

ELECTION INTEGRITY AND PUBLIC INTEREST LITIGATION: A CRITICAL ANALYSIS

Legal Upanishad Journal (LUJournal.com)

Vol 1 Issue 2 | August 2023 | pp- 156-171

Sreeja Mukherjee, Law Student, Xavier Law School, Kolkata

ABSTRACT

Election integrity is the linchpin of any democratic society, and hence, ensuring that the electoral process is free from fraud, coercion, rigging, and manipulation becomes essential. Public interest litigation (hereinafter referred to as PIL, in short) has emerged as a powerful tool to safeguard the rights of citizens to challenge irregularities and advocate for reforms. This paper critically examines the concept of election integrity, provides a brief background on the concept of a PIL, explores the role of a PIL in addressing electoral issues, and attempts to evaluate the effectiveness of PILs to ensure free, transparent, and credible elections. Through a comprehensive analysis of certain legal cases and scholarly articles, this paper aims to examine the nature and ambit of voting rights and cast light on the challenges, limitations, and effectiveness of public interest litigation to uphold election integrity.

Keywords: *Democracy, Election Integrity, Fraud, Manipulation and Public Interest Litigation.*

1. INTRODUCTION

In the words of Abraham Lincoln, "The ballot is stronger than the bullet". Elections serve as a fundamental and central pillar of democratic governance, and their integrity ensures transparency and an accurate representation of the diverse views and will of the citizens. Fair and transparent elections guarantee the protection of the rights and liberties of various sections of society so that everyone can participate in the election process without any fear of coercion, compulsion, violence, rigging, or manipulation. By upholding the integrity of elections, the values and principles that underpin democracy itself, such as freedom of choice and regard for the rule of law, are strengthened and reinforced. In recent times, there has been a growing concern about manipulations in the electoral process, voter suppression, gerrymandering, and undue influence in politics, which has stressed the need to have robust mechanisms to protect election integrity. When someone's right to vote has been violated or when something could affect the conduct of free and fair elections, such as allegations of election fraud or malpractice, constitutional violations, or election-related violence, public interest litigation may play a critical role in enabling that person to seek justice.

LEGAL UPANISHAD JOURNAL

2. PUBLIC INTEREST LITIGATION: HISTORY AND CONCEPT

In the 1960s, the idea of public interest litigation¹ emerged in American jurisprudence, where there were provisions for providing legal representation and advice to organizations like ethnic minorities, disorganized groups, the destitute, etc. Reginald Heber Smith deserves credit for taking the initial step in the formation, which led to the establishment of an organized legal aid organization for the underprivileged in 1876. Following that, legal assistance was organized with driven law firms concentrating only on legal aid projects². With regard to India, the introduction of the same was nothing less than a revolutionary move to voice the grievances and opinions of those who are poor and disadvantaged and ensure justice for those sectors of society who are deprived because of various procedural technicalities and formalities pertaining to litigation and the judicial process.

¹ P.M. BAKSHI, PUBLIC INTEREST LITIGATION (Whytes & co. 2018)

² Ibid

The Judiciary overlooked procedural irregularities and gave a very liberal interpretation of the Indian Constitution's Articles 32³ and 226⁴. Hon'ble Justice Krishna Iyer discussed PIL in the case of *Mumbai Kamgar Sabha v. M/S Abdulbhai Faizullabhai & Ors.*⁵, where he noted that in our socio-economic environment, flexible construction of locus standi promotes the public interest⁶, and conceptual latitudinarianism justifies taking liberties where the solution is supported by a large number of people, especially when they are weaker. However, *Hussainara Khatoon v. The State of Bihar*⁷ has been identified as the first known PIL case in India. Considered 'the mother of public interest litigation in India,' Pushpa Kapila Hingorani submitted the petition to raise awareness of the conditions of convicts held in the Bihar Jail.

Thereafter, PIL has continued to develop as a type of social litigation directed towards the welfare of the poor and marginalized people and has brought the judiciary closer to the people of India. Not only has it thereby become a more powerful institution, but it has also acquired legitimacy and prestige. The wide scope of the PIL is begrudged both by the bureaucracy and the politicians because it exposes their conduct to public scrutiny.

