

# Exploring the Evolution and Impact of Public Interest Litigation in India

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**Abstract:** This article examines the evolution and current state of Public Interest Litigation PIL in India. It highlights the transformation of legal access and the extension of locus standi, which has enabled a broader range of individuals and groups to seek justice in public interest cases. The paper also discusses the challenges and pitfalls that have emerged in the process, particularly the misuse of PIL for personal gains. It underscores the need for a more regulated approach to PIL to maintain its integrity and effectiveness in upholding public welfare.

**Keywords:** Public Interest Litigation, Legal Reform, Locus Standi, Constitutional Law, Judicial Activism

## 1. Introduction

At the time of independence, court procedure was drawn from the Anglo-Saxon system of jurisprudence. The bulk of citizens were unaware of their legal rights and much less in a position to assert them. And as a result, there was hardly any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the legislature on the one hand and the vast majority of illiterate citizens on the other. However, this scenario gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. Public Interest Litigation as it has developed in recent years marks a significant departure from traditional judicial proceedings. The court is now seen as an institution not only reaching out to provide relief to citizens but even venturing into formulation policy which the state must follow.

Fundamental rights are of paramount importance to any citizen in a state. Their salience arises from the fact that deprivation of these rights would make human life fruitless and unproductive, in other words, in the absence of fundamental rights, life would not be worth living. As the indispensability of these rights is such, their protection also needs to be done in equal measure. Declaration of fundamental rights is useless if there isn't any mechanism to back its enforcement.

The constitution therefore, encompasses the above in the form of right to constitutional remedies within articles 32-35. However, there is no mention of any set rules, it merely mentions appropriate proceeding<sup>1</sup>. The constitution makers deliberately did not lay down any formal form of proceeding or have any straight-jacket formula to follow for enforcement of rights because they knew that in a country like India where poverty, illiteracy, exploitation and deprivation is rampant, any insistence for a right formula

would render the whole purpose of enforcement of rights futile.<sup>2</sup>

In the recent past, constitutional jurisprudence has been witnessing the development of a dynamic approach to constitutional remedies in the form of social action litigation or class actions or better known as Public Interest Litigation<sup>3</sup>.

Traditionally, the *locus standi* to move the courts rests on a person whose fundamental rights have been infringed. But this has been relaxed by the Supreme Court in its recent rulings by permitting PILs for the enforcement of constitutional and legal rights of any person or group of persons.

The SC firmly upheld the rule regarding PIL in the Judges Transfer Case<sup>4</sup>, in Justice Bhagwati's words, "...any member of the public having 'sufficient interest' can approach the court for enforcing constitutional or legal rights of other persons and redressal of a common grievance." In other words, it means that the grievance with which one approaches the court should be *bonafide* and genuine, devoid of any malicious intention.

Public Interest Litigation (PIL) has been an invaluable innovative judicial remedy. It has translated the rhetoric of fundamental rights into living reality for at least some segments of our exploited and downtrodden humanity. Under trial prisoners languishing in jails for inordinately long periods, inmates of asylums and care-homes living in sub-human conditions, children were working in hazardous occupations and similar disadvantaged sections. But the development of Public Interest Litigation (PIL) in the country has very recently uncovered its own pitfalls and drawbacks.

### Statement of problem:

Researcher in this research has dealt the problem of "Evolution and Development of Public Interest Litigation and has also focused on the challenged faced with the development in the matters of Public Interest Litigation.

<sup>1</sup> Article 32 (1) Constitution of India.

<sup>2</sup>The Judges Transfer Case, S.P. Gupta. Union of India, AIR 1982 SC 149.

<sup>3</sup> Herein after referred to as PIL.

<sup>4</sup> Supra, n.4.

