3rd International Conference

On Public Policy (ICPP3)

June 28-30, 2017 – Singapore

Panel: Session 2

T03P08 - Democracy Institutions and Public Policy Performance

Topic: *Policy and Politics sponsored by Policy & Politics Journal*

Panel Chair: *Prof. Hai Phu Do - haiphudo@gmail.com*

Title of the paper

THE ROLE OF PUBLIC INTEREST LITIGATION IN SHAPING UP THE PUBLIC POLICY REGIME IN INDIA: OVER-REACHING OR JUSTIFIED AND THE WAY AHEAD

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Date of presentation

Thursday, June 29th 13:30 to 15:30 (Block B 5 - 4)

INTRODUCTION TO PUBLIC INTEREST LITIGATION

« INJUSTICE ANYWHERE IS THREAT TO JUSTICE EVERYWHERE. »

– MARTIN LUTHER KING JR..

Rule of law is the internal part of any democratic society wherein the rights of the citizen are taken care by an independent and impartial judiciary. Therefore, in any democratic society, a citizen's access to justice is the hallmark of protection against any encroachment on the spirit of the democratic system. But in recent times the adjudicatory system has fallen prey to dilatory and expansive process which has taken a heavy toll on poor section of society, to their right to easy excess to justice. Lately, after the implementation of the economic reforms of "Liberalization, Privatisation and Globalisation" policy by the government of India, there has been a tremendous increase in governmental power and responsibility as the idea of welfare state is becoming more prominent which entails a host of executive inferences in various walks of human life and leaves no corner of individual life untouched. Thus, due to this unprecedented change in socio-economic and political aspect of the governance of a country, the judiciary has also assumed new responsibilities.

One of the main aims of 'law' is to ensure justice in the society and Public Interest Litigation is one of such tools developed by the judiciary in India to achieve this objective. For example, a litigation which focuses not on vindicating private rights but on the matters of general public interest, extends the reach of judicial system to the disadvantageous section of the society. The term "Public Interest" means the larger interest of the public, general welfare and interest of masses[1] and the word "litigation" means a legal action which includes all proceeding therein initiated in a court of law with the purpose of enforcing a right and seeking remedy. Hence, the expression "Public Interest Litigation" means any litigation for the benefit of the public.

Until the emergence of the PIL, justice was considered to be a far-off reality for the unprivileged section of the society largely due to three major problems; first being, lack of awareness among the people; secondly, lack of assertiveness due to their socio-economic status and thirdly, lack of an effective machinery to give them legal aid. Further, the reinterpretation of the concept of *locus standi* by the Apex court has removed the major obstacles faced by the poor and paved the way for easy access to justice. If one looks at the traditional interpretation of the *locus standi,* it means that only the person who has suffered a legal wrong could take recourse to the

[1] Oxford English Dictionary 2nd Edn. Vol.XII.

court of law for relief. The new approach adopted by the court has relaxed this strict interpretation of *locus standi*. According to this approach, if any legal wrong is done to a person or a class of persons who by reason of poverty or any other disability cannot approach the court of law for justice, it is open to any public spirited individual or organization to approach the court on their behalf. Thus, this approach of the courts has been taken up so that constitutional objective of socio economic justice can be achieved for all.[2]

The concept of PIL[3] was initially brought in by Justice Krishna Iyer in 1976 in the case of *Mumbai Kamgar Sabha v. Abdul Thai*[4] and was further initiated in *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*[5] where even an unlisted association of workers was given the permission to institute a writ petition under Article 32[6] of the Constitution to redress the grievances suffered by them. Krishna Iyer J., enunciated the reasons for liberalization of the rule of *Locus Standi* in *Fertilizer Corporation Kamgar Union v. Union of India*[7] and the idea of 'Public Interest Litigation' was brought in *S.P. Gupta and others v. Union of India*[8]. In cases prior to *S.P. Gupta*, the Apex Court did not use the term 'Public Interest Litigation' expressly but just had the rule of *locus standi* relaxed, but it was only after the judgment of the *S.P. Gupta case* that the term was expressly used by the court.

Therefore, the development of PIL in India is observed only because of the judicial activism by the courts after the post-emergency period. After the post-emergency period, courts started interpreting the constitutional provisions more liberally to secure the objective of socio-economic justice to the poor sections of the society. Hence, the paper also focusses on the darker side of PIL, when the judiciary uses it as a tool for judicial populism and not activism at times.

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[2] Mr K.G. Balakrishnan, Chief Justice of India, 'Judicial Activism under the Indian Constitution', Trinity College Dublin, Ireland – October 14, 2009.
[3] Mrs Saroj Bohra, 'Public Interest Litigation: Access to Justice', Manupatra Articles, <http://www.manupatra.com/roundup/379/Articles/Public%20Interest%20Litigation.pdf> (11th June 2017, 04:53 AM).
[4] AIR 1976 SC 1455.
[5] AIR 1981 SC 298.

[6] Article 32 of the Constitution states the remedies for enforcement of rights conferred by Part III of the constitution is guaranteed.
[7] AIR 1981 SC 344.
[8] AIR 1982 SC 149.

EVOLUTION OF PUBLIC INTEREST LITIGATION

Emergence of Public Interest Litigation[9] motivated the judicial system to extend its protection towards new social and public interest. The term 'PIL' originated in the United States in the mid-1980s. The phrase 'public law litigation' was prominently used by the American academician, Abram Chayes to describe the practice of lawyers or some public spirited individuals who seek to bring in social changes through the court ordered decree to reform the legal rules, enforce existing norms and articulate public norms.[10] Since the nineteenth century, different movements have contributed towards public interest law which became the part of legal aid movement in the United States. The first legal aid office was established in New York in 1876. Later on the PIL movement began to receive financial support from the Economic Opportunity office, which in turn encouraged the lawyers and public spirited individuals to take up the cases of the under-privileged and fight against the dangers to environment and public health as well as exploitation of consumers and the weaker sections of the society. In England, PIL made its mark in 1970s.

The origin of PIL in the Indian context is primarily a judicial constructed phenomenon and is closely related to the active assertion of judicial power. Although there has been an explosive assertion of judicial power following the deceleration of the political emergency of 1970s in India, but such power had been pronounced in the past too. The constitutional tension over land reforms had been pronounced before the court and parliament.[11] The decision of the Apex Court during late 1950 and 1960 appeared to obstruct this social change as at that time, they had asserted the right to a fair return of the value of any property acquired by the state for redistributive process.[12] But in the 1970s, this outlook changed and protected the privileges and pensions of princes from the government[13] and invalidated the bank nationalization legislation.[14]

The victory of the Indian National Congress led by Mrs Indira Gandhi in the general elections of 1971 on a manifesto of economic and social reform appeared to be a popular invalidation of

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[9] Hereinafter referred to as "PIL".
[10] Abraham Chaves, 'The Role of the Judge in Public Law Litigation', Harvard Law Review, Vol.89, 1976, p.1281
[11] Jagat Narain, "Judges and distributive justice," in Rajeev Dhavan & R. Sudarshan, eds., Judges and the judicial powers [London: Sweet and Maxwell, 1985]; S.P. Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits, Oxford University Press, 2002.
[12] S.P. Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits, Oxford University Press, 2002.
[13] Madhav Rao Scindia v. Union of India, A.I.R. 1971 SC 350.
[14] R.C. Cooper v. Union of India, A.I.R. 1970 SC 564.

the court's approach. Following years of this electoral victory led up to the state of constitutional emergency which lasted from 1975 to 1977. During this period, the Supreme Court was marginalized in its pro-property decisions, which was being neutralized by constitutional amendments.[15] Consequently, there were transfers of judges; and the practice of supersession, to further erode judicial autonomy.[16] In the 1970s, the right to property which was a fundamental right was removed from Part III of the Constitution. The Court's failure to assert fundamental rights during the Emergency[17] reinforced its negative image and the 42nd amendment to the Constitution tried to eliminate the power of judicial review of Courts.

