



**PUBLIC INTEREST LITIGATION:  
MISUSE AND IMPACT OF  
JUDICIAL INTERVENTION ON  
GOVERNANCE**

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*its growth and evolution post emergency era. It also tends to throw light on the Check and Balance System by highlighting Role of Judiciary and Impact of its intervention on governance. The paper further discusses guidelines by Supreme Court to stop the misuse of PIL and suggest measures to restore the authenticity and usefulness of this revolutionary concept.*

**Abstract**

*Public Interest Litigation has been a milestone achieved by Indian Judicial System, the main objective of which is being able to impart equal opportunities of justice to disadvantaged and marginalized sections of the society by dismantling the traditional concept of Locus Standi. Not only PIL made justice flexible for less privileged but also has been successful in imparting discretion to courts by virtue of it being able of being introduced in a court of law suo motu rather than by aggrieved party, a member of the public or another third party.*

*The use of PIL has led to a rapid transformation and substantial improvements in matters pertaining to the public at large. However, in recent years a number of cases have emerged involving its abuse and misuse. Filing frivolous complaints about one's private and political gains have become a usual practice since the filing of such cases costs much lesser than private litigations. The paper with the help of certain cases presents the current scenario of PIL and forms of misuse of PIL. The paper argues about uses and abuse of PIL by analyzing*

**1. INTRODUCTION**

'Public Interest Litigation' was started for the protection of the public interest of people who are socially or economically disadvantaged. The term 'Public Interest' means larger interests of the public, general welfare and the word 'Litigation' means 'a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy'. The Indian PIL is an improved version of the PIL in the USA. It is not defined in any act or statute, it is only interpreted by judges to consider the intent of Public at large. It is not an ordinary legislation, it cannot be filed by one private person against another, at least one party to the suit must be a government body in order to constitute a PIL.

A PIL may be introduced in a court of law *Suo Motu*, rather than the aggrieved party or another third party. The right to file a suit in a PIL is given to a member of Public, the member may be a non-governmental organization, an institution or an individual. It has opened a new horizon for the poor and ignorant by



diluting the traditional concept of Locus Standi. It has historically been an innovative procedure and brought about a revolution in the judicial system of India.

## 2. CONCEPT OF PUBLIC INTEREST LITIGATION

The concept of Public Interest Litigation came around in the 1980s in India to foster judicial activism in a healthy way in case where law makers interest of public at large is affected. It is in accordance with the principles enshrined in Article 39A<sup>1</sup> of the Indian Constitution to protect and deliver prompt justice with the help of law.

Article 32 of the Constitution of India, “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed”. Under this Article, the Supreme Court is empowered to issue writs or directions or orders. Generally, only aggrieved party has to right to seek redressal under Article 32.

Justice P.N. Bhagwati in the case *S.P. Gupta vs Union of India and Anr.*<sup>2</sup> articulated the concept of PIL as “Where a legal wrong or a legal injury is

caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226<sup>3</sup> and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.”<sup>4</sup>

In *Dr. D. C. Wadhwa and Ors vs State of Bihar and Ors.*<sup>5</sup>, the petitioner filing the petition was not the aggrieved. Counsel of Bihar opposed the writ petition on the ground that the first petitioner has no locus standi to maintain the petition. The court held that the petitioner as a member of public has ‘sufficient interest’ to maintain a petition under Article 32.

<sup>1</sup>INDIA CONST. art. 39 A “Equal Justice and free Legal Aid: The State shall secure that the operation of the legal system promotes Justice, on a basis or equal opportunity and shall, in particular, provide free Legal Aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities.”