### Research Objectives

The main objectives of the study are as under:

In this research the researcher has framed following aims and objectives:

- 1) To discover the new methods and techniques for effective implementation of Public Interest Litigation through court of law.
- 2) To develop new legal concepts and dimension of functioning of High Courts and Supreme Court their discretion for effective implementation of public laws and to predict the consequences of new Act which has been made for the effective implementation of Public Interest Litigation.
- 3) An impact analysis of Legislation may be the objective of legal research. A study of various reported Judgments of High Courts and Supreme Courts in Public Interest Litigations may fall within the impact analysis.
- 4) To study the challenges faced by the development of the Public Interest Litigations

This study aims at detailed overview of the topic and its scope and limitation at length along with important cases on the same

The study aims to explore the evolution of the concept of Public interest litigation and misuse of the PIL during the development of this concept and how the highest court of Law i. e. Supreme court has dealt with these issues.

In this research work Researcher's hypothesis is "The discretion exercised by courts in deciding public interest litigations does not meet to the demand of justice."

## 2. Research Methodology

This paper is based on doctrinal method of research. The researchers have made use of secondary data only. The data so obtained has been used appropriately and effectively. The net has been the primary source of secondary data besides books.

The present study is based on secondary sources. No empirical survey has been made. Secondary sources like international Conventions, national and international cases, commentaries of the jurists, national and international Reports and journals, books, articles in reputed national and international journals and newspapers etc. have been used to study the subject. The researcher has also consulted the legal jurists and persons having special knowledge in this field.

### Evolution of the Public Interest Litigation

It should be noted at outset that PIL, at least as it had developed in India, is different from class action or group litigation. Whereas the latter is driven primarily by efficiency considerations, the PIL is concerned at providing access to justice to all societal constituents. PIL in India has been a part of the constitutional litigation and not civil litigation.<sup>5</sup> Therefore, in order to appreciate the evolution of

<sup>5</sup>The Indian Code of Civil Procedure though allows for class action: O.1 R.8 of the Code of Civil Procedure 1908. Furthermore, s.91 of the Code provides: "In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a

PIL in India, it is desirable to have a basic understanding of the constitutional framework and the Indian judiciary.<sup>6</sup>

After gaining independence from the British rule on August 15, 1947, the people of India adopted a Constitution in November 1949 with the hope to establish a "sovereign socialist secular democratic republic".<sup>7</sup> Among others, the Constitution aims to secure to all its citizens justice (social, economic and political), liberty (of thought, expression, belief, faith and worship) and equality (of status and of opportunity).<sup>8</sup> These aims were not merely aspirational because the founding fathers wanted to achieve a social revolution through the Constitution.<sup>9</sup> The main tools employed to achieve such social change were the provisions on Fundamental Rights (FRs) and the Directive Principles of State Policy (DPs), which Austin described as the "conscience of the Constitution".<sup>10</sup> In order to ensure that FRs did not remain empty declarations, the founding fathers made various provisions in the Constitution to establish an independent judiciary. As we will see below, provisions related to FRs, DPs and independent judiciary together provided a firm constitutional foundation to the evolution of PIL in India.<sup>11</sup>

Part III of the Constitution lays down various FRs and also specifies grounds for limiting these rights. "As a right without a remedy does not have much substance",<sup>12</sup> the remedy to approach the Supreme Court directly for the enforcement of any of the Part III rights has also been made a FR.<sup>13</sup> The holder of the FRs cannot waive them.<sup>14</sup> Nor can the FRs be curtailed by an amendment of the Constitution if such curtailment is against the basic structure

declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted . . . with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act."

<sup>6</sup>See Sheetal B. Shah, "Illuminating the Possible in the Developing World: Guaranteeing the Human Right to Health in India" (1999) 32 Vanderbilt Journal of Transnational Law 435, 463.

<sup>7</sup>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.

<sup>8</sup>Constitution of India 1950 Preamble.

<sup>9</sup>Granville Austin, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford: Clarendon Press, 1966), p.27. "The social revolution meant, 'to get (India) out of the medievalism based on birth, religion, custom, and community and reconstruct her social structure on modern foundations of law, individual merit, and social education'." (Austin, Cornerstone of a Nation, p.26, quoting K. Santhanam, a member of the Constituent Assembly.)

