

PIL AND JUDICIAL ACTIVISM IN INDIA

***Rishab Bhandari**

***Sandeep Rana**

ABSTRACT

Judicial activism is an important role played by the Indian judiciary through exercising the power of judicial review and PIL. This research paper deals with the historical evolution of PIL in India governing different principles. Along with this, this paper discusses the merits and demerits of both PIL and judicial activism and some landmark judgments which changed the system in India wonderfully in a positive manner. This paper also deals with the interlinking of PIL and judicial activism and how it works simultaneously through judicial activism. The main objective of this paper to make aware of the different aspects of Judicial Activism. And let them know how PIL acts as legal horizon in which the power is given to the public for the protection of their interest and the power of the court to initiate and enforce action for securing justice to the interest of the people of the country. It is needless to say that through different remedies and methods justice is secured to the people of the country. Therefore, it's a need of the hour is to understand and appreciate the concept of PIL and judicial activism.

INTRODUCTION

Judicial activism is an important role played by the Indian judiciary through exercising the power of judicial review and PIL. An independent, impartial, and well-organized judiciary is the third main organ of the democratic system of government. Indian judiciary by giving an interpretation to various legal and constitutional provisions helps in shaping the legal order of the society. It also protects the rights and liberties of citizens and also strengthens democracy. The major important role of the judiciary is to provide protection to the constitution through exercising its power of judicial review. .While exercising the power of judicial review and PIL by the court, the new concept of judicial activism came into the picture. Moreover, PIL is a new form of concept undertaken by the Indian judiciary for the protection of the larger interest of the public under the eye of law. The constitution of India is the fundamental law of the land and in no case, the executive and the legislature have the power to infringe its basic

structure.⁸⁵³ The concept of Public interest litigation can be traced in the system of *actiopopularis* of Roman law which permitted anyone in the society to initiate an action for a public delict in the court of law to bring an action of restitution or injunction for the protection of public property or religious charitable property.⁸⁵⁴

PUBLIC INTEREST LITIGATION - AN AID

Public interest litigation is an extra judicious remedy. The term "Public Interest" means the larger interests of the public, general welfare and interest of the masses⁸⁵⁵ and the word "Litigation" means "*a legal action including all proceedings taken in a court for the purpose of seeking a remedy and enforcing rights and claims.*" Interest shared by the citizens generally in the affair of local, state or national government⁸⁵⁶ "... Public interest litigation is filed in those matters which deal with the public at large, having any pecuniary interest or which affects their legal rights or liability. It is the power given to the public for the protection of their interest through judicial activism by the court.

Public interest litigation can be seen as an affordable legal aid because of the nominal court fees involved in this. It deals with any public matter or issue related to the removal of some public grievance, consumer welfare, environment, and human rights. Judicial activism plays an important role in the relaxation of the traditional rule of "locus standi" in which a person alone can file a petition for the infringement of his rights. Now the court permits PIL for the enforcement of rights, any citizen can move to the court for the public welfare, by filing a petition.

In the landmark case, Justice P. N. Bhagwati stated: - "PIL is a cooperative or collaborative effort on the part of the petitioner, the state or public authority and the courts to secure observance of the constitutional or legal rights, benefits conferred upon the vulnerable section of the community and to reach social justice to them".⁸⁵⁷

* Chandigarh University, Chandigarh

⁸⁵³ *Keshavananda Bharti v. State of Kerala* AIR 1973.

⁸⁵⁴ Dr. UPD Kesari, *Administrative Law*, Page no. 429 (Twenty First Edition, 2016).

⁸⁵⁵ Oxford English Dictionary 2nd Edn. Vol. XII.

⁸⁵⁶ Mohd Haris Usmani, *Public Interest Litigation*, available at: <http://www.legalserviceindia.com/article/I273-Public-InterestLitigation.html> (last accessed on 18th July 2020).

⁸⁵⁷ *People's Union of Democratic Rights v. Union of India* 1982 AIR 1473.

In the landmark judgment of *S. P. Gupta v/s Union of India* (AIR1982 SC 149), Bhagwati, J., an activist judge of the Supreme Court, established the validity of the Public Interest Litigation.