<sup>2</sup>*AIR 1982 SC 149.*

<sup>3</sup>INDIA CONST. art. 226 “Notwithstanding anything in Article 32 every High Court shall

have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

<sup>4</sup>*S.P. Gupta vs Union of India and Anr (AIR 1982 SC 149).*

<sup>5</sup>*AIR 1987 SC 579.*



### 3. HISTORICAL BACKGROUND

The seeds of the revolutionary idea of Public Interest Litigation were sown in India, initially, by Justice Krishna Iyer in *Mumbai Kamgar Sabha, Bombay vs M/S Abdulbhai Faizullahbai and Ors.*<sup>6</sup> wherein the appeal was dismissed on ground that the appellant union was not a party to the dispute, therefore had no locus standi. It was further initiated in *Akhil Bhartiya Soshit Karamchari Sangh (Railway) vs Union of India and Ors.*<sup>7</sup>, wherein an unrecognized association was permitted to approach court under Article 32. Krishna Iyer J. stated, “Our current processual jurisprudence is broad-based and people oriented and envisions access to justice through “class actions”, “public interest litigation” and “representative proceedings”. The narrow concept of cause of action and person aggrieved and individual litigation is becoming obsolescent in some jurisdictions [224 G-H].”<sup>8</sup>

Prior to 1980s, the concept of litigation in India was still in its rudimentary form. It was seen as a private pursuit for the vindication of private interests as only the

aggrieved party could personally knock the doors of justice to seek remedy. However, all these scenarios gradually changed after the Emergency Period of 1975-77.

### 4. EMERGENCE AND GROWTH OF PUBLIC INTEREST LITIGATION

The emergency period of 1975-77 witnessed somewhat colonial nature of the Indian legal system. It marked not just a political watershed in the country, but also judicial one. During the period of emergency, by invoking Article 352<sup>9</sup> of the Indian Constitution, Gandhi exercised her extraordinary powers leading to widespread of state repression and governmental lawlessness. Thousands of innocent people including political opponents, protestors, strike leaders were sent to jails and were put to abuse and torture resulting in complete deprivation of civil and political rights of the detainees and prisoners. The post-emergency period provided an occasion for the judges of the Supreme Court and High Court to openly disregard the impediments of Anglo-Saxon procedure in providing access to justice to the poor. The Supreme Court devised an

<sup>6</sup> AIR 1976 SC 1455.

<sup>7</sup> AIR 1981 SC 298.

<sup>8</sup> *Akhil Bhartiya Soshit Karamchari Sangh (Railway) vs Union of India and Ors* (AIR 1981 SC 298).

<sup>9</sup> INDIA CONST. art. 352 “If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, made a declaration to that effect in

respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation Explanation A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.”



innovative way wherein a member of the public can approach the Supreme Court or High Court for seeking legal remedies in case concerning public interest. An informal nexus of pro-active judges, lawyers, journalists and social activists led to the emergence of PIL. This new trend manifested a stark difference between the traditional justice delivery system and the modern justice system where the judiciary is performing an administrative judicial role.

### 5. EVOLUTION OF PUBLIC INTEREST LITIGATION

The first reported case of PIL, *Hussainara Khatoon & Ors vs Home Secretary*<sup>10</sup>, State of Bihar, focused on the inhuman conditions of prisons and under trial prisoners. The PIL under the writ of Habeus Corpus was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of a large number of men and women including children languishing in various jails in Bihar deprived of their freedom and legal rights. These proceedings led to the release of more than 40,000 undertrial prisoners. As a result, right to speedy justice emerged as a basic fundamental right which was earlier denied to these prisoners. The same set pattern was adopted by courts in subsequent cases.

The magnificent efforts of Justice P.N. Bhagwati and V. R. Krishna Iyer were instrumental of this juristic revolution of the eighties. They recognized the possibility of providing access to justice to the less privileged and exploited people by relaxing the rules of standing. A new era of the PIL movement was established by Justice P.N. Bhagwati in the case of *S.P. Gupta v. Union of India*<sup>11</sup> (also known as Judges' Transfer case). Three writ petitions which were filed in different High Courts were transferred to the Supreme Court under Article 139<sup>12</sup>. The court held that any member of the public acting bonafide can file a Writ in the court seeking redressal against violation of fundamental or legal rights of persons who cannot approach the court by themselves due to any social or economic or any other disability.

In the case, *Anil Yadav & Ors v. State of Bihar & Anr.*<sup>13</sup>, the brutalities of the Police in Bhagalpur Central Jail were exposed. This PIL was a result of the suspension of Superintendent of the jail on the ground that he was negligent in providing proper medical care to the blinded undertrial prisoners in the jail claiming that his suspension is quashed as it was mala fide filed to prevent him from filing the affidavit as per court's direction. Newspaper report revealed that about 33 suspected criminals were blinded by the police in Bihar Jail by putting acid into their eyes. Through

<sup>10</sup>AIR 1979 SC 1360.