<sup>10</sup>Austin, Cornerstone of a Nation, p.50.

<sup>11</sup>Surya Deva, "Public Interest Litigation in India: A Critical View", Issue I, Civil Justice Quarterly, 2009, Sweet & Maxwell, London

<sup>12</sup>M.P. Jain, "The Supreme Court and Fundamental Rights" in S.K. Verma and Kusum (eds), FIFTY YEARS OF THE SUPREME COURT OF INDIA—ITS GRASP AND REACH (New Delhi: Oxford University Press, 2000), pp.1, 76.

<sup>13</sup>Constitution of India 1950 art.32.

<sup>14</sup>*Bheshar Nath v CITAIR* 1959 SC 149; *Nar Singh Pal v Union of India* AIR 2000 SC 1401.

of the Constitution.<sup>15</sup> Some of the FRs are available only to citizens<sup>16</sup> while others are available to citizens as well as non-citizens,<sup>17</sup> including juristic persons. Notably, some of the FRs are expressly conferred on groups of people or community.<sup>18</sup> Not all FRs are guaranteed specifically against the state and some of them are expressly guaranteed against non-state bodies.<sup>19</sup> Even the “state” is liberally defined in art.12 of the Constitution to include, “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”.

The expression “other authorities” has been expansively interpreted, and any agency or instrumentality of the state will fall within its ambit.<sup>20</sup>

The DPs find a place in Part IV of the Constitution. Although the DPs are not justiciable, they are, “nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws”.<sup>21</sup>

<sup>15</sup>The judiciary is the “sole” and “final” judge of what constitutes basic structure of the Constitution. Over a period of time, various provisions have been given the higher pedestal of basic structure or basic features of the Constitution, e.g. independence of judiciary, judicial review, rule of law, secularism, democracy, free and fair elections, harmony between FRs and DPs, right to equality, and right to life and personal liberty. See Mahendra P. Singh (ed.), SHUKLA’S CONSTITUTION OF INDIA, 10th edn pp.884–97; Jain, “The Supreme Court and Fundamental Rights” in Verma and Kusum (eds), FIFTY YEARS OF THE SUPREME COURT OF INDIA, pp.8–13.

<sup>16</sup>See, for example, Constitution Art.15(2) (right of non-discrimination on grounds only of religion, race, caste, sex, place of birth or any one of them to access and use of public places, etc.); Art.15(4) (special provision for advancement of socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes); Art.16 (equality of opportunity in matters of public employment); Art.19 (rights regarding six freedoms); Art.29 (protection of interests of minorities).

<sup>17</sup>See, for example, Constitution Art.14 (right to equality); Art.15(1) (right of non-discrimination on grounds only of religion, race, caste, sex, place of birth or any one of them); Art.20 (protection in respect of conviction of offences); Art.21 (protection of life and personal liberty); Art.22 (protection against arrest and detention); Art.25 (freedom of conscience and right to profess, practice and propagate religion).

<sup>18</sup>See, e.g. Constitution Arts 26, 29 and 30.

<sup>19</sup>Austin cites three provisions, i.e. Constitution Arts 15(2), 17 and 23 which have been “designed to protect the individual against the action of other private citizen”: Austin, Cornerstone of a Nation, p.51. However, it is reasonable to suggest that the protection of even arts 24 and 29(1) could be invoked against private individuals. See also Vijayashri Sripati, “Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950–2000)” (1998) 14 American University International Law Review 413, 447–48.

<sup>20</sup>See *Ajay Hasia v Khalid Mujib* AIR 1981 SC 487; *Pradeep Kumar v Indian Institute of Chemical Biology* (2002) 5 S.C.C. 111. In the application of the instrumentality test to a corporation, it is immaterial whether the corporation is created by or under a statute. *Som Prakash Rekhi v Union of India* AIR 1981 SC 212.