However, there was a slow pace towards the judicial activism that began to be noticed in the 1970s which could observed in important constitutional decision such as the *Kesavananda Bharti case*,[18] where judges on both sides of the issue of the 'extent of parliament's amending powers under Article 368[19] of the Indian constitution' legitimized their interpretative method by referring to the interests of the Indian people.[20] In the case of *Kesavananda Bharati*, one of the judges said, "The Constitution is not intended to be the arena of legal quibbling for men with long purses. It is made for the common people." And further, "The court is not chosen by the people and is not responsible to them in the sense in which the House of the People is. However, it will…augment its moral authority if it can shift the focus of judicial review…to the humanitarian concept of the protection of the weaker section of the people."[21] In *Indira Gandhi v. Raj Narain*[22] the court's decision gave legitimacy to the basic structure doctrine propounded in Kesavananda as a limit on parliament's power of constitutional amendment, and as a major safeguard for individual liberties guaranteed by the constitution.

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[15] The 24th Amendment Act, 1971 sought to restore to parliament the unqualified power of constitutional amendment it had possessed until the Supreme Court's decision in Golaknath v. The State of Punjab, A.I.R. 1967 SC 1643; the 25th Amendment further restricted the right to property and the 26th abolished the privy purses.

[16] Jamie Cassels, "Judicial activism and public interest litigation in India: attempting the impossible?" [1989] 37(3) the American Journal of Comparative Law 495-519.

[17] A.D.M. Jabalpur v. Shiv Kant Shukla, A.I.R. 1976 SC 1207; *Supra* note 11.

[18] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.

[19] Article 368 of the Constitution states "the power of Parliament to amend the Constitution and procedure therefore".

[20] Upendra Baxi, "Taking suffering seriously: Social action litigation in the Supreme Court of India," in Neelan Tiruchelvam and Radhika Coomaraswamy, eds., The role of the judiciary in plural societies [London: Frances Pinter (Publishers), 1987]; Pritam Kumar Ghosh, Public Interest Litigation in India- Judicial Activism or Judicial Overreach, International Journal of Research (IJR) Vol-1, Issue-9, October 2014 ISSN 2348-6848.

[21] Ibid.

[22] A.I.R. 1975 SC 1590.

Post-emergency period, judicial activism was a display of the court's response towards retrieving the degree of legitimacy following the emergency,[23] and increasing the political power of the other organs of the government[24] and judicial interpretation of the fact that can be seen in the construction of constitutional provisions such as of Article 14[25] and Article 21[26] in *Gopalan*[27] was being contradictory to its decision in *Kesavananda Bharati*[28] and *Minerva Mills*.[29] Thus, the judicial exercise of the authority after the emergency saw the PIL phenomenon arise where the court's interpretation of the Fundamental Rights became more liberal in order to maximize the rights of the people, particularly of the disadvantaged sections of the society and increasing their access to court by relaxing the rules of *locus standi*. With this, Justice V.R. Krishna Iyer and Justice P.N. Bhagwati opened new vistas of PIL.[30]

[23] *Supra* note 22.
[24] Upendra Baxi, The Indian Supreme Court and politics [Lucknow: Eastern Book, 1980]
[25] Article 14 of the Constitution states "Equality before law".
[26] Article 21 of the Constitution deals with 'Protection of life and personal liberty'.
[27] A.K. Gopalan v. State of Madras 1950 AIR 27, 1950 SCR 88.
[28] *Supra* note 18.
[29] Minerva Mills Ltd. & Ors v. Union Of India & Ors 1980 AIR 1789, 1981 SCR (1) 206.
[30] Shah Nawaz, 'Judicial activism and the problem of governance in India', <http://shodhganga.inflibnet.ac.in/handle/10603/40573> (11th June 2017, 04:53 AM); T. R. Andhyarujina, Going beyond the ambit, <http://indianexpress.com/article/opinion/columns/arun-jaitley-judicial-activism-supreme-court-2828018/>, (11th June 2017, 04:53 AM).

IS THE POWER OF THE JUDICIARY OVERREACHING IN PUBLIC INTEREST LITIGATIONS?

Public Interest Litigation for more than three decades has served as a viable tool for the Indian Judiciary to advance the concept of social and economic justice to the marginalized and underprivileged sections of the society. However, everything that shines is not gold and the same holds truth in the case of PIL. In the recent past, certain limitations and criticisms have emerged in the sphere of Judicial Activism concerning the 'Separation of Powers', 'Capacity of Judicial Powers' and 'Inequality'.[31] It is quite clear that matters in PIL primarily constitute social and economic rights which generally requires a positive action and does not identify a duty holder which means that the jurisprudential analysis of the concept reveals that it is a right without a corresponding duty, the reason being that public constitute masses at large and no single individual can be attributed with the duty. Furthermore, the rights are claimed against the state and hence, it should be *'sine qua non'* when it comes to enforcement, protection and remedies against the guaranteed rights and not the judicial arm of the constitutional machinery.[32] Other aspects which has been starkly highlighted, revolves around the illegitimacy of the judicial power in exercising social justice. The time traversed by the PIL in Indian context says much about the transformation of judiciary from an interpretative jurisdiction forum to supervisory jurisdiction forum where it started correcting actions, legislations and policies of the public authorities, government and other bodies working for the public good. Justice P.N Bhagwati strongly noted in 1982 that PIL is a '*a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation."* This definition captures the true essence of the Public Interest Litigation but the modern intervention developed by the judiciary to the 'Public Interest' is leaning more towards the 'Public Cause'. This in turn is creating a plethora of problems towards the implementation of a rights-based social structure as the judicial arm is working more towards correcting the decisions of the legislature rather than to protect the existential rights.[33]

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[31] Soli Sorabjee, 'Every matter of public interest cannot be a matter of public interest litigation', <http://www.firstpost.com/india/soli-sorabjee-on-pils-every-matter-of-public-interest-cannot-be-a-matter-of-public-interest-litigation-2592886.html> (11th June 2017, 04:53 AM).

[32] Rekha Kumari R Singh, 'An analytical and critical study on judicial activism vis-a-vis judicial overreach with respect to legislative function of the Indian parliament, Judicial Activism vis-à-vis Judicial Overreach', <http://shodhganga.inflibnet.ac.in/bitstream/10603/32340/11/12_chapter%206.pdf> (11th June 2017, 04:53 AM).

[33] Varun Gauri, 'Public Interest Litigation in India Overreaching or Underachieving?', Policy Research Working Paper, The World Bank Development Research Group, WPS5109.