To be considered a PIL, each petition must follow a set of rules that have been provided by the Supreme Court. The power of a PIL comes from its freedom from the constraints of conventional legal procedures. In the case of PILs, judges have the authority to devise creative solutions, drive policy changes, catalyze the passage of laws, admonish officials, and enforce orders, and they are not hesitant to use this authority when they believe it would serve the greater good⁸. The Court moves quickly to address any perceived gaps in governmental authority.

3. EXPLORATION OF CONSTITUTIONAL DIMENSIONS

³ INDIA CONST. art. 32

⁴ INDIA CONST. art. 226

⁵ *Mumbai Kamgar Sabha, Bombay vs. M/S. Abdulbhai Faizullabhai & Ors.*, 1976 SCR (3) 591

⁶ Monika Ahuja, *Public Interest Litigation in India: A Socio-Legal Study*, UMI (Aug 7, 2023, 6:30 PM), [etheses.lse.ac.uk/1417/1/U084680.pdf](https://theses.lse.ac.uk/1417/1/U084680.pdf)

⁷ *Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar*, 1979 SCR (3) 532

⁸ Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19 J. ENV. L. (2007)

As explained by the Supreme Court, it is fundamental that citizens possess a right to be informed about the affairs and operations of the government, which, having been chosen by them, seeks to formulate effective strategies of governance focused on their wellbeing. The court continued by adding that democracy demands openness and transparency, and openness is a requisite of a free society.⁹

In its rulings in *N. P. Ponnuswamy v. Returning Officer, Namakkal Constituency*¹⁰ and *Jyoti Basu v. Debi Ghosal*,¹¹ the Supreme Court noted that, strangely enough, the right to vote is neither a fundamental nor a common law right while being essential to democracy. It is purely a statutory right.

The aforementioned statement indicates three things: the right to vote does not constitute a common law right or a fundamental right. Simply put, it is a statutory right.¹² As a result, we might conclude that the right to vote does not qualify as a fundamental right in its strict legal sense. This is because it is nowhere specified in the many fundamental rights, as enshrined in Part III of the Constitution, that citizens are entitled to. Because no such customarily granted right has even been with us since its inception, there is some ambiguity or confusion in the second half of the claim that the right to vote does not constitute a common law right. The third clause of the sentence, the right to vote is a right granted as per the provisions of the statute, refers to the fact that the Representation of the People Act¹³, 1951, grants us the right to vote.

However, two decades later, in a judgement, *People's Union for Civil Liberties v. Union of India*¹⁴, two judges in a bench of three judges held the right to vote to be a constitutional right, although not a fundamental right. It was stated therein that voting in elections for the House of the People or legislative assembly is not only a statutory right; it is a constitutional right. One aspect of the fundamental right protected by Article 19(1)(a)¹⁵ of the Constitution is the freedom to vote, which differs from the right to vote. A voter's exercise of their right to free expression is accomplished when they cast a ballot in favour of any candidate. A

⁹ Dinesh Trivedi, *M.P. v. Union of India*, (1997) 4 SCC 306

¹⁰ *N. P. Ponnuswamy v. Returning Officer, Namakkal Constituency*, AIR 1952 SC 64

¹¹ *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691

¹² Virendra Kumar, *Citizen's Right to Vote: Role of the Supreme Court in Empowering Citizenry to bring about 'A Systemic Change' through NOTA for cleansing out body politic (A juristic critique of constitutional developments)*, 56 J. IND. L. INST. 25, 32-34 (2014)

¹³ Representation of the People Act, 1951, No. 43, Acts of Parliament, 1951 (India)

¹⁴ *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399

¹⁵ INDIA CONST. art. 19(1)(a)

democratic political system is predicated on the individual's right to vote for the candidate of their choosing. Our Constitution recognizes this right, and the Representation of the People Act gives it legal meaning in its form.

In *People's Union for Civil Liberties & Anr. v. Union of India & Anr.*¹⁶, the Supreme Court, after carefully reviewing the rulings in *Kuldip Nayar*¹⁷, *Association for Democratic Reforms*¹⁸ and *People's Union for Civil Liberties*, pointed out that there was no discrepancy concerning the fact that the right to vote is a right purely granted as per statutory provisions and neither a fundamental nor a constitutional right.