<sup>21</sup>Constitution Art.37.

The Emergency of 1976 marked not just a political watershed in this country, but a judicial one as well. In the euphoria of the return to democracy and in an attempt to refurbish its image that had been tarnished by some Emergency decisions, the Supreme Court of India opened the floodgates to public interest litigation (PIL). Under PIL, courts take up cases that concern not the rights of the petitioner but of the public at large. In the last two decades, PIL has emerged as one of the most powerful tools for promoting social justice and for protecting the rights of the poor.<sup>22</sup>

After initial deviation,<sup>23</sup> the Supreme Court accepted that FRs are not superior to DPs on account of the latter being non-justiciable: rather FRs and DPs are complementary and the former are a means to achieve the goals indicated in the latter.<sup>24</sup> The issue was put beyond any controversy in *Minerva Mills Ltd v Union of India* where the Court held that the, “harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution”.<sup>25</sup> Since then the judiciary has employed DPs to derive the contents of various FRs.<sup>26</sup>

The founding fathers envisaged “the judiciary as a bastion of rights and justice”.<sup>27</sup> An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High Courts<sup>28</sup>—the courts that have entertained all the PIL cases. The judiciary can test not only the validity of laws and executive actions but also of constitutional amendments. It has the final say on the interpretation of the Constitution and its orders, supported with the power to punish for contempt, can reach everyone throughout the territory of the country. Since its inception, the Supreme Court has delivered judgments of far-reaching importance involving not only adjudication of disputes but also determination of public policies and establishment of rule of law and constitutionalism.<sup>29</sup>

<sup>22</sup><http://www.ngosindia.com/resources/pil.php> (visited on 23.1.12)

<sup>23</sup>*State of Madras v Champakam Dorairajan* AIR 1951 SC 226.

<sup>24</sup>*CB Boarding & Lodging v State of Mysore* AIR 1970 SC 2042; *Kesavananda Bharti v State of Kerala* AIR 1973 SC 1461; *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789; *Unni Krishnan v State of AP* (1993) 1 S.C.C. 645. See also Rajiv Dhavan, “Republic of India: The Constitution as the Situs of Struggle: India’s Constitution Forty Years On” in Lawrence W. Beer (ed.), *Constitutional Systems in Late Twentieth Century Asia* (Seattle: University of Washington Press, 1992), pp.373, 382–383, 405 and 413–416.

<sup>25</sup>*Minerva Mills Ltd v Union of India* AIR 1980 SC 1789, 1806.

<sup>26</sup>See the cases cited below in fnn.35–49. See also Jain, “The Supreme Court and Fundamental Rights” in Verma and Kusum (eds), FIFTY YEARS OF THE SUPREME COURT OF INDIA, pp.65–76.

<sup>27</sup>Austin, CORNERSTONE OF A NATION, p.175.

<sup>28</sup>Constitution of India 1950 Arts 32 and 226.

<sup>29</sup>See, for an analysis of some of the landmark judgments delivered by the Apex Court during these years, Gobind Das, “The Supreme Court: An Overview” in B.N. Kirpal et al. (eds), SUPREME BUT NOT INFALLIBLE: ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA (New Delhi: OUP, 2000), pp.16–47.

The factors that have contributed specially in the growth of PIL in India can be summarized as:

- 1) The character of the Indian Constitution unlike Britain, India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) provides a framework for regulating relations between the state and its citizens and between citizens inter-se.
- 2) India has some of the most progressive social legislation to be found anywhere in the world whether it be relating to bonded labor, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
- 3) The liberal interpretation of *locus standi* where any person can apply to the court on behalf of those who are economically or physically unable to come before it has helped. Judges themselves have in some cases initiated *suo moto* action based on newspaper articles or letters received.
- 4) Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the "right to life" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bar fetters and hand cuffing in prisons, etc.
- 5) Sensitive judges have constantly innovated on the side of the poor for instance, in the **Bandhua Mukti Morcha** case in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer. Similarly in the **Asiad workers judgment case**, Justice P. N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts.
- 6) In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

### 3. Locus Standi and Aspect of PIL

#### 3.1 Locus standi

Black's Law Dictionary defines *locus standi* as the right to bring an action or to be heard in a given forum.<sup>30</sup> *Locus standi* means legal capacity to challenge an act or decision.<sup>31</sup>

Traditionally it was only a person who has suffered a specific legal injury by a reason of actual or threatened

violations of a legal right or legally protected interest who could bring an action for judicial redress. But, later this concept got liberalized.