It is duly highlighted in the evolution of PIL in the earlier chapter that unlike the United States regime, where the concept was rooted in the 'participation of civic masses in the government decision making', the concept of PIL in India was mooted as one which talks about the repressive character of the state and takes stringent measures against Government-influenced lawlessness through the whip of the Judicial arm.[34] This characteristic feature is reminiscent of the fact that the Indian tinge on PIL has a concentrated effect on its institutional framework leading many scholars to believe that it has become more of 'populism' than 'activism' on the part of the courts in India. Of a multitude of factors behind this play, few have gained larger notoriety including the excessive workload on the courts, lack of judicial infrastructure, procedural abuse of power and the rift that it has created with the other organs of the government. All such factors give rise to the 'judicial adventurism' on the part of the courts which are meant to be interpretative in nature and not decision makers on public policy matters.

[34] T. R. Andhyarujina, Disturbing trends in judicial activism, http://www.thehindu.com/opinion/lead/Disturbing-trends-in-judicial-activism/article12680891.ece (11th June 2017, 04:53 AM).

IS PIL, A BOON OR BANE?

Going through a history of writ petitions involving issues of public interest ranging from public maladministration, environmental degradation, pollution, access to basic amenities, regulations of public institutions, prohibition, and sexual harassment in workplace to violations of rights by public bodies, gives a very confusing picture of the Public Interest Litigations. All issues similar to the ones stated above, pertains to the development and upliftment of the society but among these, some frivolous and unwanted issues were also barged over the Court including PIL against a Super Specialty Hospital,[35] PIL as a revision petition for the so-called "public interest" during Bofors Scam,[36] PIL against pollution by an industrial company on private accord and rift[37] and even PILs for regulating practice of private schools in conducting interviews of adolescent pupils.[38]

All such instances lead the intelligentsia to believe that PIL is no more a tool for social reform but rather a failed gimmick to claim judicial intervention for personal motive and vendetta, an opportunity to build private practice, an easy way to claim fame and a mechanism to over-exert an already overburdened judiciary.[39] The question which has haunted the Courts the most is the point of diversion when it comes to *Locus standi.*[40] In few cases, the Courts have considered petitions from third parties which have no relatable association or connection with the issue or the cause of action of the affected parties.[41] On the other hand, in a few situations, Courts have also rejected petitions for lack of public interest being affected or for petitioners having no identifiable measures to take up public interest in the particular circumstances[42].

This commotion at the judicial level is not only limited to the issue of *locus standi* but several other issues are also at the helm of the Courts when it comes to PIL and judicial activism, which discussed in the following.

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[35] J Venkatesan, 'Supreme Court slaps Rs 5 lakh costs on petitioner for frivolous PIL', <http://www.deccanchronicle.com/nation/current-affairs/110317/supreme-court-slaps-rs-5-lakh-costs-on-petitioner-for-frivolous-pil.html> (11th June 2017, 04:53 AM).

[36] Janata Dal v. H.S. Chowdhary and Ors. AIR 1993 SC 892.

[37] Subash Kumar v. State of Bihar, 1991 AIR 420.

[38] ''PIL and Indian Courts'' in Combat Law (November–December 2007), Vol.6:6.

[39] Pallavi Sharma, 'Are we Over expecting from PIL's', <http://www.commoncause.in/are-we-over.html> (11th June 2017, 04:53 AM).

[40] Mahesh R Halde, 'Locus Standi Has Widening the Scope of Public Interest Litigation' <https://ssrn.com/abstract=1934112> (11th June 2017, 04:53 AM).

[41] Ashok Desai and S. Muralidhar, 'Public Interest Litigation: Potential and Problems', Published in B.N. Kirpal et al. eds, Supreme but not Infallible Essays in Honour Of the Supreme Court Of India, International Environment Law Research Centre, 2000. (New Delhi. Oxford University Press, 2000), p. 159.

[42] Ibid.

Ignorance of Separation of Powers

One of the most keenly contested space in India is the supremacy amongst the three wheels of government and especially that of the Legislature and Judiciary. The concept of 'Judicial Overreach'[43] lies in the hallways of judicial intervention in the forsaken territory, ruled by the Legislative arm of the Government. It is no secret that it is upto the legislature to formulate laws, policies and rules regulating the public discourse but there were many a time when such power was usurped by the judiciary to come up with guidelines while dictating terms in a plethora of case laws.

A fine example of such a collusion can be seen in the case of *Vishaka v. State of Rajasthan*[44] where the Supreme Court forgot that it is infallible and went on to detail out a comprehensive set of guidelines to avert sexual harassment of women at workplace which was not provided in any other civil or criminal law. This clearly lends credence to the fact that the judiciary was trying to encroach upon the exclusive domain of legislature.

In a similar fashion, in the case of *Prakash Singh v. Union of India*[45] the judiciary laid down directives to the State to incorporate mechanism that lead to a series of reforms in the police-system in 2006. In this case, the court unbendingly laid down seven points of action which must be adopted at the earliest in the wake of loopholes in the disciplinary administration on the part of the Police Authorities. Such an action by the Court was totally violative of the Separation of Powers enshrined in the Constitution of India as Police Administration is a state subject and hence, out of the purview of the Judiciary to legislate such norms.[46]

Without an iota of doubt, it must be quite clear that the Judiciary must not take policy making in their hands and must steer away from engulfing the authority of the decision-makers of the state. On a parallel note, it was rightly pointed out by the Court in the case of *Satya Narain Shukla v. State Of U.P. Chief Secy.*[47] that "The justification given for judicial activism is that

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[43] Manish Tewari, 'Judicial over-reach or executive paralysis', <http://www.asianage.com/columnists/judicial-over-reach-or-executive-paralysis-257> (11th June 2017, 04:53 AM); RN Bhaskar, 'Coins: Judicial overreach or administrative underreach? , <http://www.freepressjournal.in/analysis/coins-judicial-overreach-or-administrative-underreach-r-n-bhaskar/920234 > (11th June 2017, 04:53 AM).

[44] Vishaka & Ors v. State Of Rajasthan & Ors AIR 1997 (7) SC 384.

[45] AIR 2006 8 SCC 1.

[46] Y.K. Sabharwal, C.K. Thakker & P.K. Balasubramanyan, Writ Petition (civil) 310 of 1996, <http://www.supremecourtcases.com/index2.php?option=com_content&itemid=135&do_pdf=1&id=21218> (11th June 2017, 04:53 AM).

[47] Appeal (civil) 2082 of 2003

the executive and legislature[48] have failed in performing their functions. Even if this allegation is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not, firstly because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly because the judiciary has neither the expertise nor the resources for this."[49]

Hence, in order to maintain the order and principles of Constitutional Supremacy, the Courts must ensure that they do not row their boats in far off waters and thus, does not double up as a legislative arm of the Government.