Recently, in *Anoop Baranwal v. Union of India*¹⁹, a five-judge Supreme Court bench examined the conflicting arguments regarding the standing of the right to vote. In the instant case, the procedure of choosing the Chief Election Commissioner (CEC) and election commissioners was under deliberation. The majority's position was that the right to vote should be a constitutional right, although no final opinion was given because of the ruling in *Kuldip Nayar*. In a separate concurring judgement, Justice Rastogi pointed out that, in accordance with Article 19(1)(a), the right to vote is a representation of the citizen's choice and preference. The right to vote is a crucial tool for people to control their own destiny by electing the government they like, which is in line with Article 21²⁰ of the Constitution being a part of the right to life. The right to vote is also centred around Articles 15 and 17 of the Constitution. He noted that historically, only men and those who were not socially disadvantaged had the right to vote, but that the Indian Constitution made the brave decision to expand the privilege to everyone. He continued by saying that alongside Article 326²¹ of the Constitution, other Constitutional provisions, including Articles 15²², 17²³, 19²⁴, and 21, also pertain to voting rights. The court was therefore of the view that the level of inspection over the operations of the Election Commission of India, overseeing the holding of free and fair elections, has increased as a result of our ruling that voting rights are not only constitutional rights but also part of Part III of the Constitution. Because it concerns

¹⁶ *People's Union for Civil Liberties & Anr. v. Union of India & Anr.*, [2013] 12 S.C.R. 283

¹⁷ *Kuldip Nayar & Ors. v. Union of India & Ors.*, (2006) 7 SCC 1

¹⁸ *Union of India v. Association for Democratic Reforms & Anr.*, (2002) 5 SCC 294

¹⁹ *Anoop Baranwal v. Union of India*, (2023) 6 SCC 161

²⁰ INDIA CONST. art. 21

²¹ INDIA CONST. art. 326

²² INDIA CONST. art. 15

²³ INDIA CONST. art. 17

²⁴ INDIA CONST. art. 19

constitutional and fundamental rights, this court must ensure that the Election Commission's operations as per Article 324²⁵ allow for the protection of people's right to vote.

Now let us have a better understanding of election integrity and the significance of having free and fair elections.

4. ELECTION INTEGRITY: CONCEPTS AND CHALLENGES

As stated by Lyndon B. Johnson, "A man without a vote is a man without protection." In any democracy, the only source of the government's legitimacy and power is the people who are being ruled. Free and fair elections must be held in order to convert the consent of those being governed into governmental authority. To maintain a strong democracy in our nation, the Election Commission needs to be protected against political and/or executive meddling. These elections define the power and determine the leadership of the popularly elected representatives, subject to the laws and statutory regulations of the country.

According to Article 21 of the Universal Declaration of Human Rights (UDHR)²⁶, adopted in 1948, the wishes of the people should serve as the foundation for the power of the government. This willingness should be expressed through regular, genuine, and truthful elections that are held under strict confidentiality by secret vote and using equal opportunity for participation, which is universal and equal suffrage.

The very basis of democracies is openness, transparency, and accountability²⁷, with one very important exception, which is the act of voting itself. It is here that the idea of a secret ballot needs to be discussed. By granting the electorate anonymity through a secret ballot, third parties' potential influence on the electorate is avoided or at least reduced. When the offender can see who has voted for whom, election fraud crimes such as intimidation, extortion, and vote buying are all substantially simpler to commit.

There are numerous ways in which election integrity may be affected. There might be inaccuracies in elections introduced on account of human error or electoral malpractices like fraudulent voting such as multiple voting, illegal voting, etc., or even a lack of proper oversight. Tallies may be inaccurately reported because of carelessness or malicious activity.

²⁵ INDIA CONST. art. 324

²⁶ Universal Declaration of Human Rights, 1948, art. 21

²⁷ Sanjoy Yambem, *Right of Voter to know about Candidate: A Note*, LEGAL EAGLE (Aug 12, 2023, 5:00 PM), <https://legaleagleweb.com/articlsdetail.aspx?newsid=19>

Voters could even be physically barred or otherwise deterred (say, by intimidation) from accessing polling sites. Manipulation may be used to mislead potential voters. Threats, the use of violence, disinformation campaigns, gerrymandering, rigging, etc. could be various other reasons that affect election integrity.