HISTORICAL EVOLUTION OF PIL

In India, PIL is considered as part of the constitution litigation rather than civil litigation. Therefore, it needs to have a basic understanding of the constitutional framework and the Indian Judiciary system, before in order to appreciate the historical evolution of India. After Independence from the Britisher's on August 15, 1947, to constitute India into a sovereign socialist secular democratic republic with a parliament system of government, people adopted the constitution of India.⁸⁵⁸

Two judges of the Supreme Court of India (Bhagwati and Iyer JJ) had prepared the groundwork from the mid-1970s to the early 1980s, for the birth and evolution of PIL in India. It includes the modification of the traditional rule of locus Standi, the procedure to file a writ petition, amendments in fundamental rights, and enforcing legal rights and seeking remedies. On the issue of inequality, the analysis finds that win rates for fundamental rights claims are significantly higher when the claimant is from an advantaged social group than when he or she is from a marginalized group, which constitutes a social reversal, both from the original objective of public interest litigation and from the relative win rates in the 1980s.⁸⁵⁹ The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamgar Sabha v. Abdul Thai*,⁸⁶⁰ and was initiated in *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*,⁸⁶¹ wherein an unregistered association of workers were permitted to institute a writ petition under Art. 32 of the Constitution for the redressal of common grievances. Krishna Iyer J. enunciated the reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar Union*

⁸⁵⁸ Although the terms "socialist" and "secular" were inserted by the 42nd amendment in 1976, there were no doubts that the Constitution was both socialist and secular from the very beginning.

⁸⁵⁹ Two Paths to Judicial Power: The basic Structure Doctrine and Public Interest Litigation in Comparative perspective, also referred <https://heinonline.org/HOL/LandingPage?handle=hein.journals/sdintl12&div=9&id=&page> (Last access on 11-06-2020).

⁸⁶⁰ AIR 1976 SC 1455.

⁸⁶¹ AIR 1981 SC 298.

v. Union of India,⁸⁶² and the idea of 'Public Interest Litigation' blossomed in S.P. Gupta and others vs. Union of India.⁸⁶³

Justice P. N. Bhagwati stated: - “where a legal injury is caused to a person belonging to disadvantageous sections of our society who thereby a reason of their poverty or socially and economically weak background cannot approach the court for redressal of their dispute, any member from the public have the right to maintain an application before the court on their behalf.”⁸⁶⁴

PRINCIPLES GOVERNING PIL

At the time of filing PIL, firstly, there must be a bonafide intention for the protection of public interest at large. The dispute must be related to public nature. One cannot raise the matter related to some private grievance. The court is having the power to take Suo moto cognizance to resolve the dispute under PIL. In PIL, there is no requirement of filing a writ through a lawyer, the case can be filed by the person alone. The wrong must be related to government liability affecting the rights of people.

Where PIL Can Be Filed?

Any public-spirited citizen can file a petition and approach the court for public cause under:

1. Article 32 of the Constitution, in Supreme Court
2. Article 226 of the Constitution, in High Court
3. Section 133, Cr. P.C. in the Court of Magistrate

However, at the time of filing the petition, the person must satisfy the court that there is a bonafide intention and filed for public interest, not a frivolous litigation.

MERITS OF PIL

It is an effective instrument for change in society and to remove the atrocities prevailing in society. Anyone can approach the court. It is a vehicle for creating and enforcing the rights of individuals or groups of individuals. It is very crucial for the sustenance of democracy because, under public interest litigation, the judicial process becomes more democratic

⁸⁶² AIR 1981 SC 344.

⁸⁶³ AIR 1982 SC 149.

⁸⁶⁴ *S.P. Gupta v. Union of India*, SC 1982.

because of public participation. It is an inexpensive remedy because of the nominal court fee involved while filing a PIL. Even though PIL had a small beginning in India, later on, the concept of PIL got widened in India, and SC and HC started intervening in policy issues as well. So this led to the hyperactivity of the judiciary. It is an affordable means, those who can afford the procedure of courts; they have economic options to apply for PIL. It also talks about the common good because it is filed for a public cause.