Aspersions over the Nature of PIL: Public or Private

It is true that sometimes the Courts have gone beyond the scope of their powers. They have entertained matters which they ought not to have entertained and are guilty of populism, adventurism; thus, breaking the barriers set by the Constitution. Conversely, it can also be said that the Courts are the only accessible forum to the common citizens to address their grave issues in a timely, impartial and justiciable manner. In light of such contrasting perspectives, it would be best for the Courts to exercise judicial discretion in churning out a definite mechanism for implementation of 'judicial restraint'. Such exercise of judicial discretion would not only ensure a level-playing field for the various stakeholders of the Government but would also mean that some measures would exist to counter the ill-effects of PIL usage by parties inclined towards private interest and for whom public benefit is inconsequential to their own self-motives. It was well noted by the then-Chief Justice of India, Mr. A.S.Anand[50] that '*Care has to be taken to see that PIL essentially remains Public Interest Litigation and does not become either Political Interest Litigation or Personal Interest Litigation or Publicity Interest Litigation or used for persecution."*

As the name suggests, the whole circle that encapsulates PIL speaks of 'public good' and 'public betterment' and in no manner such interests be hampered by individually motivated

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[48] Akanksha Kumar, '5 Public Interest Litigation Cases That Changed Our Lives Forever', <https://www.thequint.com/india/2015/08/29/5-public-interest-litigation-cases-that-changed-our-lives-forever> (11th June 2017, 04:53 AM).

[49] Union of India v. R. Gandhi, CIVIL APPEAL NO.3067 OF 2004; "That the Indian Constitution recognizes separation of power in a broad sense without however their being any rigid separation of power as under the American Constitution or under the Australian Constitution."

[50] Dr Faqir Hussain, 'Public Interest Litigation', <https://www.sdpi.org/publications/files/W5-Public%20Interest%20Litigation.pdf> (11th June 2017, 04:53 AM), Sustainable Development Policy Institute, 1992; *Supra* note 11.

goals. To provide impetus to this argument, it was held by the Apex Court in the celebrated case of *Raunaq International Ltd. v. I.V.R. Construction Ltd. and Ors.,*[51] that,

"When a petition is filed as a public interest litigation challenging the award of a contract by the State or any public body to a particular tenderer, the court must satisfy itself that party which has brought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition. Hence, before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests."

This decision truly enlist the reasons behind the adoption of Public Interest Litigation in India by the courts of law which was to seek out larger good of the society keeping in mind the constitutional limits and giving a pedestal to the weaker sections of the society in order to safeguard them against the burgeoning interest of private hounds whose only goal is to fulfill their commercial interests.

Limited Resources and Populism Exercised by the Judiciary

PIL serves as the most effective and speedy way to justice as it is considered by the courts of law around the country on priority-basis for the purpose of hearings. Additionally, it is quite clear that the Courts in India are backlogged[52] to a far larger extent than they should have been actually and all this is because of the fact that the Courts are still lingering over the formulation of rules that can guarantee strict action against PILs which are frivolous, individualistic and unwanted in nature. This is the reason why speedy justice still hasn't reached the common people and indirectly, their rights have been violated because of the limited access to justice.[53] In a few cases, the Courts have also shown a lethargic attitude in disposing of PILs which are quintessential as to the time and the need of the parties. This attitude of the judiciary has further widened the gap between effective justice and the public's access to it.

In PIL, the judiciary did away with the procedural nuances and adopted adversarial litigation. Hence, it can be rightly pointed out that such procedural dilution could give rise to abuse of

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[51] (1999) 1 SCC 492.
[52] SC Pendency Project, 'Corp, tax & PIL cases pend longest | More near-Delhi cases end in Supreme Court & food for stats geeks', <http://www.legallyindia.com/the-bench-and-the-bar/the-pendency-project-more-near-delhi-cases-end-in-supreme-court-a-more-for-stats-geeks-20121214-3323> (11th June 2017, 04:53 AM).
[53] Dr. Justice B.S. Chauhan, 'The Legislative Aspect of the Judiciary: Judicial Activism and Judicial Restraint', <http://www.tnsja.tn.nic.in/Article/BS%20Chauhan%20Speech-%20Lucknow.pdf> (11th June 2017, 04:53 AM).

power and such abuse could also lead to the violations of the epitome of law, i.e. the "Principles of Natural Justice".[54]

(i) nemo judex in re sua, i.e. the authority deciding the matter should be free from bias*; and*

(ii) audi alteram partem, i.e. a person affected by a decision has a right to be heard.

The first principle herein not only means that a person should be a judge in his own case but also that the authority deciding the matter including judges, chairmans and other administrative judgment-givers must be impartial and unbiased. Such an authority should not have any resumptions or preconceived notions as to the parties and subject matter of the litigations.[55]

One of the foremost scholars on Indian PIL regime, Prof. Upendra Baxi reaffirms that "*Social Action Litigation marked the advent of judicial populism that is, the Supreme Court (in the memorable phrase of Justice Goswami) began to imagine itself as the —last resort of the bewildered and oppressed Indians."*[56] This statement is viable in the present context as the judiciary has already soaked its hand in the blood of populism, adventurism and excessivism. Judges who are the primary deliberators, interpreters and protectors of the courts of law are far from being unbiased. The reason often being cited revolves around the proposition that how PIL is an impediment in judicial-efficiency mainly because of its gate-keeping role.[57] Sathe argues that Courts are primarily staffed by Judges who are human beings with a repository of judicial knowledge but the psychological setup of just another similar human being. Thus, he is susceptible to error which means that to uphold the principle of democratization of judicial powers, a simplistic tradition of juristic and populistic criticism of such decision must develop.

All judges are humans and they are no short of their individual convictions based on their political outlook,[58] social inclinations and religious ideologies.[59] This approach was vociferously reflected in the judgment of Justice Dwivedi in the landmark case of *Kesavananda*

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[54] Surya Deva, 'Public Interest Litigation in India: A Critical Review', Sweet and Maxwell, Civil Justice Quarterly Issue 1, 2009, <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan047384.pdf> (11th June 2017, 04:53 AM).

[55] Shobha Aggarwal, 'The Public Interest Litigation Hoax in India: its Adverse Impact on the Poor and Working Class', South Asian Citizens Web, <http://www.sacw.net/article11105.html> (11th June 2017, 04:53 AM).

[56] *Supra* note 32.

[57] Mr K.G. Balakrishnan, Chief Justice of India, 'Growth of Public Interest Litigation in India', <http:/supremecourtofindia.nic.in/speeches/speeches_2008/8%5B1%5D.10.08_singapore_-_growth_of_public_interest_litigation.pdf> (11th June 2017, 04:53 AM), Singapore Academy of Law, Fifteenth Annual Lecture October 8, 2008.

[58] Ramesh Thakur, 'Judicial activism, romanticism & overreach', <http://www.thehindu.com/todays-paper/tp-opinion/Judicial-activism-romanticism-amp-overreach/article15177963.ece> (11th June 2017, 04:53 AM).

[59] Pritam Kumar Ghosh, Judicial Activism And Public Interest Litigation In India, Galgotias Journal of Legal Studies, 2013 GJLS Vol.1, No.1, ISSN. 2321-1997.

Bharati v. Union of India[60] where it was stated that ''The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review[61] from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people.'' Essence of this observation lies in the core of 'judicial populism' and how it should be avoided at all costs. To sum up this dark nature of the Public Interest Litigation, the celebrated case of *S.P Gupta v. Union of India*[62] must be discussed wherein the Court laid down that "Where the contest is between those who are socially or economically unequal, the judicial process may prove disastrous from the point of view of social justice, if the Judge adopts a merely passive or negative role and does not adopt a positive and creative approach.... What is necessary is to have Judges who are prepared to fashion new tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability, not to any party in power nor to the opposition nor to the classes which are vociferous but to the half hungry millions of India who are continually denied their basic human rights".[63] This approach adopted by the Court clearly means that judges should abstain from using Public Interest as a tool for popularity but rather work as social engineers who are aware of the socio-economic realities of the social structure existing in the society and uses law as a tool for achieving the underlying Constitutional objectives.