Election disputes are very common in emerging democracies, given the increased competition for political power. From the standpoint of democratic consolidation, election integrity, therefore, plays a vital role in maintaining public trust, promoting political stability, and fostering representative governance, and hence should be seen as an indispensable element of the electoral process. Thus, reflecting the unrestricted expression of the national populace's will is a crucial requirement for credible elections. Elections must be transparent, open, inclusive, and responsible, and there must be equitable opportunities to compete in the elections²⁸.

Thus, from the above discussion, it is obvious that election rights have grown to be a widely acknowledged element of not only international but also Indian constitutional jurisprudence.

With China recently being surpassed by India as the world's most populous nation, holding elections successfully has also become one of the most critical democratic exercises. The Indian government is confronted with various security challenges, including questions of voter fraud, manipulation, rigging, corruption, and cyber security. This is accompanied by serious security concerns ranging across national and local conflicts, domestic rebel groups, and violent political rivalries.

Having discussed the concept of election integrity, we may now examine the constitutional dimensions of a PIL.

5. CONSTITUTIONAL DIMENSIONS AND SCOPE OF PIL

²⁸ *Supporting Free and Fair Elections*, UNITED STATES AGENCY INTERNATIONAL DEVELOPMENT (Aug 13, 2023, 4:30 PM), <https://www.usaid.gov/democracy/supporting-free-and-fair-elections#:~:text=USAID's%20Center%20of%20Excellence%20on,bureaus%2C%20other%20USG%20entities%2C%20>

The provision found in Article 39A²⁹ of the Indian Constitution serves as the foundation for the concept of PIL. Prior to 1980, only aggrieved people could approach a court of law to seek justice. However, with the introduction of PIL, a means to seek a legal remedy was created whenever the public interest was at risk. The litigant's sincerity and lack of any ulterior motives must also be established to the court's satisfaction.

Regardless of the ostensibly important public cause being advocated by the petitioner, the bona fides of the petitioner are of extraordinary relevance and must be assessed at the very threshold itself, according to the Supreme Court's ruling in the case of *State of Jharkhand v. Shiv Shankar Sharma & Ors.*³⁰

Reference was made to *Ashok Kumar Pandey v. State of West Bengal & Ors.*³¹, where it was pointed out that the effective weapon of a PIL should be directed at redressing a genuine public injury and not be publicity oriented or based on personal vengeance. It should not be utilized for shady or nefarious products. The court must take care to ensure that any group of people or member of the public who approaches it is doing it in good faith and without ulterior motives such as political, personal, or private motives³². It was stated that the Court must also be persuaded of the following: (a) the petitioner's credentials; (b) the information furnished by the petitioner being genuine or accurate on the face of it; and (c) the information is not ambiguous or imprecise. The seriousness and gravity of the situation involved should be obvious. It was further stated that the Court must conciliate between two competing interests: (i) no one must be permitted to make irrational or careless accusations that reflect poorly on the personalities of others; and (ii) the prevention of public mischief and petitions that maliciously seek to challenge, for hidden motives, justified executive activities. But in such circumstances, the Court cannot adopt a liberal stance. It must take care to avoid invading the territory allocated for the Legislature and the Executive by the Constitution under the false pretence of resolving a public grievance. When dealing with busybodies, imposters, or meddlesome intervenors posing as public-spirited holy individuals, the court must be harsh. Although they have no public or even personal interests to defend, they pose as advocates of justice and claim to operate *pro bono publico*.

²⁹ INDIA CONST. art. 39A

³⁰ *State of Jharkhand v. Shiv Shankar Sharma & Ors.*, 2022 LiveLaw (SC) 924

³¹ *Ashok Kumar Pandey v. State of West Bengal & Ors.*, AIR 2004 SC 280

³² *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590

Guidance on how to uphold the purity and sanctity of a PIL was issued in *State of Uttaranchal v. Balwant Singh Chauhal & Ors.*³³, wherein the Court opined,

- a) Courts must endeavour to encourage those PILs that are genuine and bona fide and restrain those filed for extraneous considerations.
- b) Rather than each judge coming up with his own method of handling the same, it would be proper for each high court to formulate appropriate and proper rules for supporting the truly filed PIL and discouraging the PIL filed for oblique considerations.
- c) The courts must initially confirm the litigant's credentials prior to considering any PIL.
- d) The courts should also be pleased with the petition's accuracy and truthfulness.
- e) The courts must be completely convinced that the PIL involves a significant public interest.
- f) The courts are required by law to guarantee that any petition with a higher level of public interest, seriousness, or urgency is given preference over other petitions.
- g) The courts must ascertain that the PIL is filed without any personal intentions, private benefits, or covert motives and that it is intended to address any genuine public harm or injury.
- h) The courts must likewise make sure that petitions filed by busybodies for unrelated reasons are discouraged or that petitions filed for shady purposes are constrained by adopting equivalent new approaches.