<sup>11</sup> AIR 1982 SC 149.

<sup>12</sup>INDIA CONST. art. 139 "Conferment on the Supreme Court of powers to issue certain writs Parliament may by law confer on the Supreme Court power to issue directions, orders or writs,

including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of Article 32."  
<sup>13</sup> AIR 1982 SC 1008.



interim orders, the Supreme Court gave directions to the State government to bring the blinded men to Delhi for medical treatment and ordered speedy prosecution of the guilty policemen. The court also read right to free legal aid as a fundamental right of every accused under Article 21<sup>14</sup>.

In the 1990s, the judiciary stepped ahead in judicial activism and set another benchmark by accepting the news reports, letters, telegrams as petitions. “The Court entertained a letter from two professors at the University of Delhi seeking enforcement of the constitutional right of inmates at a protective home in Agra who were living in inhuman and degrading conditions.”<sup>15</sup> In *Paramjit Kaur vs State of Punjab and Ors.*<sup>16</sup>, a telegram sent to the Court was considered as a petition to Habeus Corpus under Article 32<sup>17</sup>.

## 6. MISUSE OF PUBLIC INTEREST LITIGATION

### 6.1 USE AND MISUSE

The Public Interest Litigation was created and nurtured with care and caution by courts to serve the purpose of protecting rights of the public at large through vigilant action by public spirited persons

and prompt justice. As Supreme Court stated, it was aimed at “fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard”<sup>18</sup>. However, the profound need of this tool has been plagued with misuses, the abuse of PIL which was started in the 90s is increasing with its extended and multifaceted use. The genuine cases of public interest have receded back and irresponsible PIL activities have started to play a major but no so constructive role in the legal arena. Many of the activists have found it as a handy tool to file frivolous cases due to the allurements it offers such as less court fees and speedy justice as compared to ordinary litigations. In a recent case, while dismissing an ostensible petition against the sale of a plot through public auction, the court held that the matter has not been raised in public interest at all, but to ventilate a private grievance. The abuse of PIL has reached a stage where it has started undermining the actual purpose for which it was designated.

The time has come for a serious scrutinization of the misuse of public interest litigation. There have been numerous cases in the history of jurisprudence in which misuse of PIL can

<sup>14</sup>INDIA CONST. art. 21 “Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>15</sup>Wikipedia, the free Encyclopedia, Public Interest Litigation in India, (Jan. 12, 2017, 5:28 AM).

<sup>16</sup>AIR (1996) 7 SCC 20.

<sup>17</sup>INDIA CONST. art. 32 “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”

<sup>18</sup> *Janata Dal vs H.S. Chowdhary and Ors.* AIR (1992) 4 SCC 305.



be seen. In *Subhash Kumar vs State of Bihar and Ors.*<sup>19</sup>, the petitioner filed a writ petition alleging that the respondents are discharging surplus waste from their washeries into the river Bokaro making it unfit for consumption and the State of Bihar and Pollution Control Board have failed to prevent the pollution and instead granted lease on payment on collection of slurry. The court held that “A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected person or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the constitution should be taken by person genuinely interested in the protection of society on behalf of the community. Public Interest Litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained it would amount to an abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court.”<sup>20</sup>

In the case, *Sheela Barse vs State of Maharashtra*<sup>21</sup>, the petitioner, a free-lance journalist sought permission to interview female prisoners in Maharashtra State Jails. However, she started tape-recording the interviews, as a result, the permission was withdrawn. Aggrieved by the withdrawal, the petitioner moved to

the court filing a writ petition on the ground that a citizen has right to know under Article 19 (a)<sup>22</sup> and 21<sup>23</sup>. Dismissing the petition, the court held that the person who has the permission to interview has to abide by some restrictions and as per the tape recording of interviews, special permission has to be acquired. In *Kalyaneshwari vs Union of India*<sup>24</sup>, the court cited misuse of PIL.