A clear stance has been declared in the **Judges Transfer Case**, the court holding that any member of the public having 'sufficient interest' can approach the court for enforcing constitutional or legal rights of other persons and redressal of a common grievance.

According to the guidelines of the Supreme Court any member of public having sufficient interest may maintain an action or petition by way of PIL provided:-

- There is a personal injury or injury to a disadvantaged section of the population for whom access to legal justice system is difficult,
- The person bringing the action has sufficient interest to maintain an action of public injury,
- The injury must have arisen because of breach of public duty or violation of the Constitution or of the law,

It must seek enforcement of such public duty and observance of the constitutional law or legal provisions.

The SC observed has observed in *M/s J. Mohapatra & Co. v. Orissa*<sup>32</sup> that today the law with respect to *locus standi* has considerably advanced and in the case of PIL it is not necessary that a petitioner should himself have a personal interest in the matter. Nevertheless, even though the scope of *locus standi* has been widened, yet a mere busy body having no interest in the subject-matter cannot invoke the jurisdiction of the court.<sup>33</sup>

But a person who may not necessarily be directly influenced by the subject matter could file a petition if he is doing it on behalf of poor or disadvantaged people who have no legal sources or knowledge about their plight as he is a person interested in protecting the lives of the victims.<sup>34</sup>

#### 3.2 Aspects of PIL

In 1981 Justice P. N. Bhagwati in *S. P. Gupta v. Union of India* (AIR 1982 SC 149) articulated the concept of PIL. In regard of this, let us observe the aspects of PIL, namely:

##### (i) Remedial in Nature

Remedial nature of PUL departs from traditional *locus standi* rules. It is indirectly incorporated the principles enshrined in the Part IV into Part III of Indian Constitution.

##### (ii) Representative Standing

Representative standing can be seen as a creative expansion of the well-accepted standing exception which allows a third party to file a habeas corpus petition on the ground that the injured party cannot approach the court himself. And in this regard the Indian concept of PIL is much broader in relation to the American PIL which is a modified form of class action.

<sup>32</sup> AIR 1984 SC 1572

<sup>33</sup> M.P.Jain, INDIAN CONSTITUTIONAL LAW, vol 1, 5<sup>th</sup> ed. 2003, p.302.

<sup>34</sup> *M.C. Mehta v. Union of India*, (1987) 4 SCC 463.

<sup>30</sup> Brayen A. Garner, BLACK'S LAW DICTIONARY, 8<sup>th</sup> ed., 2006, p.2456.

<sup>31</sup> VG Ramchandran, LAW OF WRITS, vol 1, 6<sup>th</sup> ed., 2006, p.26.

## (iii) Non-Adversarial Litigation

Non-adversarial litigation has two aspects, namely:

- Collaborative Litigation: In collaborative litigation the effort is from all the sides. The claimant, the court and the Government or the public official, all are in collaboration here to see that basic human rights become meaningful for the large masses of the people.
- Investigative Litigation: It is investigative litigation because of it works on the reports of the Registrar, District Magistrate, comments of experts, newspaper, etc.

(iv) Relaxation of Strict Rule of *Locus Standi*

The rule of *locus standi* have been relaxed and a person acting *bonafide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the court and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

## (v) Epistolary Jurisdiction

The Supreme Court of India as well as High Courts can convert a letter from a member of public into a writ petition. The access to judicial redress may be found even without a lawyer or filling formal papers.