*S. P. Gupta v. Union of India & Anr.*³⁴, however, made clear that the court must stop politicians and others from misusing the process to hinder necessary administrative activity or further a political agenda. Additionally, it is necessary for the court to understand that not every state or public authority default is justiciable and that there is a significant distinction between locus standi and justiciability. The court must be careful to ensure that it stays within the bounds of its judicial role and does not stray into areas that the Constitution reserves for the Legislature and Executive.

³³ *State of Uttaranchal v. Balwant Singh Chauhal & Ors.*, (2010) 3 SCC 402

³⁴ *S. P. Gupta v. Union of India & Anr.*, 1981 (Supp) SCC 87

For an effective understanding, we may now consider certain judicial decisions that will enable us to analyze the role of a PIL in safeguarding election integrity.

6. PIL AND ELECTION INTEGRITY: CASE STUDIES AND IMPACT

These cases span different jurisdictions and highlight the effectiveness of a PIL in addressing various challenges concerning elections.

Mrinall Shashi Shekhar Chakravorty v. Election Commission of India.³⁵

The Bombay High Court denied the petition on the grounds that it could not be maintained and stated that this case did not qualify for the use of public interest litigation jurisdiction. A person acting in good faith and with adequate interest in the PIL action can only have locus standi and be able to move to court, according to the rules, as there is a nexus between the petitioner and the cause that has been self-shouldered. The Court was of the view that the majority of those who were contesting the election or wishing to do so would have the resources to do so and be able to access the appropriate legal remedies.

The Court emphasized that PILs are a tool that is required to be used with extreme caution and circumspection and that courts must be highly vigilant to determine whether there is any private animus, vested interest, or publicity stunt hiding behind the public interest facade. The courts should distinguish between legitimate grounds brought up for the public's benefit and must not permit the exploitation of their procedure for oblique consequences.

Thus, the Court pointed out that this was not a case where the petitioner is championing the cause of a weaker segment of society who are unable to seek justice because of struggles and hardships intrinsically present to them. In essence, there was no justification for why it might be in the public interest to look into such a problem.

Adhir Ranjan Chowdhury v. West Bengal State Election Commission & Ors.³⁶

³⁵ Mrinall Shashi Shekhar Chakravorty v. Election Commission of India, 2019 SCC OnLine Bom 2560

³⁶ Adhir Ranjan Chowdhury v. West Bengal State Election Commission & Ors., 2018 SCC OnLine Cal 2135

The Calcutta High Court had handled several cases collectively that shared similar factual and legal issues. The petitioner's main argument was that the West Bengal panchayat elections should be held in a free and transparent manner. They also requested the deployment of central forces to ensure peaceful and fair elections. Allegations surfaced that the ruling party's cadres used violence and threats of severe repercussions to physically prevent candidates from other political parties willing to contest elections from submitting their nomination papers in order to eliminate competition.

According to the Ld. Advocate General, who was speaking on behalf of the State, argued that the petitioner, who is the leader of a political party and is interested in the results of the election, could not sustain the current PIL as it was driven by politics. Additionally, it was also argued that the maintainability of this writ petition was subject to a constitutional bar. To support this argument, reference was made to Article 243-O of the Constitution of India in *pari materia* with Article 329³⁷.³⁸ He argued that courts, including the writ court, are not permitted to meddle in the electoral process or issue any orders that would slow down or halt it.

The petitioner, on the other hand, contended that he had filed the current PIL to uphold the democratic rights of the inhabitants of West Bengal and had no personal stake in the issue.

The court referred to several judicial decisions. The case *Election Commission of India v. Shivaji*³⁹ was cited, in which the Apex Court unequivocally held that the non-obstante provision provided in Article 329⁴⁰ (which is in *pari materia* with Article 243-O⁴¹) renders the High Court ineligible to entertain a petition challenging an election on any grounds under Article 226. Even though there may be legal or constitutional grounds for contesting the validity of the electoral process, the party keen on doing so would have to wait until after the election and then file a petition as per the provisions of the applicable statute.