Falling standards of Implementation and Ill-fated Recognition of Rights

Even though it has been repeatedly mooted that "the judges could enforce a law but should not create a law and seek to enforce it"[64], they actually do enact laws in innumerable instances probably in a manner suited to the whims and fancies of the judiciary. A two-fold approach to the justice rendered under PIL bluntly shows that PILs do come up with fancy symbolic

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[60] *Supra* note 18.

[61] Delhi Development Authority, N.D. and Anr. v. Joint Action Committee, Allottee of SFS Flats and Ors., AIR 2008 SC 672; Broadly, a policy decision is subject to judicial review on the following grounds:
"(*a) if it is unconstitutional;*
(b) if it is dehors the provisions of the Act and the Regulations;
(c) If the delegate has acted beyond its power of delegation;
(d) if the executive policy is contrary to the statutory or a larger policy."

[62] *Supra* note 8; Justice Krishna Iyer observed, "Every judge is an activist either on the forward gear or the reverse."

[63] *Supra* note 53.

[64] Justice Markandey Katju & Justice A.K. Mathur, 'Judicial Activism, Human Resource and Development', <http://www.mcrhrdi.gov.in/crashcourse/presentations/SG%2003%20-%20Judicial%20Activism.pdf> (11th June 2017, 04:53 AM).

decisions but fail big time in the implementation of those directives, principles and rules. On a secondary note, it has been seen that nothing could be achieved in recognizing such rights under PILs which cannot be exercised and thus, will eventually become worthless. The reason behind lack of implementation is not concerned with the standing of the court of law in the eyes of people but it highly depends on the public officials, departments and officers who are appointed or called in case of issues arising in the Courts. These officials are the impediments in the implementation of qualitative decisions because of uncooperativeness and non-compliance of these officials in lieu of the excuse that such decisions are non-implementable or are overly ambitious.[65] A sequence of chain events which is clear in these sort of circumstances is that if Judiciary steps into the shoes of Executive and Legislature, it is exposed to the issues faced by these organs on the front of implementation, transparency and accountability. "More often than not, the alacrity of the judiciary in delivering path-breaking judgments in public interest may not matched by the foot soldiers in the executive, who ultimately shoulder the burden of implementing the given directions." Without such support from the Executive, even the most welfare-centric directions, rules and guidelines would not be able to make any positive impact on the society. The Courts themselves have accepted the notion that majority of the decisions in the PILs have been unfruitful even after creating a mass hysteria among common people. Katju pointed out in the case of *Common Cause (A Regd. Society) v. Union of India & Ors*[66] that "We would be very happy to issue such directives if they could really be implementable. However, the truth is that they are not implementable (for various reasons, particularly lack of financial and other resources and expertise in the matter). For instance, the directives issued by this Court regarding road safety in M.C. Mehta's case hardly seem to have had any effect because every day we read in the newspapers or see the news on TV about Blue-line buses killing or injuring people. In the Hawala case (*Vineet Narain v. Union of India* AIR 1998 SC 889) a valiant effort was made by this Court to check corruption, but has it made even a dent on the rampant corruption prevailing in the country? It is well settled that futile writs should not be issued by the Court." The analogy drawn by former Justice Katju in this case is pertinent to the crux of a lot of guidelines and directives issued by the courts of law which are not more than a sword made out of paper. Some of these guidelines include the ones in the *Police*

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[65] R.K. Gupta, 'Abuse of public interest litigation in India need of legal safeguards, Criticism of Public Interest Litigation', <http://shodhganga.inflibnet.ac.in/handle/10603/39837> (11th June 2017, 04:53 AM); Prashant Narang,' Judicial Activism Or Overreach?', <http://ijustice.in/sites/default/files/resources/judicial_activism_or_judicial_overeach.pdf> (11th June 2017, 04:53 AM).; Umama Moin, 'Parliament and Supreme Court : the Indian experience', <http://shodhganga.inflibnet.ac.in/handle/10603/11379> (11th June 2017, 04:53 AM).

[66] U.P. 2014(2) SCC 1.

Directives case,[67] *Vishaka case*,[68] *D.K Basu case*[69] (Procedure of Arrest), *Depletion of Forest Cover case,*[70] *Madhu Kishwar case*[71] and other similar cases where the judiciary positively legislated on the intrinsic issues involved in the heart of the matter but were overshadowed due to the procedural blunders committed by the authorities in their implementation.[72] In such cases, even though the courts of law have the power to impose penalties on the concerned official through 'contempt of court' mechanism if the official absents himself from the appraisal of the Court of the progress made under its order, they usually hinder themselves from using such extreme measures because they might lack in implementation and can get useless by overuse.[73]

Till the time the Courts does not come up with a strategic plan for implementation of such orders, the whole purpose of PILs would keep going on the downslide. Alternative measures can be taken by designating private authorities in keeping a check and balance on the government's progress on the implementation of the orders by providing such parties certain incentives so they can carry out such review work diligently and efficiently. Yet another alternative could be a monitoring authority where individuals are appointed by the legislature but are under the supervision and control of the judiciary. This would ensure that neither the principle of separation of powers nor that of realization of justice is violated.

In the long run of events, the best would be to take remedial measures against misuse of such powers usurped by the Courts which leads to unfruitful results. More importantly as pointed out by Singh "a judge may talk about right to life as including right to food, education, health, shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced'',[74] it must be kept in mind that rights are recognized in light of a corresponding duty. If anywhere in the conundrum of rights and duties, a point of contention arises, it will negate the whole concept of justiciability as rights cannot exist in abeyance of an existing duty.

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[67] *Supra* note 40.
[68] *Supra* note 44.
[69] D.K.Basu v. State of West Bengal, (1997) 1 SCC 416.
[70] T.N. Godavarman Thirumulpad v. Union of India & Ors., WRIT PETITION (CIVIL) No. 202 OF 1995.
[71] Madhu Kishwar & Ors. v. State Of Bihar & Ors. 1996 AIR 1864.
[72] Lakshmi v. Union of India, (2014) 4 SCC 427.
[73] Sri Somnath Chatterjee, Bar-at-Law, Senior Advocate and Former Speaker, Lok Sabha, "Separation of Powers and Judicial Activism", <http://calcuttahighcourt.nic.in/sesqui/lect_3.pdf>(11th June 2017, 04:53 AM).
[74] Hasan Ahmed, 'The concept of Public Interest Litigation (PIL) lies at the root of judicial activism in India.' POL322: Politics of India, Lahore University of Management Sciences, Fall 2016;

JUSTIFICATION OF THE POWERS AVAILABLE TO THE COURTS UNDER THE PUBLIC INTEREST LITIGATION SYSYTEM

With reference to the works of Rousseau, Austin and many other great minds, there was one contention that was found to be common among them and that was their conviction of the fact that the human nature is not a completely virtuous element. Paying heed to this statement, it has been observed since times immemorial that society has always been exploitative. Going further down the line on a microscopic level, it is the weak whether socially, politically or economically who face the brunt of these exploitative measures.