DEMERITS OF PIL

It seems that the misuse of PIL in India, which started in the 1990s, has reached such a stage where it has started undermining the very purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the PIL project.⁸⁶⁵ Frivolous petitions are filed in the court. Sometimes a matter is just to ventilate a private grievance, instead of rising in the public interest. There is abuse of PIL because every matter which involves a public interest cannot be the basis of PIL. The doctrine of separation of power was not incorporated strictly by the framers of the constitution. PIL disturbs the constitutional balance of power. The flexibility of the procedure because it gives an opportunity to opposite parties to ascertain the precise allegation and respond to specific issues. Interference in policymaking and policy interpretation by the judiciary through PIL. Sometimes, there is a fear of judicial populism. In order to remain effective, PIL should not be allowed to become a routine affair that is not taken seriously by the Bench, the Bar, and most importantly by the masses.⁸⁶⁶

FIVE ICONIC PIL CASES WHICH CHANGED THE SYSTEM IN INDIA

*Vishaka v. the State of Rajasthan*⁸⁶⁷

This was one of those remarkable case laws which marked a victory in the History of India for all those women who were facing mental or physical harassment at the workplace. In this case, a writ Petition was filled by certain social activists and NGOs after the rape of a girl in Rajasthan, it has been bringing as a class action suit in the court. Then, some guidelines were

⁸⁶⁵ Pritam Kumar Ghosh, *Judicial Activism and PIL in India*, available at: <http://law.galgotiasuniversity.edu.in/pdf/issue6.pdf> (last accessed on 28-07-2020).

⁸⁶⁶ Sathe S.P., *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, (Oxford University Press, UK, 2003).

⁸⁶⁷ AIR 1997 SC 3011.

given by the Supreme Court of India. The provisions of CEDAW were laid down and some guidelines were given by Supreme Court of India to all the employers to be followed hiring the female employees. Some of the guidelines were given by the government popularly known as Vishaka guidelines which must be followed by every employer. Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as

- i. Physical contact and advances;
- ii. A demand or request for sexual favors;
- iii. Sexually colored remarks;
- iv. Showing pornography;

Or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Moreover, under this Act, it becomes mandatory for the Employer to take appropriate steps for the protection of women against any kind of act of sexual harassment. Moreover, the Court also explained that Section 294, Section 354, Section 509 shall be used which makes Sexual harassment a criminal offense.

***Parmanand Katara vs. Union of India*⁸⁶⁸**

A PIL was filed by human rights activists in SC against the negligence and irresponsibility of hospitals and staff who do not use to handle medico-legal cases immediately. The SC passed a judgment in favor of petitioner and issues important guidelines which must be followed by hospitals and doctors while attending patients because the preservation of human life is the paramount importance and it is the professional obligation of every doctor with the expertise, whether at a government hospital or private, to protect the lives first, it must be their first priority to save the life of the patient and it is binding not only on the doctor, but also on police, citizen and everyone else.

***Javed v. the State of Haryana*⁸⁶⁹**

This was another landmark PIL which challenged the constitutionality of an election law of the state of Haryana (Sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994) which disqualified "a person having more than two living children" from holding any offices in the panchayats. The objective of this norm was to promote the concept of family planning because it will set an example of restrained reproductive behavior set by their

⁸⁶⁸ 1989 SCR (3) 997.

⁸⁶⁹ AIR 2003 SC 3057.

elected leaders and would be followed by others. The petition challenged these provisions on the ground that it cleared violation of article 14 (right to equality before law) because a person with two or less than two children qualified for public offices and article 21 (right to life and personal liberty) because these provisions prevent liberty of individual to the number of children one chooses to have. The court upheld the disqualification provisions of the election law of the state of Haryana and declared it's constitutional, salutary, and in the public interest. The court found that it is related to the objective of promoting socio-economic welfare and popularizing family planning because the problem of population explosion is a national and global issue. The court emphasized on controlling population is a necessary obligation to be fulfilled by the state and as a part of the state's fundamental duty of sustainable development.

Hussainara Khatoon v. State of Bihar⁸⁷⁰

In this case, the attention was drawn on the issue of trials of under-trial prisoners detained in pending trials for a period far in excess of the maximum sentence for their offenses. The court recognized the speedy trial of cascades as the fundamental right of every accused and right to access free legal services to the poor under article 21 of the constitution. And it is the duty of the state to protect these rights. The SC passed an order of release of 40,000 under trials who had been undergone detention for a period exceeding the maximum term that they should have been convicted for.

M.C. Mehta v. Union of India⁸⁷¹

It is one of the most iconic PIL filed in India, against the authorities for allowing untreated sewage from Kanpur tanneries making its way into the Ganga River. A writ of mandamus was filed by MC Mehta which result into a passing into a no. of orders against more than 50,000 industries which were polluting the Ganga river and closure down of several tanneries and allowed to reopen only after these industries set up sewage treatment plant because the protection of the environment is of paramount importance and must be saved from the effects of air and water pollution.