The court believed that even if the petitioner has any kind of private interest in the litigation, the court may treat the writ application as a PIL. There might as well be overlapping private and public interests, and both may coexist. Here, the petitioners being individually affected

³⁷ INDIA CONST. art. 329

³⁸ *M. Nagarajan v. State Election Commission & Ors.*, 2017 Latest Caselaw 1615 Del

³⁹ *Election Commission of India v. Shivaji*, (1988) 1 SCC 277

⁴⁰ INDIA CONST. art. 329

⁴¹ INDIA CONST. art. 243-O

definitely had an element of private interest involved, but at the same time there was overwhelming public interest, and nobody questioned the maintainability of such PILs.

The Court reiterated that the greater public interest is served by a free and fair election where voters can cast their votes for the candidate of their choice without any interference or fear. It serves as the foundation for the citadel of democracy.

All India Anna Dravida Munnetra Kazhagam v. The State Election Commissioner & Ors.⁴²

In the instant case, the Madras High Court had contradictory views from different judges. While Justice S. J. Mukopadhaya opined that a prohibition is imposed under Article 243-ZC to interfere with election matters on or immediately after the date of elections, before counting and declaration of results, since such interference would amount to retarding, interrupting, protracting, or stalling election proceedings, He added that writ courts cannot determine whether the election in one or other wards was free and fair. The State Election Commission performs public functions and has the authority to resolve conflicts, including inquiries into the conduct of free and fair elections.

Justice Ibrahim Kalifulla, on the other hand, believed that voting is a constitutional right that, when used in an election, subsequently acquires the attributes of the fundamental right of freedom of expression and therefore needs to be given all the protection and safeguards provided by Chapter III of the Constitution. When injustice is being done, Writ courts should not be reluctant to step in, and the fact that there are other options for redress should not stop them from exercising extraordinary jurisdiction if the gravity of the issue warrants it. Election results may be disregarded for several good reasons. Any democratic institution must be built on the institution of free and fair elections. He added that the court can use public interest litigation to exert its authority whenever a substantial number of people have been subjected to injustice.

In view of the differing opinions, the matter was placed for consideration before Justice P. K. Misra, who had a concurring opinion with Justice Ibrahim Kalifulla.

⁴² All India Anna Dravida Munnetra Kazhagam v. The State Election Commissioner & Ors., 2007 SCC OnLine Mad 49

The State of West Bengal & Ors. v. Dipak Mishra ⁴³

In the instant case, Special Leave Petitions were filed against a common order dated March 5, 2021, passed by a Division Bench of the Calcutta High Court in two writ petitions filed as PILs, Nilanjan Adhikary v. The State of West Bengal & Ors.⁴⁴ and Dipak Mishra v. The State of West Bengal & Ors., whereby an order dated February 10, 2020, passed by the Additional Chief Judicial Magistrate discharging the petitioner and various other persons from criminal cases levelled against them, has been stayed, and the concerned courts were directed to take note of the orders of stay and to deal with the criminal cases accordingly.

It was contended that the public interest litigation had been filed by persons belonging to a political party for oblique reasons and therefore should not have been entertained. The Supreme Court was presented with an important question, which was whether the PIL could be dismissed just because the appellant belonged to an opposing political party.

The Court held that the question of whether or not the litigation is authentic and in good faith is a separate matter that it must consider while taking into account the particular facts, circumstances, and type of complaint that have been brought before it, which would vary from case to case. It is true that the court must decide whether safeguarding the public interest is the primary goal of the dispute or whether to further any other goal under the guise of the public interest. People with political ties are just as eligible to file a PIL as anyone else, the Court observed, so it could not be dismissed only on the grounds that the petitioner belonged to an opposing political party.