It is fortunate to find that many remedies against such exploitative measures are enshrined in the Constitution of India, a document which is upheld to its highest reverence by any citizen of the Republic of India, like Article 16(4)[75] of the Constitution which helps the depressed classes of the society by encouraging affirmative action to increase their participation and representation and *etc*. But sadly, in reality many of the rules enshrined in the Constitution are not enacted upon (forget the enforceability) and thus, again the weaker sections are up against the predicaments caused by this abstinence of the executive and the legislature which is ironically the representative of the population of the nation.

In order to save the day for the people who belong to the weaker sections of the society, to instil upon them the fruits of justice; the Supreme Court took up the cause of dispensing justice by responding to a Public Interest Litigation suit through its judicial activism. Justice Krishna Iyer himself said that "Every judge is an activist either on the forward gear or reverse."[76]

In *Janata Dal v. H.S. Chowdhary*[77], the Supreme Court observed the lexical expression of Public Interest Litigation as a legal action launched in a court of law to have the public interest or general interest in which the class of the community have pecuniary interest or some interest enforced by which their legal rights or liabilities are disturbed. A PIL can be introduced in a court of law *suo motu*. It is not necessary for the aggrieved party to personally seek remedies from the court. The right to file a suit is given to a member of the public who may be a non-governmental organization, an institution or an individual.[78] When an individual or group of people feel that their interest is not taken care by the government, a PIL can be filed in a court

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[75] Article 16(4) of the Constitution states that 'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.'
[76] Moreshwar Kothawade, Need For Judicial Activism, Laxmi Book Publication, 2015
[77] *Supra* note 36.
[78] *Supra* note 11.

of law by approaching the Supreme Court under Article 32[79] of the Constitution or any of the High Courts who have the requisite jurisdiction, under Article 226[80] of the Constitution. Thereafter, the court of law can proceed and enforce the necessary measures which serves and safeguards the welfare of the public. Therefore, it can be witnessed that the lacunas of the policies, made and adopted by the legislature and executive, which affects the unprivileged sections of the society in a detrimental fashion, have been effectively handled by the tool of PIL to secure social justice for everybody.

One must not forget that there were times when the legislature wanted to curb the fundamental rights of the citizens during the pre-emergency days but it was the historic decision of the Supreme Court in the *Keshavananda Bharti case*[81] which gave its due to the fundamentals of a citizen in the form of the unamendable 'basic structure' of the constitution. In this case, it was held that the Parliament could amend any part of the Constitution including the Fundamental Rights; but there were certain 'basic doctrines' of the Constitution of India, if amended, could irreparably alter the whole spirit of the Constitution. With this judgement, the doctrine of 'basic structure' of the Constitution came into existence. Further, in the *Minerva Mills case*[82], Justice P.N. Bhagwati also concluded that Judicial Review as laid down in Article 13[83] of the Constitution of India, is also a part of the 'basic structure' of the Constitution as without Judicial Review, the effectiveness of the Constitution would be rendered as futile. Therefore, it is because of this doctrine of 'basic structure' that the Republic of India has not seen the lights of a tyrannical rule that has been faced by its neighbours.

Article 21[84] of the Constitution of India guarantees the Right to Life and Personal Liberty. This article, which talks about the concept of 'life' and 'personal liberty', has been interpreted liberally in many decisions ever since the judgement in the *Maneka Gandhi case*[85] was decided. Consequently, the Supreme Court has carried on to expand the scope of Article 21[86] through Public Interest Litigation, which started guaranteeing certain socio-economic rights which had not been expressly mentioned in the Constitution.

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[79] *Supra* note 6.
[80] Article 226 of the Constitution states the power of High Courts to issue certain writs
[81] *Supra* note 18.
[82] *Supra* note 29.
[83] Article 13 of the Constitution talks about 'Laws inconsistent with or in derogation of the fundamental rights'
[84] *Supra* note 26.
[85] Maneka Gandhi v. Union Of India 1978 AIR 597, 1978 SCR (2) 621
[86] *Supra* note 26.

With the *S.P. Gupta case*[87], we saw the explicit-introduction of Public Interest Litigation in the country for the first time. In this case, the counsel appearing on behalf of the Law Minister argued that the petitioners had not faced any grievances or any legal injury by the issue of a circular of the Law Minister nor by the short term appointments of the judges by the Central Government; hence, the petitioners had no *locus standi* for the maintenance of the writ petition. In opposition to this argument, it was made clear by the esteemed judges of the bench that in a country like India where access to justice is already curtailed by many social and economic stymies, judicial remedies can be democratized by promoting "Public Interest Litigation" which is an accessory to provide access to justice to large masses of people who are denied basic human rights and to whom words like 'freedom' and 'liberty' have no meaning. For that reason, PIL is a way to guarantee justice to those socially cornered people to whom the actions of the legislature is inaccessible as it is also in consonance with Article 32[88] of the constitution and Article 226[89] of the Constitution.

The scope of Public Interest Litigation also comes in agreement with Article 39A[90] of the Constitution which is a directive principle of the state policy that is laid down to protect and deliver prompt social justice with the help of law. Furthermore, the Supreme Court's rulings become obligatory precedents for all courts of law and tribunals in the legal system of the country which points to the fact that the decisions and the judgements of the Supreme Court also becomes the 'law of the land' as it has been empowered to do the same by Article 141[91] of the Constitution. Thus, with respect to the interpretation of above facts, it can be seen that even the founding fathers of the nation, who have meticulously drafted the Constitution of India after referring to the Constitutions of various other civilized nations, were of the view that judicial activism was the solution to the problems of the country where the hands of legislature could not reach.

Ever since the rape of Bhanwari Devi in the late 1996, the nation finally took cognizance of the major threat of sexual harassment that the women faced in their workplace but sadly, the legislature had not brought in the necessary statute to have this grave and abhorrent act curbed, despite being a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1980 itself. The Sexual Harassment of Women at Workplace

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[87] *Supra* note 8.
[88] *Supra* note 6.
[89] *Supra* note 80.
[90] Article 39A of the Constitution talks about 'Equal justice and free legal aid'
[91] Article 141 of the Constitution states that 'Law declared by Supreme Court to be binding on all courts'

(Prevention, Prohibition and Redressal) Act, 2013 came in sixteen years after the *Vishaka case*[92] was heard in 1997 but it was due to the activism of the Supreme Court that women could go freely to work, being finally empowered with their rights. It is often seen that a particular petition might not be able to secure relief in a wholesome fashion or be sluggish in its implementation but nonetheless, litigation does play a very important role in bringing constructive and significant reforms by at least introducing an ignition for change.[93] For those sixteen years, it was the *Vishakha guidelines* of the Supreme Court that safeguarded the honour of hard-working women from sexual harassment; thus, upholding gender justice in the society. It is very interesting to also see that these guidelines were framed by the Supreme Court with the consent of the Solicitor General, who is a premier law officer of the executive government. This shows that judicial activism doesn't encroach upon the doctrine of 'Separation of Power' which talks about the division of responsibilities among the three organs of government in a manner that the powers of one organ do not come in conflict with powers associated with the other organs, but it only fills up an existing legislative void by providing effective redressal.