## 6.2 PUBLICITY INTEREST LITIGATION

The rampant misuse of PIL comes in various forms. The first being what Justice Ajit Pasayat in *Ashok Kumar Pandey vs State of West Bengal*<sup>25</sup> described as “busybodies, meddlesome interlopers, wayfarers or officious interveners who approach the court with extraneous motivation or for the glare of publicity.”<sup>26</sup> Such petitions are filed regularly by litigants for the sake of gathering attention and to publicize.

## 6.3 POLITICAL INTEREST LITIGATION

Then, there is the misuse of PILs by political interests, many a time petitions are not filed for Public Interests but merely for Political reasons. Justice P. N. Bhagwati in *S.P. Gupta v. Union of*

<sup>19</sup> AIR 1991 SC 420.

<sup>20</sup> *Subhash Kumar vs State of Bihar and Ors* AIR 1991 SC 420.

<sup>21</sup> AIR 1983 SC 378.

<sup>22</sup> INDIA CONST. art. 19 (a) "All citizens shall have right to freedom of speech and expression."

<sup>23</sup> INDIA CONST. art 21 "Protection of life and personal liberty No person shall be deprived of his

life or personal liberty except according to procedure established by law."

<sup>24</sup> AIR (2011) 3 SCC 287.

<sup>25</sup> (2004) 3 SCC 349.

<sup>26</sup> *Ashok Kumar Pandey vs State of West Bengal*, (2004) 3 SCC 349.



India<sup>27</sup> in this regard said, “But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that ‘political pressure groups who could not achieve their aims through the administrative process’ and we might add, ‘through the political process, may try to use the courts to further their aims’. These are some of the dangers in public interest litigation which the court has to be careful to avoid.”<sup>28</sup>

This was restated in 1991 in *Janata Dal v. H.S. Chowdhary and Others*<sup>29</sup> by Justice Pandian as under: “It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the color of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.”<sup>30</sup>

## 6.4 PRIVATE INTEREST LITIGATION

The third form is the misuse of PIL by hidden litigants for private vested interests. Rival Business groups, personal rivalries are settling scores by resorting to PILs, activists are using PIL to fulfill their personal interests disguise as public interests. A case in this point is *T. N. Godavarman Thirumulpad vs Union of India and Ors.*<sup>31</sup> In this case, the question pertaining to the authenticity of PIL was raised. *M/s. Maruti Clean Coal and Power Limited* was pleading since the filing of a petition that petitioner filed has been set up by their competitor and there was a link between former and the latter. The Supreme Court dismissed the filing of mala fide application in veil of public interest litigation by petitioner.

In *Chhetriya Pradushan Mukti Sangharsh Samiti vs State of UP and Ors*<sup>32</sup>, the petitioner filed a petition alleging environment pollution caused by the chimneys of Respondent no. 3. “It was contended that it had complied with the provisions of Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and there was no complaint whatsoever. It was further stated that the petitioner was an anti-social element and his only aim was to blackmail and extract money from people like Respondent No. 3 and that a criminal case has already

<sup>27</sup> 1982 SC 149.

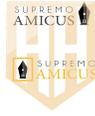
<sup>28</sup> *S P Gupta vs Union of India* AIR 1982 SC 149.

<sup>29</sup>(1992) 4 SCC 305.

<sup>30</sup>*Janata Dal vs H.S. Chowdhary and Ors.* AIR (1992) 4 SCC 305.

<sup>31</sup> AIR 1995 SC 202.

<sup>32</sup>AIR 1990 SC 2060.



been filed against him, for such activities.”<sup>33</sup>

### 6.5 PAISE INCOME LITIGATION

The fourth and equally disturbing form is Paise Income Litigation. In Dattaraj Nathuji Thaware vs State of Maharashtra & Ors<sup>34</sup>, the Court dismissed the petition styled as Public Interest Litigation on the grounds that no public interest was involved in it, in fact, the petitioner blackmailed Respondent no. 6 & 7 and was caught red-handed accepting the money. It also turned out that the allegations made in the petition about unauthorized constructions were false. Justice Pasayat, in this case, reflected, “Public Interest Litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. The High Court has found that the case at hand belongs to the last category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant born out of wishful thinking.”<sup>35</sup>

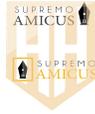
“It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have

been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are looked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts

<sup>33</sup>Chhetriya Pradushan Mukti Sangharsh Smity vs State of UP and Ors AIR 1990 SC 2060.