⁸⁷⁰ 1979 AIR 1369.

⁸⁷¹ 1987 4 SCC 463.

JUDICIAL ACTIVISM: WHEN JUDGES LEGISLATE & EXECUTE

The Preamble of the Constitution of India, states “to secure to all its citizens Justice, Liberty, Equality and Fraternity”⁸⁷². It is the prime responsibility of State to ensure that the rights of citizens under constitution of India do not gets violated. The Constitution of India⁸⁷³ provides a power to strike down actions taken by the executives and the laws made by the Judiciary, it is done under the concept of Judicial Review⁸⁷⁴, and it is the duty of Judiciary to interpret the Constitution and Judiciary is having a power to do. Looking back to 1979, the Judiciary led by the Supreme Court became pertinent to India in such a manner not observe by the makers of the Constitution of India and Judiciary became an operative contributor in the dispenser of Social Justice.

The Judicial Activism emerged, as the judiciary plays a vital role protect the fundamental rights and uphold the constitutional values and ethics under the Constitutional patterns. The judiciary applies its mind to deal with the normative and positive aspects of legislation and for addressing Civic Dilemmas.

The word Judicial Activism isn’t defined anywhere in Indian Law, it means when judiciary become active and Activism in Judicial Policies by making the cause of social change or with joined concepts such as Justice, Liberty and Equality.

Black’s Law Dictionary” defines judicial activism as “*a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent.*”⁸⁷⁵

Justice P. N. Bhagwati defined Judicial Activism as “*The judge infuses life & blood into the dry Skelton provided by legislature & creates a living organism appropriate & adequate to meet the needs of the society*”⁸⁷⁶.”

WORDS SPEAK

⁸⁷² The Preamble, the Constitution of India, 1950.

⁸⁷³ 1950.

⁸⁷⁴ Article 226 and 227 of the Constitution of India, 1950 for High Courts and Article 32 and Article 136 of Constitution of India, 1950 for the Supreme Court.

⁸⁷⁵ Judicial Activism A tempest, or a tempest in tea spoon by Mark Franek, the Philadelphia lawyer Summer 2014.

⁸⁷⁶ Justice Bhagwati P. N. Enforcement of Fundamental rights – Role of the Courts, Indian Bar Review.

DOCTRINE OF SEPARATION OF POWER

Many questions remain answered, when Judges Legislate & execute, is it violation of separation of power? Before we understand that whether the Judges can legislate & execute, it is important to understand the concept of Separation of power, to answer unanswered questions.

The Constitution has drawn up a line between the working of the Judiciary, Legislature and Executive and such restrictions are as follows:

Restriction on discussion in the Parliament and Legislature:

There is restriction on parliament that no discussion shall take place of any Judge of Supreme Court or High Court regarding their conduct acting judicially⁸⁷⁷. It isn't only about the Parliament as same restriction is imposed on the legislature as well⁸⁷⁸.

Courts not to inquire into proceedings of Parliament⁸⁷⁹ & Legislature⁸⁸⁰:

Court is restricted by the Constitution not to inquire into proceedings of Parliament, it is stated that it shall not be called in the question as of alleged irregularity and no member to whom powers are vested under the Constitution shall be subject to any of the jurisdiction of the court acting in its powers prescribed under Constitution.

Protection to Parliament⁸⁸¹ and Legislation⁸⁸² Members:

Constitution imposes a restriction on the Court not to try any member of Legislature and Parliament in respect of anything stated or vote by him/her in Parliament and Legislature and for the publication under the authority in the house by the Legislature and Parliament. The question whether the Court can legislate was answered in the case of *Rai Sahib Ram Jawaya Kapur and Ors. v. The State of Punjab*⁸⁸³, the Supreme Court observed that “Our Constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another.” Separation of power needs to be broad under the Constitution of India among the Legislature, Judiciary and Executive and none of these organs of the state, should encroach into the working or domain of another under any other

⁸⁷⁷ Article 121, The Constitution of India, 1950.

⁸⁷⁸ Article 211, *Id.*

⁸⁷⁹ Article 122, *Id.*

⁸⁸⁰ Article 212, *Id.*

⁸⁸¹ Article 105(2), The Constitution of India, 1950.

⁸⁸² Article 194(2), *Id.*

⁸⁸³ AIR 1955 SC 549.

law, if anything happens apart from all above, the fine balance between all of them be disturbed. Courts are not conferred with the powers to legislate⁸⁸⁴.