**PRIVATE/PAISA/PUBLICITY INTEREST Litigation: Abuse of PIL**

PIL was introduced with a noble intention to render justice quickly, a letter could be written and submitted to either the HC or the SC. The courts then set aside their normal work and take up hearing of that PIL on a priority basis and dispose it off immediately. The litigant-friendly nature of PIL works to the advantage of the people who are poor, disadvantaged or belonging to a weaker section of the society because it is cost efficient and depending upon the urgency of the matter, the court gives an immediate hearing.

However, the very same could also act as a bane because there are a thousand petitions filed in the courts everyday which do not have real and genuine reasons with ulterior motives of private benefits have to be heard in large numbers and then dismissed off. Much of the precious time of the courts is lost besides incurring unnecessary expenses. The Supreme Court said that the courts have to be cautioned that the unregulated use of PILs petitions would make them a vindictive tool in the hands of unscrupulous people.<sup>35</sup> They will have to be vigilant in approaching cases which have stemmed from private publicity or malice.<sup>36</sup>

In 1982, in his ruling in *Janta Dalv. H. S. Chaudhary* case, former Supreme Court Judge Patnave Pandian has clearly defined PIL in the following words: "only a person acting *bona fide* and with sufficient interest in the proceedings of

*the PIL will have a locus standi and can approach the court to wipe the tears of the poor and needy, who are suffering from violation of their fundamental rights-but not a person for personal gain, private profit, political motive or any oblique consideration. A vexatious petition under the color of the PIL brought before the court deserves rejection at the threshold."*

But the connotation given to the phrase 'sufficient interest' differs from case to case.

In the case of *Charanjit Lalv. Union of India*<sup>37</sup>, it was held that no one except whose rights were directly affected by a law could raise the question of the constitutionality of that law.<sup>38</sup>

In the case of *Krishna Swamiv. Union of India*<sup>39</sup>, a writ petition by two petitioners was filed in pursuance of quashing a motion by 108 members of the Lok Sabha against the removal of a SC judge who was alleged of financial irregularities, claiming that the procedure followed for the enquiry was unconstitutional. It was held that the petitioners had no *locus standi* as they were in no way being directly affected by the law in question and the issue did not concern the public at large, thus, dismissed.

Likewise, in *Simranjit Singh Mannv. Union of India*<sup>40</sup>, the question as to whether a third party could challenge the conviction of a person on grounds of Article 14, 21 and 22, with the intention of upholding the rule of law and fairness and justice under PIL hold water. The petitioner, who was the president of a political party was a complete stranger to the conviction of the murderer; he was not even authorized by the convicts. Clearly, he did not fall under the victimage of the law and the matter did not address any public purpose.

In *G. C. College Silacharv. Gauhati University*<sup>41</sup>, the university decided to introduce Assamese as the medium of instruction while retaining English too. The petitioners brought action arguing that this was breaching articles 29 and 30, however, they were held to have no standing as it did not affect them directly.

The abuse of PIL has become more rampant than its use and genuine causes either receded to the background or began to be viewed with the suspicion generated by spurious causes mooted by privately motivated interests in the disguise of the so-called public interests.<sup>42</sup> Every matter of public interest cannot be the basis of a PIL, e. g. increase in the price of onions or in railway fares or the dilapidated condition of railway stations or the Red Fort or trains not running on time.

<sup>35</sup><http://www.hindu.com/2004/12/22/stories/2004122202951200.htm>

<sup>36</sup> In *Dattaraj Nathuji Thawarev. State of Maharashtra & Ors.*, the SC dismissed a PIL against the appointment of a judge and fined the petitioner Rs 10,000 for abuse of the PIL process. It observed that the petitioner's motive had been self-publicity and warned that: 'the judiciary has to be extremely careful that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking'.

<sup>37</sup> AIR 1951 SC 41.