<sup>34</sup>AIR 2006 SC 540.

<sup>35</sup>Dattaraj Nathuji Thaware vs State of Maharashtra AIR 2006 SC 540.



by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.”<sup>36</sup>

## 7. STRENGTHENED ROLE OF JUDICIARY

The contribution of PIL has been significant and it has played a dominant role for the Judiciary in appointment and transfer of judges, their removal and terms and conditions of their services. In the case *S.P. Gupta vs Union of India*<sup>37</sup>, a petition was filed by a senior advocate challenging the transfer of judges from one High Court to another. The Apex Court declared that in the matter of appointments, the executive has the final say. However, the power related to the appointment was later vested in Chief Justice of India and two senior-most judges of Supreme Court since the word consultation occurring should be read to mean concurrence. The matter whether the court has amended the language of the article by purporting to interpret has faced considerable controversy.

The matter regarding the impeachment motion for the removal of V. Ramaswamy J. witness a number of petitions. The Speaker of Lok Sabha constituted a three judges’ committee to enquire the allegations. However, as the

Lok Sabha dissolved, the government did not constitute the committee stating that the motion has been relapsed. This was questioned in a PIL by an association of lawyers. The SC held that the motion has not relapsed clarifying the process of removal of judges consisted of two stages namely a.) the stage of investigation and proof of misbehavior, b.) the stage of discussion and voting in the Parliament. Post the conclusion of inquiry and submission of a report to the Parliament, Sarojini Ramaswamy (the wife of Justice V. Ramaswamy) filed a PIL asserting the right of the judge to be supplied with a copy of the report before Parliament started debating the motion to give the judge an opportunity to defend himself.

The Supreme Court was provided the opportunity by virtue of PIL filed by All India Judges Association to give extensive directions to the state governments on issues concerning the appointment and removal of judges, functioning of the judiciary, provisions for residential accommodation for judicial officers, libraries, vehicles, and suggested the setting up of an All India Judicial Services.

The PIL has witness significant role of Judiciary in matters related to Environment, as in *M.C. Mehta Case*<sup>38</sup>. The petitioner was a pioneer in bringing a number of issues to the court, including leakage of Oleum Gas from a factory in Delhi, the dangers posed by Mathura Refinery to Taj Mahal, regulation of

<sup>36</sup>Janata Dal vs H.S. Chowdhary and Ors. AIR (1992) 4 SCC 305.

<sup>37</sup> S P Gupta vs Union of India AIR 1982 SC 149.

<sup>38</sup>M C Mehta vs Union of India AIR 1987 SC 1086.



traffic and the degradation of Ridge area in Delhi. The involvement of courts in these matters has triggered the activation of the statutory machinery established under law related to Environment. The repercussions of unchecked industrialization forced the court to come up with strict rules, hence ended up developing Polluter's pay principle. This, however, attracted a lot of criticism since the court heard neither the industries nor the affected workmen.

The precautionary principle, another principle evolved encourages the state to envisage the risks of the use of hazardous technology. The court dealing with the issue of pollution caused by over 900 tanneries operating in Tamil Nadu noticed that Tamil Nadu's export of unfinished leather accounts for 80% of country's export and is one of the major foreign exchange earners.

The court's guidelines on the concept of sustainable development and balancing ecology has become a part of the customary international law. While through the PILs, the courts have enforced strict orders, it has given rise to issues involving workers' right and affected them and their families directly or indirectly. Whether it was shutting down an industry or about strictly implementation of the Forest and Wildlife Protection Act where the interests of the tribal population were

affected. Thus, PIL has contributed in strengthening the role of Judiciary and granting to it powers it lacked before.

## 8. JUDICIAL ACTIVISM AND CONCEPT OF CHECK AND BALANCE

The Indian constitution does not follow a strict doctrine of separation of powers<sup>39</sup> but envisages a system of checks and balances<sup>40</sup>.