Public Interest Litigation has also been the sword or rather the pen of the environmental crusade or also known as the 'green litigation' that was valiantly and tirelessly pursued by M.C. Mehta. He brought in several progressive changes in the protection of the environment by not being a policy- maker elected by the people but by being a conscious citizen of the nation who filed petitions in the interest of the public which have resulted in orders deciding absolute liability for the leak of Oleum gas from a factory in New Delhi,[94] bringing in directions to the authorities to have pollution in and around the Ganges river checked,[95] having hazardous industries relocated from the domestic boundaries of Delhi,[96] bringing in directions to state agencies to check the pollution in the propinquity of the Taj Mahal[97] and also having government-run buses shifted to the use of environment-friendly fuel like Compressed Natural Gas (CNG).[98] In the beginning, some of these decisions were criticized for making 'unwarranted intrusion' into the functions of the pollution-regulation boards but slowly with the passage of time, it is now widely acknowledged that pollution in Delhi has been checked to a considerable extent due to

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[92] *Supra* note 44.
[93] *Supra* note 33.
[94] M.C. Mehta v. Union of India, (1987) 1 SCC 395
[95] M.C Mehta v. Union of India (1988) 1 SCC 471
[96] M.C. Mehta v. Union of India, (1996) 4 SCC 750
[97] M.C. Mehta v. Union of India, (1996) 4 SCC 351; Emily R. Atwood, 'Preserving the Taj Mahal: India's struggle to salvage cultural icons in the wake of industrialisation', 11 Penn State Environmental Law Review 101 (Winter 2002)
[98] M.C. Mehta v. Union of India, (1998) 8 SCC 648

such judicial activism. It can also be observed that Public Interest Litigation has consequentially played a big role in the setting up of the special 'Green Bench' which has been constituted by the Supreme Court to give directions to the apropos governmental agencies in keeping a check on the forest conservation measures.[99] With the Shriram Food & Fertilizer case[100], a whole new doctrine of law was introduced in the legal system of India with the mark of the doctrine of 'absolute liability', which brought in a clinical change in the jurisprudence of law of torts in India, a common-law country as before this judgement was given, the jurisprudence involved in law of torts in India was heavily depended on that followed in England, another common-law country. This makes it clearly visible that with the inception of Public Interest Litigation in the country, a wide- array of doors have been opened for innovative judicial interpretations which have witnessed 'justice' being achieved in a unique manner with respect to time and place.

The thing that makes the aura of Public Interest Litigation even-more charming is its simplicity and its 'public-friendly' procedure. While giving out the judgement in the *S.P. Gupta case*,[101] Justice P.N. Bhagwati had noted that accessibility to justice could be made easier by removing the technicalities which often acts as a barrier rather than a bridge while dispensing justice. From this statement, it can be understood that the ones who are direly in need of justice, in accordance with the rule of law, are often ruled out from seeking it as the technicalities associated with the courts of law in providing justice such as time, money and other inconveniences involved in a litigation, are too much for the common man to digest which concurrently deters their recourse to take legal action. With Public Interest Litigation, there came a pivotal change in the form of the dilution of '*locus standi*' that is necessary for initiating proceedings in a court and also the Court's taking *suo motu* cognizance of matters which have exploited and deprived the sections of humanity of their socio-economic rights, through letters addressed to sitting judges of courts of law. This exercise of initiating proceedings on the basis of letters has become a common practice and has come to be described as 'epistolary jurisdiction'.[102] Due to such people-friendly policies and measures, the Supreme Court's attention was drawn to labour and employment- related issues like the employment of underage labourers and the payment of wages below the prescribed statutory levels of minimum-wages

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[99] TNN, 'After 17 years, SC's forest bench to be named green bench', <http://timesofindia.indiatimes.com/home/environment/the-good-earth/After-17-years-SCs-forest-bench-to-be-named-green-bench/articleshow/21928568.cms> (11th June 2017, 04:53 AM)
[100] *Supra* note 94.
[101] *Supra* note 8.
[102] *Supra* note 7.

to those involved in the construction of the facilities of the then- Asian Games of 1982 where the Supreme Court took serious exceptions to these practices as the employment of children in construction-related jobs clearly violated the constitutional prohibition on child labour and the non-payment of minimum wages was considered to be nothing less than extraction of forced-labour.[103] Public Interest Litigation also provides sufficient assistance in keeping check on persisting social evils like the age- old convention of bonded labour despite the Constitution outlawing such abhorrent practices.[104] It is also through the channel of PIL, that courts of law in India have embraced the strategy of providing hefty monetary compensation by way of awarding exemplary damages for constitutional injuries such as illegal detention,[105] torture of detainees held in custody[106] and extra-judicial killings by state agencies.[107] One can never forget that India's struggle for freedom was a movement to regain the right to life with dignity and the right to equality which were purged by the atrocities and the exploitative measures carried on by the imperialist approach of the then colonial rulers of India. Thus, people who pursue litigation in the interest of the public, are only pursuing their fundamental duty of cherishing and following the noble ideas such as achieving social, economic and political justice and equality of status and of opportunity for all, which inspired India's national struggle for freedom, as laid down in Article 51A[108] of the Constitution.

Individuals who are of the view that judicial activism through Public Interest Litigation is encroaching upon the sovereignty of the parliament, must be advised to stop looking at this as a battle between the executive and judiciary, something that the country had already witnessed in the starting decades of its independence.[109] The Constitution of India has elucidated the fact that the ultimate aim of the judiciary is to dispense justice in accordance with the rule of law, to each and every person of the state who seeks access to it. In the *BALCO case*,[110] when the disinvestment season was initiated by the NDA-1 government of the then Prime Minister of India, Mr Atal Behari Vajpayee to sell 51% of stakes in BALCO, the BALCO Employees' Union filed a petition arguing that the workers would be severely affected by this disinvestment decision of the government as they would lose their rights and protection under Article 14[111]

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[103] People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473
[104] Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161
[105] Bhim Singh v. State of Jammu and Kashmir, (1985) 4 SCC 677
[106] Nilabati Behera v. State of Orissa, (1993) 2 SCC 746
[107] *Supra* note 69.
[108] Article 51A of the Constitution states the Fundamental Duties of a citizen.
[109] *Supra* note 15.
[110] Balco Employees Union (Regd.) v. Union Of India & Ors 2002(2) SCC 333
[111] *Supra* note 25.

and Article 16[112] of the Constitution which they were entitled to, for being employees of a governmental authority as defined in Article 12[113] of the Constitution. The Supreme Court responded to this by making it clear in its decision that "Public Interest Litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power." This prudent decision highlights that the Apex court of the land also acknowledges the administrative independence of the executive and in no manner, is interested in encroaching upon its jurisdiction as long as such policies are in consonance with the existing statutory provisions and the spirit of the Constitution. It has also been laid down in the National Litigation Policy of 2009[114] that Public Interest Litigation should not to be taken as matters of convenience to let the courts do those things which the government finds inconvenient.