CONSTITUTION POWERS OF THE SUPREME COURT AND HIGH COURT

Articles enshrined under the Constitution, regarding the Judicial Activism can be understood under:

Article 13: Laws inconsistent with or in derogation of the Fundamental rights

Article 13 states that any pre-constitutional law existing and if it is inconsistent with the fundamental rights of citizens shall be void and State shall not make any law with in regard that abrogates any of the fundamental right and if there exists any law, it shall become void-ab-intio, as this power is granted to Court and Court is a sole guardian of the Constitution and it is duty of the court to protect the fundamental rights of the citizens.

Article 32: Remedies for enforcement of the Fundamental rights/Writ Jurisdiction of Supreme Court

Article 32 states that an individual have a right to move to the Supreme Court for enforcement of its rights and the Supreme Court is having a jurisdiction to try the matter and issue directions or orders or writs (Habeas Corpus, Mandamus, Prohibition, Quo warranto and certiorari) as whichever will be mandatory for issuing for the enforcement of the Fundamental right and the remedies for the enforcement of the fundamental rights cannot be violated. Article 32 to be read with Article 13 of Constitution for enforcement of rights.

Article 226: Power of High Court to issue writs

Apart from Article 32 of Indian Constitution, Article 226 lays down power granted to High Court to issue writs (Habeas Corpus, Mandamus, Prohibition, Quo warranto and certiorari) for the enforcement of fundamental rights, as Article 226 to be read with Article 13, it is much wider than the power to issue writs by the Supreme Court under Article 32 of Indian Constitution.

Article 131: Original Jurisdiction

The Supreme Court of India, is having a power to deliver its verdict between the Inter-Governmental disputes, in any of dispute between the government of India as a Petitioner and One or two or more States as a defendant or vice versa; or between the Government of India as the Plaintiff and any state or states as defendant and vice versa and between one or more

⁸⁸⁴ 1991 SCR (3) 873.

states or between any two states. Government of India or a State, in their dispute must have assertion of legal right, then only the matter can be decided, whereas question of any political nature not involving in any legal aspect are excluded herein from the Court's view⁸⁸⁵.

Article 136: Special Leave Petition

The provision under the Article 136 of Indian Constitution empowers the Supreme Court to grant in its discretion special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. It excludes all the orders and judgments passed by the Tribunal functioning under Armed laws. Not only grant special leave petition not only to courts but also to quasi-judicial bodies as Tribunal. The wide discretionary power of the Supreme Court shall be exercised sparingly and only in exceptional cases⁸⁸⁶.

Article 142: Power of Supreme Court to do complete Justice

Article 142 gives unconditional power to the Supreme Court in the exercise of Jurisdiction to pass orders or decrees for imparting justice and the same order or decree shall be enforceable through the pan India. The Supreme Court in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan⁸⁸⁷ concede the significance of Article 142 of Constitution and stated that the Court is having a power under Article 142, to issue guidelines or directions for protecting and implementing the fundamental rights in the absence of any legislative enactment. Further the court in its order reiterated that any direction passed by the court, filling up the gap of legislation shall be considered law of the land. And the Parliament will have a power to replace directions issued by Supreme Court. Wherein the Vishakha Guidelines for the prevention of Sexual harassment at the work place was issued by the Supreme Court in the year of 1997 and same was replaced by the Sexual Harassment of Women at Workplace Act⁸⁸⁸.

JUDICIAL OVERREACH

- i. *Kesavananda Bharati v. State of Kerala*⁸⁸⁹ is the first case of Judicial Activism, in which the majority judges of the Supreme Court of India evolved the concept of

⁸⁸⁵ *State of Bihar v. Union of India* AIR 1970 SC 1446.

⁸⁸⁶ *Pritam Singh v. The State* AIR 1950 SC 169.

⁸⁸⁷ AIR.2005 SC 972.

⁸⁸⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁸⁸⁹ AIR 1973 SC 1461.

‘basic structure’ to the Constitution of India, whereas it was no-where mention or implied anywhere in the constitution. First case of Judicial history showing that the court exceeding its powers of interpretation, as it crosses the line drawn up by the Constitution between Judicial Activism and Traditional Function. And further this case is considered as the landmark Judgment by the Supreme Court with pretext to the Constitution.