Policymaking, Implementation of policy and Resolving the disputes are conventionally regarding the exclusive domain of the executive, the legislature, and the judiciary. However, the concept of Public Interest Litigation tends to narrow the divide between the exclusive roles of each organ of the government. The role of the court in matters related to law and policy is to check that if the implementation or non-implementation of a certain policy or law is resulting in a violation of fundamental, legal or constitutional rights. For instance, *M.C Mehta v Union of India*<sup>41</sup>, the court noticed that despite the enactment of Environment (protection) Act, 1986, a considerable decline in the quality of environment is seen, the court then asked the central government to indicate the steps it had taken so far along with the presenting of the national policy for the protection of environment. In *Vishaka & Ors vs State of Rajasthan*<sup>42</sup>, PIL concerning sexual harassment of

<sup>39</sup>Separation of Powers, "A fundamental principle of the United States government, whereby powers and responsibilities are divided among the legislative branch, executive branch, and judicial branch."

<sup>40</sup> Checks and Balances, "A fundamental principle of American government, guaranteed by the

Constitution, whereby each branch of the government (executive, judicial, and legislative) has some measure of influence over the other branches and may choose to block procedures of the other branches."

<sup>41</sup>AIR 1987 SC 1086.

<sup>42</sup>AIR (1997) 6 SCC 241.



women at workplace annihilated the fine divide between law and policy, declaring that the guidelines by the court would be enforceable till the time the legislature enacts a law in compliance with the convention on the Elimination of All Forms of Discrimination Against Women, the guidelines set out by the court would be enforceable. There have been other instances as well where courts assumed powers not delineated in the constitution, such as Kesavananda Bharti<sup>43</sup> or Advocates-on-Record<sup>44</sup>.

The three organs of the government are subject to each other's scrutiny by way of check and balance, this implies that the working of one should not violate the principles of other. Hence, it can be said that the rule in today's scenario requires a reconsideration to make it work in a proper way. In the absence of specific provisions in the Constitution regarding the Separation of powers, it fails to fulfill the very purpose of check and balance it anticipates. Judicial activism and reviews functions is an important element of our judiciary to keep a check on the legislature and the executive, to restraint their powers within their ambit that the constitution set for them. The independence of the judiciary which is evident from the above discussion implies that the Indian Constitution has not entirely been embraced the doctrine of separation of powers but drawn a lot from the concept. In Indira Gandhi vs.

Raj Narain<sup>45</sup>, it was accepted as a basic feature of the Constitution by the Supreme Court.

### 9.IMPACT OF JUDICIAL INTERVENTION ON GOVERNANCE

The edifice of a democratic government rests on three organs of the government machinery – the executive, the legislature and the judiciary. The powers and functions of these organs are defined in the Constitution of India.

However, the past few years witnessed some noteworthy changes, with the growth of judicial activism, the role of judiciary seems to be expanded and in a number of cases, it is seen establishing policies and issuing guidelines on various issues. The decisions taken by the Legislative and Executive if affecting the fundamental rights of the citizen of India in Part III<sup>46</sup> of the Constitution can be challenged through Public Interest Litigation in a court of law. In the case, Shri R. R. Tripathi vs Union of India<sup>47</sup>, the extension in the service of the Chief Secretary of State of Maharashtra and the maintenance of PIL raising an issue regarding the validity of legislation was questioned. The Court held that "The post in question affects the entire administration of the State and, therefore, larger public interest, it will be difficult to hold that the present Writ Petition is not

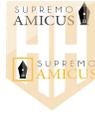
<sup>43</sup>His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (1973) 4 SCC 225).

<sup>44</sup>Supreme Court Advocates-on-Record Association vs Union of India (1993) 4 SCC 441.

<sup>45</sup>Indira Gandhi vs Raj Narain (1975 1975 SCR (3) 333).

<sup>46</sup>INDIA CONST. Part III provides for Fundamental rights to the citizens under art. 12-35.

<sup>47</sup> AIR 2009 (111) BOMLR3053.



maintainable as a Public Interest Litigation”<sup>48</sup>.