As it had been stated in the beginning of this chapter, the human nature is not a completely virtuous element. In furtherance of this statement, it is not surprising to see the misuse of Public Interest Litigation by people who frivolously file petition in pursuance of their self-motivated interest which is sugar-coated by them as "in the interest of the public". Although it has been held in the *S.P. Gupta case*[115] that the phrase "in the interest of the public" is subjective and depends from one case to another, the judgement of this very case also puts down that litigants filing petitions in the interest of the public must act in a bona fide manner and must not petition for personal gain or political motivation or any other circumlocutory considerations. The judgement of the *BALCO case*[116] also actively discourages Public Interest Litigations being filed for the sake of publicity. Frivolously filing petitions in the interest of the public impedes the justice delivery mechanism as the whole process eats up most of the valuable judicial time of the court while engrossing in the nitty-gritties of such cases which ultimately turn out to be futile. Such incidents at the cost of 60,751 pending cases in the Supreme Court looks highly cataclysmic for the future.[117] In order to efficiently restrict this negative practice, the Supreme Court has launched an unprecedented confrontation on the piling up of frivolous petitions by imposing heavy costs like imposing a cost of Rs. Ten lakhs on a Bihar MLA who filed a petition

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[112] Article 16 of the Constitution provides "Equality of opportunity in matters of public employment"
[113] Article 12 of the Constitution states that 'In Part III, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.'
[114] National Litigation Policy, Ministry of Law and Justice, <www.lawmin.nic.in/la/nlp.doc>, (11th June 2017, 04:53 AM)
[115] *Supra* note 8.
[116] *Supra* note 110.
[117] Supreme Court of India, 'Types of matters in Supreme Court of India' , <http://sci.nic.in/p_stat/pm01052017.pdf> (11th June 2017, 04:53 AM)

questioning the "authenticity of a 23- year old newspaper article", Rs. One lakh on a professor from Maharashtra who filed a petition challenging "a circular issued by the Gujarat government" and admonishing of costs from a Madurai-based car mechanic who filed a petition challenging "illegal additional floors" in a hospital in Thanjavur, Tamil Nadu.[118] It has also been recognized by the highest court of the land that law is in a process of development that makes it exigent to develop separate public law procedures as well as public law principles whose applicability depends on the situation identified by the court.[119] Thus, the courts are required to function in a firm manner by holding to their ground but with adequate caution and abstention or else proceedings under Article 32[120] or Article 226[121] of the Constitution shall be misused as a covert alternative for civil action in private law. In sequence to restrict such misuse, the decisions of the Supreme Court have set precedents for the grounds on which a PIL can be rejected such as non-impleading of the necessary parties,[122] misrepresentation or suppression of facts,[123] Res Judicata,[124] laxity of the petitioner in filing the petition[125] and maliciousness of the petition filed before the court.[126]

Therefore, after analysing the course of judicial activism in India that has been moulded by Public Interest Litigation, it is strongly believed that the role of PIL in shaping up the public policy regime in India has been justified as judicial activism through such Social Action Litigations- as Prof. Upendra Baxi prefers to call it, has taken on numerous pressing issues that have plagued the society. The legislature has always been acknowledged for its primary role played in the shaping of a nation's public policy by coming out with new legislations and statutes but it should also be undeniably considered that the procedure in making and passing such laws can be a prolonged and a time-taking one as has been witnessed with the enactment of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013". Therefore, in the presence of such legislative vacuum, it is highly necessary for the judiciary of the land to play a critical role in redressing the problems of the masses in order to achieve the constitutional goals of equality and social, economic and political justice which

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[118] Krishnadas Rajagopal, 'A stern message from SC against frivolous PILs', <http://www.thehindu.com/news/national/a-stern-message-from-sc-against-frivolous-pils/article18347907.ece> (11th June 2017, 04:53 AM)
[119] *Supra* note 106.
[120] *Supra* note 6.
[121] *Supra* note 80.
[122] Krishna Swamy v. Union of India AIR 1993 SC 1407
[123] Welcome Hotel v. State of Andhra Pradesh AIR 1983 SC 1015
[124] Forward Construction Co. v. Prabhat Mandal (Regd.) AIR 1986 SC 391
[125] Tilokchand Motichand v. H.B. Munshi AIR 1970 SC 898
[126] Kini v. Union of India AIR 1985 SC 8915

have been mentioned through the Preamble of the Constitution until concrete policies are undertaken by the legislature and the executive to fill up such a vacuum.

CONCLUSION

With the arrival of 2017, the world is witnessing nearly 40 years of Public Interest Litigation in India since its introduction into its legal system in the 1970s but the pertinent question that still lingers around after all this time is whether the role of Public Interest Litigation in shaping up the public policy regime India has been over reaching or justified? In this paper, we have approached and elaborately dealt with both the faces of Public Interest Litigation, which makes it even more difficult in reaching a conclusion in general due to the variations in tendencies witnessed among the decisions passed by the courts of law over the time.

Upon this exercise, it is being said without any doubt that PIL has a very critical role to play in the justice redressal mechanism which provides a metaphorical elevator to the path of justice to the marginalised classes of the society which also includes a section of people who are not even aware of the rights provided to them by the Constitution. In this manner, Public Interest Litigation has provided a platform for the dissemination of such rights among the aggrieved individuals of the public who do not even have the opportunity to get access to courts; for such people 'getting justice' is already considered out of question. The other positive outcomes which have come with the introduction of PIL are the direct involvement of the civil society by engaging in widespread awareness about human rights and providing a voice to the unprivileged communities in the courts of law and in public policy-making too. This shows that PIL has significantly contributed to good and smart governance by legitimising the accountability of the government. This highlights a massive mark in improving the principles of democracy and strengthening the rule of law which have contributed to a great extent in achieving many important policy goals that have been envisioned by the founders of this 67 year-old republic through the Constitution of India.

At the same time, the Indian experience of Public Interest Litigation also forecasts the importance to ensure that PIL does not become the alternate entry to the sanctuary of justice to have private interest fulfilled, political motives entertained or to have publicity gained as all these motives go antithetical to the principle with which PIL was conceived. It is often argued that PIL leads to the overreaching power of the judiciary in the separation of power. However, many a time it is ignored that balance of power among the organs of the government which is maintained by this separation of power does not suggest a rigid interpretation of this doctrine but connotes a passive *interpenetration* among these autonomous organs by which a check is maintained on the domination of any such organs over the others. Thus, courts should refrain from using PIL as a weapon to run the country by illegitimately entering into the domain of the

executive and legislature. Hence, judicial populism has to be circumvented with extreme rationality by restricting the ambit of PIL. It will also be foolish to disregard the fact that with the inception of PIL, there has been an unprecedented increase in the number of pending cases in the judiciary due to frivolous filing of such petitions which is highly detrimental in the process of delivering justice to the ones who require it the most.

Therefore, the sanctity of Public Interest Litigation can only be maintained by discouraging the practices which stand as hindrances to the objectives that have been set by such mechanisms. This can be achieved by promoting economic incentives and disincentives on such litigations. Incentives such as protected cost order, provision of legal aid, encouragement of filing suits *pro bono*, fundraising for the civil society engaged in petitioning in the interest of public and *amicus curie* briefs, will not only encourage legitimate PIL cases but it also remains concurrent with view of the original and essential rationale for PIL of acknowledging potential plaintiffs who are not always found to be resourceful while disincentives could keep the people filing PIL for an ulterior purpose which could be harmful in promoting smart governance, urban development and peaceful and strategic foreign policy, although indirectly, away from the bays of its aims and objectives.

On a concluding remark, it can be highlighted that judicial review through PIL has been quite fundamental in churning out an 'equity-based society' with protection of rights of the individual coming in its periphery. What lacks is that access to justice under PILs has not been heard in every corner of the country and hence, many sections of the society still remain weaker and continue to suffer as they are not aware of their rights. Thus, in order to provide a real purpose to the concept of PIL, the courts of law must ensure its implementation and keep in mind that it respects the principle of Constitutionalism and Separation of Powers enshrined in the spirit of the Indian Constitution.