- ii. In the case of *Arjun Gopal v. Union of India*⁸⁹⁰, The PIL has been filed under Article 32 of Constitution, with regard to Air pollution and the Supreme Court issued several directions, and banned the use of non-green crackers and allowed only crackers having reduced emission and allowed only green crackers for manufacturing and selling. Further set up timing for burning the firecrackers on festivals like Diwali or Gurupurab, from 8:00pm till 10:00pm only. With regard to this there wasn’t any law with this effect.
- iii. In the case of *Rajesh Sharma v. The State of Uttar Pradesh*⁸⁹¹, The Supreme Court amended the Section 488A⁸⁹² by requiring complaints with its context to send to a Family Welfare Committee (DSW) constituted by the DLSA-District Legal Service Authority for the prevention of misuse of Section 498A, but as such there wasn’t any such requirement with regard to Section 498A⁸⁹³.
- iv. In the case of *Shayara Bano v. Union of India*⁸⁹⁴, popularly known as Teen Talaq Case, the Supreme Court Bench comprising of five Judge, majority of three judges ruled that the practice of Triple Talaq, finding no sanction in the Quran, is un-Islamic whereas other two judges held that the triple Talaq has been permissible⁸⁹⁵, which by the ambit of codification has found in violation of Article 14 of Constitution.
- v. The Supreme Court amended the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, by repealing the Section 18⁸⁹⁶, which states that no anticipatory bail shall be granted to persons having n accusations under the

⁸⁹⁰ W.P (Civil) No. 728 of 2015.

⁸⁹¹ SLP (Crl.) No. 2013 of 2017.

⁸⁹² Indian Penal Code, 1860.

⁸⁹³ Ibid.

⁸⁹⁴ 2017 SCC (9) 1.

⁸⁹⁵ Section 2, The Shariat Act, 1937.

⁸⁹⁶ Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Act; by requiring a preliminary inquiry to be made: and the prohibition of arrest under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act except with the permission in writing from the authority⁸⁹⁷.

Judicial Activism not only have cons apart from cons it has more pros, it keep an check and Balances to other government branches, as provides personal wisdom where law fails, makes sure that the citizens of India trust is placed in the Justice System, keep an eye on misuse of public power, and Speedy solution to legislature when legislature gets stuck but Constitution being a grundnorm and the Judiciary its sole guardian should not violate the Constitutional law and if law to be governed then Judicial Opinions will be a standards for violation in ruling other case laws.

RELATIONSHIP BETWEEN PIL AND JUDICIAL ACTIVISM

Lest the golden key to unlock doors of justice remain only with the moneyed people, the Supreme Court took a dynamic approach and pioneered the concept of Public Interest Litigation, permitting litigation at the instance of “public spirited persons” for the enforcement of rights of any persons⁸⁹⁸. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances. Representatives actions, pro bono public and like are in keeping with the current assent of justice to the common man. It must be satisfied to the court that there has been a sufficient interest in the matter of the person approaching the court, before the court takes into consideration a matter for adjudication. In the words of Justice J. S. Verma: “Judicial activism must necessarily mean the active process of implementation of the rule of law essential for the preservation of a functional democracy⁸⁹⁹.” There has been a lot of contribution of PIL in a form of judicial scrutiny of various government institutions like hospitals, prisons, issues related to safety, security, health, environment etc. it is the power given to the public by court through judicial activism. The goal of PIL is to minimize litigation and reduce the burden of courts.

The landmark innovation of PIL is the most important contribution of Judicial Activism of the late 1980s and 1990s. This period saw a spate of myriad PIL litigation with regard to-

⁸⁹⁷ SLP (Crl.) No. 5661 of 2017.

⁸⁹⁸ *M/s Holicow Pictures Pvt Ltd. v. Prem Chandra Mishra* AIR 2008 SC 913.

⁸⁹⁹ Quoted in Manika, “Judicial Activism: A means for Attaining Good Governance”, *Nyaya Deep*, NALSA, Vol. VII, Issue 3.

The prisoner's rights and prison administration

In *D.K Basu v. State of West Bengal*⁹⁰⁰, The Supreme Court issued detailed guidelines-cum-requirements for arrest and detention of persons till legal provisions was to be made by the legislature. The Court⁹⁰¹ directed the concern authorities to take appropriate decisions in regard to jail reforms such as segregation of convicts; delay in trial; production of under-trials before the court on remand dates; framing of All India Jail Manual; Medical Facilities and hygienic conditions in Jails; communication facilities in jail; introduction of more open air prisons. The Supreme Court in the case of *Sheela Barse v. Union of India*⁹⁰² impressed upon the state Government to set up necessary remand houses and observation homes where children accused of an offence could be lodged pending investigation and trial.