The Judicial intervention in legislature can be more aptly described through the instances where the Supreme court issued guidelines and directions to central or state legislation regarding laws and policies on subjects affecting public in general by entertaining large number of PILs covering matters of human rights, environment, public policy and accountability, sexual harassment of women at workplaces and the judiciary.

The modern democracies have developed a tendency of conferring the discretionary power on the executive or administrative officers. The administrative discretion can be subject to question under the jurisdiction of Pro bono came before the Court of justice in many cases. A challenge was made while interpreting the ‘doctrine of reasonable classification’ under Article 14<sup>49</sup>, that the actions of executive exercised under this discretion cannot be questioned through Public Interest Litigation. But, in *State of Kerala vs. Aravind Ramakant Modawdakar & Ors.*<sup>50</sup>, the court ruled that “Courts would not interfere with classification, which is the prerogative of the legislature, so long as it was not arbitrary or unreasonable”. The intervention of courts in the executive by judicial activism widen the scope of social economic justice as

mentioned in the Preamble and Directive Principles of State Policy<sup>51</sup> in the Constitution of India. Through passing judgments in landmarks case such as *Manohar Lal Sharma vs The Principle Secretary and Ors*<sup>52</sup> (Coal Allocation Scam).

Taking into account the recent Mumbai terror attacks of November 2008, a former attorney general of India filed a petition in the apex court seeking to better equip the Indian police. The court asked the government about the step taken by them in this direction.

## 10. STEPS AND MEASURES TO STOP MISUSE OF PUBLIC INTEREST LITIGATION

### 10.1 THE PUBLIC INTEREST LITIGATION (REGULATION) BILL

Public interest litigation is a weapon which has to be used with great care and caution and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice or publicity seeking is not lurking.

In the judgement of *Dattaram Nathuraj Thaware vs State of Maharashtra*<sup>53</sup>, Justice Pasayat said, “It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of

<sup>48</sup> Shri R. R. Tripathi (Advocate) vs Union of India AIR 2009 (111) BOMLR3053.

<sup>49</sup> INDIA CONST. art. 14 “Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of

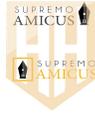
discrimination on grounds of religion, race, caste, sex or place of birth.”

<sup>50</sup>(1999) 7 SCC 400.

<sup>51</sup>INDIA CONST. Part IV deals with Directives Principles of State Policy under art. 36-51.

<sup>52</sup> AIR 2014 (2) SCC 533.

<sup>53</sup> AIR 2006 SC 540.



PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the color of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold". While tracing growing abuse of PIL, an attempt to curb the abuse was made in 1996, when a private bill was introduced in the upper house of the Indian Parliament. The Public Interest Litigation (Regulation) Bill proposed that petitioners filing frivolous cases should be put behind bars and pay damages. The bill, however, could not receive support from all political parties as it raised concerns of interfering with judicial independence, as a result the bill lapsed and the attempt was failed.

## 10.2 THE JUDICIARY

The judiciary is well-aware of the dark side of the PIL and has responded to it at various points to encourage the use of Public Interest Litigation. It has come to notice of many that we have to prevent and protect this essentially important jurisdiction as to restore its authenticity. The court in *BALCO Employees' Union vs Union of India*<sup>54</sup> recognized that in recent time, there has been an increase in cases involving abuse of PIL. Keeping in mind, the Supreme Court has limited

standing in PIL to individuals or groups or non-governmental organizations who are acting bonafide. Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against vexatious public interest litigations. Thirdly, the Supreme Court has ordered the High Courts to be more selective in entertaining the public interest litigations.

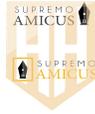
"Justice Pasayat stated three principles in a judgement rendered by him, the principles are; a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite."<sup>55</sup>

The first question that needs to be raised should be whether the intentions of the petitioner are clear or not. A judge should be immediately suspicious when a person who has nothing to do with the cause produces himself before the court as a petitioner and even hidden official documents which in ordinary course would not be accessible to him. Justice Pasayat in *Ashok Kumar Pandey case*<sup>56</sup> raised the issue of possession of official documents and stated, "Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs." If a person seems to spend huge amounts on maintaining a PIL, it should immediately come to the notice of the judge that who is footing such costs as in the case *T. N.*

<sup>54</sup> AIR 2002 SC 350.

