homework properly where he prayed to the Court that government of India was misusing public's money. Court further stated that petitioner merely relied on a tweet posted by someone else and made no effort in finding the information using the Right to Information Act, 2005.

#### 3.4 Rajeev Suri v. The Delhi Development Authority (2021) <sup>[8]</sup>

Also known as the "Central Vista Case", this petition challenged the clearances and the manner they were obtained for heritage, land-use and environment matters and the possibility of Central Vista project. The Supreme Court reiterated that PIL was not meant to make the judiciary overriding everyday governance but for other important issues like securing rights and ensuring justice for all. Supreme Court called this as a misuse of the PIL.

#### 3.5 Esteem Properties Private Ltd. V. Chetan Kamble (2022) <sup>[9]</sup>

The Supreme Court held that issues concerning title and ownership should not be allowed under PIL. The High Court was wrong in doing so. The court further held that in light of the circumstances, the said petition was nothing more than the abuse of the process of PIL. The Supreme Court also lamented the immature claims stating the amount of precious times of the courts, it wastes.

#### 3.6 Dilip Kumar Baral & Ardhendu Kumar Das v. Government of Odisha (2022) <sup>[10]</sup>

On the account of two separate PILs filed by devotees of Jagannath temple of Puri challenging the construction activities undertaken by the state government and the temple management within the premises of the historic shrine, the apex court passed orders of dismissing it stating that the construction activities are completely in tune with the earlier

2018 judgement on the same issue. The court expressed concern over "mushroom growth" of frivolous public interest litigation and imposed a fine of 1lakh each on the petitioners.

### 4. Reasons for Misuse of PIL

1. PILs in recent times have emerged as a tool for harassing and registering false cases against people to settle individual propagandas. A degree of personal vendetta is involved while filing such petitions with the objective of serving political and business interests.
2. In notable cases, the Court has repeatedly stated that 'public interest litigation should not be treated as 'private interest litigation' <sup>[11]</sup>. It is a litigation to ensure 'public interests' hence is often termed as 'social action litigation'. In recent times, individuals have decided to take it all upon themselves by widening the ambit of this definition to the benefit of their own causes.
3. Ego seems like another plausible argument for litigants indulging in luxury litigation as discussed by the Bombay High Court in an appeal which was dismissed with costs <sup>[12]</sup>. The major rise in cases which have been dormant for years are suddenly been brought up for proceedings can be attributed to this factor.
4. Various sections of society often try to use the PIL as a means of publicity. Solicitor General Tushar Mehta during the first wave of corona which was also synonymous a wave of PILs against the government machinery called them as "professional PIL shops" <sup>[13]</sup> with a sole objective of attaining "cheap publicity" during the times of distress and asked them to be abrogated with a strict action in order to stop them from mushrooming in the future.

### 5. Detrimental effect of luxury litigation

The whole aspect of involving into luxury litigation and filing frivolous PIL not only shakes the system of justice, but also wastes precious times of the courts. As of March 2022, there were 4.7 crore cases pending in the court of laws <sup>[14]</sup>. The trend of litigation is rising with more people approaching the court, which ideally is a good thing, but the mushrooming of frivolous PILs is a grave concern. Courts end up wasting their time on this which can be technically used on much constructive things. In a recent case, Supreme Court slammed Kerala government for indulging in luxury litigation. Coming down heavily, Apex Court asked the concerned state government to do something better like building schools, roads and infrastructure instead of challenging the seniority of one upper division clerk <sup>[15]</sup>. The observation shows that with courts having razor thin time due to pendency, such petitions might divert attention from the bigger problems in hand, in turn having a detrimental effect on the process of justice.

### 6. Suggestions for preventing frivolous PILs

1. Media plays an important role in the mechanism of spreading awareness in a democracy. It should highlight the cases of the abuse of PIL. Similarly, awareness seminars should be undertaken which should function as a path-marker to the litigants in general.
2. A trend that has emerged in the recent developments that Courts have retorted to hefty fines for individuals filing frivolous PILs. In a case which came up in the month of June, the Court slammed a fine of Rs 18 lacs

which was later reduced to Rs 2 lacs on the petitioner who has indulged into luxury litigation <sup>[16]</sup>. This is a good step which can be undertaken in future too as a means of having deterrent effect on others.

3. The discipline and ethics should be emphasized and lawyers should actively refuse representing such malicious practitioners. Similarly, an extra provision could also be added to the Bar Council Rules <sup>[17]</sup> which should hold lawyers responsible for filing frivolous petitions.
4. A system of check could be introduced by the courts inspecting the filed PIL to be not based on any personal vendetta where it is serving and feeding private interests.
5. Former Attorney General Soli Sorabji states of three basic rules to be followed in order to regulate the filing of Public Interest Litigation <sup>[18]</sup>. These are:
  - Rejecting and not hearing doubtful PIL in the beginning itself alongside imposing high cost on them
  - The general rules of litigation should come into play and petitions directed against some social and economic regulation or an important project after a long period of time should be out rightly rejected.
  - The also stated that PIL practitioners should be asked to provide assurances in form of undertakings to the court in order to recover the damages if the PIL is dismissed.

## 7. Conclusion

Public Interest Litigation in an important aspect of judicial activism and it comes to the rescue of the people in general alongside strengthening the judiciary. The recent “mushrooming” of frivolous petitions has been a cause of great concern in the legal and social circles. Apart from eating up the important time of the courts, “luxury litigation” also shifts the focus of judiciary on things which are totally inconsequential and irrelevant. It has been so deeply ingrained in the system nowadays that even some state governments have been called out by the Apex Court with directions stating that there are other important things which a government should focus on instead of focusing on things which are totally oblivious to the central work of the government. A wave of such PILs have been registered in the country post the Covid-19 era as every other petitioner tries to invoke his personal biases while trying to bring down and questioning governmental steps towards attaining a welfare state. Courts in 2022 have taken a strict recourse in these regards with imposing notable fines alongside being extremely vocal about sensitizing a constitutional remedy like the PIL. Newer methods and regulations should come into place and the guidelines laid down by the Supreme Court with respect to Public Interest Litigation should be followed. The overburdened judicial system of the country needs it.

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