Bimal Kumar Chatterjee v. Election Commission of India ⁴⁵

Bimal Kumar Chatterjee, the petitioner in this case, initiated a PIL, the respondent being the Election Commission of India, principally voicing apprehensions regarding the conduct of fair and free elections in the Vidhan Sabha in West Bengal. A bench of the Calcutta High Court addressed the issue. The bench highlighted that every citizen's democratic rights include the right to fair and free elections. The Court ruled that the constitutional guarantee

⁴³ The State of West Bengal & Ors. v. Dipak Mishra, WPA (P) 67 of 2021

⁴⁴ Nilanjan Adhikary v. The State of West Bengal & Ors., WPA (P) 68 of 2021

⁴⁵ Bimal Kumar Chatterjee v. Election Commission of India, WPA (P) 88 of 2021

that governs elections, in light of the constitutional framework in which laws are made, mandates that the Election Commission of India have full authority over the election process. This implies that the Election Commission of India's foremost objective would be to ensure free and impartial elections once the polls are announced.

The Court went on to emphasize the accountability of the Election Commission of India by adding that once a notification is issued and up until the election is over and the results are announced, it is generally accepted that courts will refrain from interfering in matters involving elections.

The Court noted that the Election Commission of India must ensure free and fair elections, this being within its purview in terms of jurisdiction and power. It was also stated that not only is it within the domain in terms of authority and power, but at the same time, the Election Commission of India ought to guarantee free and fair elections.

As a result, the PIL was disposed of after the Commission's submissions about ensuring smooth and safely conducted elections were accepted.

Jafar Imam Naqvi v. Election Commission of India⁴⁶

In the present case, a writ petition seeking mandamus had been filed ordering the Election Commission of India to initiate stern measures against politicians and political parties engaged in illegal action during elections, to withdraw recognition of such parties, to cancel such politicians' candidatures, and to ensure the safety of election officials.

The Supreme Court came to its conclusion considering that this could not be regarded as a PIL. The Court further stated that PILs cannot be used to raise concerns that can be decided within suitable legal frameworks. Hateful remarks made during an election campaign would need to be adjudicated by a legitimate forum and could not be elevated to the status of a true PIL. It might also have some bearing on an election dispute brought up in accordance with the Representation of the People Act of 1951. It was emphasized that approaching this area under the pretence of a constitutional safeguard would not be within the limits of the Constitution.

⁴⁶ Jafar Imam Naqvi v. Election Commission of India, (2014) 15 SCC 420

This brings us now to a point where we may examine whether PILs have at all been effective in ensuring election integrity.

7. EFFECTIVENESS OF PILs IN ENSURING ELECTION INTEGRITY

There have been numerous petitions filed in connection with elections and politics by different public-spirited individuals. PILs have been used as a tool to question the legality and validity of electoral and political practices, that may not have been possible to deal with elsewhere. Petitions were filed in their usual course, placing before the court comprehensive issues and detailed contentions.

While in certain petitions the courts recognized the bona fide motives of the litigants, in others they did not get a welcoming reception. Petitions⁴⁷ have also been refused on grounds of justiciability and the presence of alternative remedies. There has been a limited approach taken by courts to these kinds of petitions, and the response has varied from case to case, considering the division of powers within the constitutional framework, the prevalence of alternate forums or solutions, and the specificity of the arguments stated. In other cases, it has also been noted that the petitions were turned down by the courts due to a lack of enforceability and that any directives provided were uneven. Additionally, in other instances where the facts call for an intervention, no meaningful relief has been given.

8. CONCLUSION

PIL does not serve as a magic cure-all. It is basically when a public-spirited individual files a petition representing those who, because of their helplessness or because of social and economic limitations, could not approach the court for relief. Its primary goal is to protect the fundamental human rights of the underprivileged. However, there have been more and more instances of abuse of PIL. It is therefore important to reiterate the requirements that a petitioner must meet before the court can consider their PIL. Despite their positive effects on elections, numerous judgements have come under fire for judicial activism and judicial overreach. However, it is important to carefully consider whether these critiques are accurate and what effect the court's rulings will have on the triadic relationship between the people,

⁴⁷ Monika Ahuja, *Public Interest Litigation in India: A Socio-Legal Study*, UMI (Aug 15, 2023, 6:30 PM), etheses.lse.ac.uk/1417/1/U084680.pdf

the judiciary, and the elected branches of government. The law-and-order situation is still a delicate subject and confronts many difficulties throughout the election season. PIL continues to remain a crucial tool in the fight for unquestionable election integrity as democratic countries continue to develop.

LEGAL UPANISHAD JOURNAL