<sup>55</sup> *Dattaraj Nathuji Thaware vs State of Maharashtra* AIR 2006 SC 540.

<sup>56</sup> *Ashok Kumar Pandey vs State of West Bengal*, (2004) 3 SCC 349).



Godarvarman Thirumulpad<sup>57</sup>. It is not at all suggested that all public interest litigations should be viewed suspiciously, but the courts and judges need to be extra careful and vigilant in matters of Public Interest Litigation.

In the case, Sanjeev Bhatnagar vs Union of India And Ors<sup>58</sup>, the court went a step ahead imposing a monetary penalty on the petitioner (an advocate) for filing a frivolous complaint. On finding that the petition was devoid of public interest, the court dismissed the case with costs of Rs. 10,000/-.

### 10.3 RECOMMENDATIONS OF SUPREME COURT

The Supreme Court have taken relevant measures to curb the abuse of PIL. The filing of aimless and frivolous petitions “creates unnecessary strain on the judicial system and consequently leads to inordinate delay in disposal of genuine and bona fide cases,” stated a Bench consisting of Justices Dalveer Bhandari and Mukundam Sharma. Justice Bhandari, writing the judgment, said: “The courts’ contribution in helping the poorer sections by giving a new definition to life and liberty and in protecting ecology, environment and forests is extremely significant”. The Bench added, “unfortunately, of late, such an important jurisdiction, which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique

motives” in a recent case, State of Uttaranchal vs Balwant Singh Chauhan & Ors.<sup>59</sup>. The Supreme Court observed that it is crucial to streamline a significant procedure like Public Interest Litigation which has been turned out to be a panacea over the last four decades, with this regard, following directions were issued by the Court to preserve the purity and sanctity of PIL.

1. “The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations. 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.
3. The courts should prima facie verify the credentials of the petitioner before entertaining a PIL
4. The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

<sup>57</sup> T. N. Godavarman Thirumulpad vs Union of India and Ors. (AIR 1995 SC 202).

<sup>58</sup> AIR 2005 SC 2841.

<sup>59</sup> AIR 2010 SC 1029.



5. The court should be fully satisfied that substantial public interest is involved before entertaining the petition.
6. The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
7. 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.
8. The court 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.”<sup>60</sup>

PIL is a tool that enables common man to seek remedy for his grievances. The right of equal access to justice, which has emanated with the social rights regime, must be used to serve basic human, fundamental and constitutional rights, which profess to guarantee legal rights. Thus, whenever any public interest is involved, the court must scrutinize the case to ensure that there is a genuine public interest involved.

## 11. CONCLUSION

Bearing in mind, the power and significance of PIL in making the justice

accessible and a living reality for every citizen and also the efforts channeled through the medium of PIL in providing justice to marginalized and disadvantaged section of the society, the process is positively succeeding and has a glorious record in last few decades. Prior to 1980s for a grieved, poor and deprived citizen hard to seek remedy for their grievances because of economic disability, lack of information and red-tapism. However, post emergency era it took a completely different turn with the introduction of PIL. Where the relaxation of rule of locus standi and introduction of epistolary jurisdiction has made it easy to seek justice, we cannot ignore the fact that it has also opened a back door to let people fulfill their private and political interests thus misusing the PIL.

It should also be noted that in recent years a lot of criticism have been voiced raising concern about increasing judicial activism and its impact on separation of powers and check and balances in the system which implies that a reconsideration and delineation is needed talking about power and functions of the three organs of the Government, however strengthening of role of judiciary does no harm.

The Legislation, the judges and the Apex Court of India has been taking measures from time to time ever since the abuse of Public Interest Litigation has emerged. Public Interest Litigation is the power given to the public by courts for their welfare. Since it is an extraordinary

<sup>60</sup> State of Uttaranchal vs Balwant Singh Chaufal & Ors. (AIR 2010 SC 1029).



remedy available at cheaper costs, it ought to be filed after thinking twice and should not be used as a substitute for ordinary means. As Cunningham said, “Indian PIL might rather be a Phoenix: a whole new creative arising out of the ashes of the old order”.