<sup>38</sup> P.P. Craig and S.L. Deshpande, "Rights, autonomy, process: PIL in India", Oxford Journal of Legal Studies Vol 9 No. 3(Autumn 1989) p.357

<sup>39</sup> (1992) 4 SCC 605.

<sup>40</sup> (1992) 4 SCC 605.

<sup>41</sup> AIR 1973 SC 761

<sup>42</sup>[http://www.legalservicesindia.com/articles/pil\\_ind.htm](http://www.legalservicesindia.com/articles/pil_ind.htm), (last visited on 28th January 2012).

There has to be some credibility to the cause. The court has jurisdiction to give appropriate remedy to the aggrieved persons in various situations: Bihar Blinding case, flesh trade in protective of Agra, undertrial prisoners, protection of pavement and slum dwellers of Bombay, abolition of bonded labourers, protection of environment and ecology and other such imperative matters which genuinely affect a significant amount of the society.

The PIL gets especially abused when rich and affluent people who are capable of affording rich lawyers choose to file through PIL and in the deluge of PILs from such people, the petitions of the people whose grievances are more likely to be authentic, gets lost. The poor and disadvantaged in comparison with affluent businessmen and industrialists hence, become entitled to 'preferential consideration'.

### Overstepping the Boundaries:

The doctrine of separation of powers was not incorporated while framing the policy of PIL.<sup>43</sup> It is alleged that interference by the courts through PIL in the sphere of Executive and Legislature is not justified as it is likely to cause conflicts between the three organs of the government.

There have been attempts on the part of the judiciary to enter into the area of policy making and policy implementation by acting as a body to set right actions of the government which are believed to be wrong or could be improved<sup>44</sup>. It has in some ways obliterated the divide between law and policy.<sup>45</sup> PIL orders cannot disregard law, take over the administration by government or by public authorities in the name of governance or preventing misuse of power.

Quite often the court has assumed the powers which would otherwise have been done by a rule making authority.<sup>46</sup> In *M. C. Mehtav. Union of India*<sup>47</sup>, the court explained how despite the enactment of Environment (protection) Act, 1986, there had been a considerable decline in the quality of environment. Any further delay in the performance of duty by the central government cannot, therefore, be permitted. The court, however, required the central government to indicate what steps it had taken thus far and also place before it the national policy for the protection of environment.

<sup>43</sup> V. N. Shukla.. CONSTITUTION OF INDIA , 10<sup>th</sup> ed. 2003, p. 233.

<sup>44</sup> Tehmtan R. Andhyarujina, "Judicial Activism in Public Interest Litigation", Halsbury's Law, August 2008.

<sup>45</sup> Supra, n.4.

<sup>46</sup> *Bandhua Mukti Morchav. Union of India* (AIR 1984 SC 802): the court instructed local officials to identify oppressed workers and give them physical economic and psychological rehabilitation. To this effect, the court also instructed to set up camps to educate the affected, to have regular surprise checks in the quarries, etc; *Vishaka v State of Rajasthan* which was a PIL concerning sexual harassment of women at work place a significant feature of this decision was the courts' readiness to step in where the legislature had not. The court declared that till the legislature enacted a law consistent with the convention on the Elimination of All Forms of Discrimination against Women which India was a signatory, the guidelines set out by the court would be enforceable.

<sup>47</sup> AIR 1988 SC 1115.

Here the demarcation between the judiciary, executive, legislature blurs and the judiciary through its orders sometimes tries to overstep into the executive's boundaries leaving a lot of the political and executive heads annoyed. This can be seen as transgressing into the executive's authority and earning itself the name of judicial dictatorship.<sup>48</sup>

If on one hand there is a problem with the judiciary's eagerness to intrude into other organs' functions, on the other is its refusal to exercise jurisdiction at all which is well illustrated in the *BALCO*<sup>49</sup> and the *Narmada Bachao*<sup>50</sup> cases. By keeping a safe distance from disinvestment and building of dams by branding them as legislative issues, in the name of doctrine of separation of powers, the SC gave unlimited and unchecked powers in the hands of the executive. So it can now take decisions at its whims and fancies and behave like an unruly horse.<sup>51</sup>

It is undeniable that the essence of the federal structure that India follows trickles into the verdicts given by the courts but the court cannot simply '*shrug its shoulders and say priorities are a matter of policy and so it is a matter for the policy-making authority*'.<sup>52</sup> It is but obvious that whenever a court is called upon to scrutinize an official decision, it invites both policy analysis and the political exercise of determining its own jurisdiction.