The Protection and preservation of environment, forests

The Court directed to introduce compulsory education on environment, up to matriculation level. The NCERT is to prepare a model syllabus for that and the authorities concerned are directed to supervise their implementation and non-compliance of the same to entail disciplinary action⁹⁰³. The Supreme Court in the case of *T.N. Godavarman Thirumulkpad v. Union of India*⁹⁰⁴, issued directions to the state governments for the closure of non-forests activities in the forests and for imposing ban on felling of trees, for conservation of forests

The Widening of the scope of the Right to life and Personal Liberty

Widening the scope of Article 21, Supreme Court enunciated various provisions under the Article 21 of the Constitution of India, as the right to free legal assistance to the poor or indigent⁹⁰⁵; the right to healthy environment⁹⁰⁶; the right against police atrocity, torture and handcuffing⁹⁰⁷; right against custodial violence⁹⁰⁸; right to compensation for the violation of right to life⁹⁰⁹; apart from these various other rights are enshrined under the Article 21 of the Constitution of India.

Judicial Activism helps in making the judicial process more democratic. Through judicial activism, the judiciary cubs the excess of power by the legislature and executive. The

⁹⁰⁰ AIR 1997 SC 610.

⁹⁰¹ *Rama Murthy v. State of Karnataka* AIR 1997 SC 1739.

⁹⁰² AIR 1986 SC 1773.

⁹⁰³ *M.C. Mehta v. Union of India* AIR 2004 SC 1193.

⁹⁰⁴ AIR 1997 SC 1228.

⁹⁰⁵ *Sheela Barse v. State of Maharashtra* AIR 1983 SC 378.

⁹⁰⁶ *M.C. Mehta v. Union of India* AIR 1987 SC 1086.

⁹⁰⁷ *Khedat Mazdoor Chetan Sangath v. State of MP* AIR 1995 SC 31.

⁹⁰⁸ *Shella Barse v. State of Maharashtra* AIR 1983 SC 378.

⁹⁰⁹ *People's Union for Civil Liberties v. Union of India* AIR 1997 SC 1203.

judiciary has interpreted or changed existing laws through judicial activism by using the tool of PIL in the best possible manner and also putting the legislature and executive on the path of transparency and accountability. If they have taken any action without the authority of law or violate any fundamental rights, their action can be struck down by the judiciary with the help of issuance of writ petition. Through judicial activism, courts can check on arbitrariness and illegality of their action. The emerging of the PIL led to other landmark innovations. The Courts started denouncing the adversarial procedures. With a view to making themselves more accessible to disadvantaged sections of the society, they have introduced procession innovations. Mere letters addressed to the courts have been treated as writ petitions in cases of gross violation of fundamental rights, thus, led to the evolution in Epistolary Jurisprudence. Doubts and fears have been expressed against the abuse of PIL. The protagonists of conservative legal process have not been happy with this trend and have given, it the name of Judicial Activism. The sacrosanct jurisdiction, it is said, should be invoked very sparingly and in favor of vigilant litigant and not for the sake of publicity or for serving private ends. The judicial activism manifested in the strategy of PIL paves the way for the participation of public spirited and enlightened people in India's development process and displays the potentiality of the legal system to offer justice to the poor and the oppressed⁹¹⁰. The present mood of the Supreme Court is that of dignified restraint after a long period of judicial activism.

CONCLUSION

PIL contributes effectively in disposal of people's grievances, provides justice to disadvantaged sections of society, who are not well informed about their rights, and also spreads social awareness about human rights. With a view to direct the abuse of PIL, firstly the court must see that the people who approached court must be having a bonafide intention and for the larger public interest. The interference or abuse by political parties or any other authorities must not be allowed during the functioning of the court. Due to the huge heap of cases in SC and HC, the court takes a long time even in PIL cases for disposal of cases. Sometimes it disturbs the constitutional balance of power and fear of judicial populism. There

⁹¹⁰ https://shodhganga.inflibnet.ac.in/bitstream/10603/18104/12/12_chapter%204.pdf, (last accessed on 30-06-2020).



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is a need to check the abuse and misuse of PIL, and safeguards must be followed defined under the code of civil procedure or any other law for time being in force.