In cases of technical issues eg. infrastructure projects, etc the courts should neither apply the completely hands-off approach reasoning that it does not possess the right expertise to dispose the matter neither should it encroach into legislative or executive boundaries without sufficient reason. The courts need to strike a fine balance between the two divides and see as to how and where to best incorporate the doctrine of separation of powers.

## 4. Conclusion

It was in the wake of increasing centralization of government power under the domination of a single party and increasing subordination of courts to the legislature and executive, that PIL was introduced.<sup>53</sup> After the anomalies of the emergency period, PIL was touted as a tool to restore

<sup>48</sup> In the CNG case, the decision given by the SC was applaudable, however they were issues of the legislature. More recently in 2006, the SC created new extra constitutional institutions which have virtually taken over the administration of the police especially in service and operational matters.

<sup>49</sup> *Balco Employees Union (Regd) v. U.O.I.*; (2002) 2 SCC 333: It is a case of disinvestment where the employees were rendered jobless and who were not given a fair right to hearing. The SC held that judiciary can't interfere into policy matters and further employees do not have the right to challenge the administrative and policy decision of disinvestment of the company taken by the central government

<sup>50</sup> *Narmada Bachao Andolan v. U.O.I. & Ors.*; (2000) 10 SCC 664.

<sup>51</sup> Videh Upadhyay, "Relocating the Narmada Judgment: A Rejoinder", Economic and Political Weekly, Vol.36 No. 39, p.3792.

<sup>52</sup> Justice Chinnappa Reddy in *Sachidanand Pandey v. State of West Bengal*; AIR 1987 SC 1109

<sup>53</sup> Supra, n.27, p.511.

autonomy back in the courts and relieve people from the clutches of public incongruity

PIL is a product of proactive judges, media and socially active persons put together. It is an excellent redressal method readily available to address the grievances of the people at large. But these grievances would not have cropped up in the first place had there be no inadequacies in the administration and inefficiency in policy implementation. The concept of PIL is thus sadly speaking, very popular in India because of the high frequency of bureaucratic unresponsiveness.

And the administrative ineptitude is in a way percolating into the judiciary as well. Courts are now being swamped with PIL matters because of which other areas of judicial operation are suffering.<sup>54</sup> The rate at which PIL letters are being filed everyday, is putting enormous strains on already extreme scarce judicial resources.<sup>55</sup> It defeats the very purpose behind PIL. Filters established at the preliminary stage in the courts which would 'winnow' out the frivolous and inappropriate matters have often been suggested.

Early this year, the SC came up with National Litigation Policy which lays down guidelines for high courts on how to deal with frivolous PILs, the most approving nod being invited for heavy fines on faulty litigators besides strong checks and safeguarding measures such as appointed screening committees, scrutinizing the competency of the petitioners and reasons for filing petitions, etc.

In Justice Khalid's opinion, only those cases of gross violations which shock the conscience of the court should be taken into consideration. However this is a matter of debate in itself. Do the courts look into the fundamental rights only or should they also try to read non-justiciable welfare goals enshrined in Directive Principles into fundamental rights? The whole question of how far the power of liberal interpretation and judicial review should be carried comes into the picture. Even the doctrine of separation of powers needs to be reviewed. These are a couple of questions that the researcher thinks the courts require in-depth study of.

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<sup>54</sup> J. Khalid, *Sachin and Pandey v. State of West Bengal* (1987) 2 SCJ 70,112.

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