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## "ANALYSIS OF THE ROLE OF PUBLIC INTEREST LITIGATION (PIL) IN ENSURING JUSTICE IN INDIA"

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### ABSTRACT

Public Interest Litigation (PIL) has turned into a revolutionary judicial development in India which provided legal remedies to the deprived sections of the society, has protected the constitutionally enshrined fundamental rights, has helped in establishing accountability of governments. Developed originally in the last quarter of the twentieth century with the help of two Supreme Court Judges P.N. Bhagwati and V.R. Krishna Iyer, PIL recast the conventional concepts of 'locus standi' and made easier for vast cross section of society to seek justice. The constitutional provisions provided under Article 32, 226 and the under Art. 21 of the Consti. has enabled the courts to deliver path breaking judgements for socio-economic justice for citizens, environmental issues and structural discrimination.

Landmark cases that are examples of the PIL are Hussainara Khatoon<sup>1230</sup> on Speedy Trial, Vishakha on Sexual Assault at the workplace of the Govt. and Non-government institutions, M.C. Mehta vs. UOI on protection of environment. PIL has its draw-backs, which involves abuse, filing of deliberate applications and judicial overtones which could compromise the judiciary's authority or an invasion of legislative or executive arm of government. PIL filings compound the problem of congestion in the judicial system and more focus on the requirement for procedural measures and organizational changes.

This paper assesses the legal Framework and socio-political implications of PIL and the areas of improvement, such as screening processes, compliance with legal guidelines, and overall infrastructure, for its improvement. There should be Proper middle ground between judicial activism and judicial ultra vires to retain PIL as a mechanism of justice with regard to its enforcement of the Constitution, Equality, Responsibility, and Governance.

**Key Words:** Public Interest Litigation, Judicial efficiency, Judicial overreach, Separation of powers, Misuse.



<sup>1230</sup> Hussainara Khatoon v. State of Bihar, 1979 AIR 1369.

## 1. LEGAL FRAMEWORK AND DEVELOPMENT OF PIL IN INDIA

### A. Origin and Evolution of PIL in India

PIL was fomented in India as a major judicial innovation to extend the concept of justice for the society especially to the weaker and deserving sections of the society who find it extremely difficult to approach the court for justice in view of certain structural or socio-economic restrictions. In the late 1970s and early 1980s, PIL has complete change in the Working of judiciary by turning the focus from the formal systems of litigation where only the aggrieved parties could file cases, to broader public-centric approach.

A new method of more inclusive legal system was introduced by the socially aware judges like, Justice P.N. Bhagwati and Justice V.R. Krishna Iyer to unlock a liberal legal tradition. These judges expanded 'locus standi' which mean any person and organisation can file Petition on others behalf who cannot petition on their own. It also allowed the judiciary to tackle important social and environment concerns such as bonded labour, custodial violence, environment pollution, child labour, women and underprivileged groups, etc.

#### 1.1. Judicial Activism in the 1980s

The Indian judiciary especially came into its own in late 1970s and the 1980s, under the stewardship of Justices P.N. Bhagwati and V.R. Krishna Iyer brought legal rights within the reach of the common man. This period was a shift away from strictly interpreting locus standi whereby the right to bring an application to the courts has historically only been allowed to the 'aggrieved' Cognizing that the weaker sections of society have no access to the courts, and that an interested member of the public, an NGO or the judiciary itself can bring an action under public interest litigation the courts opened their doors to this concept. This judicial innovation was spearheaded by concerns of

social justice and safeguarding of basic human rights especially for those marginalized persons including bonded labor, victims of custodial violence or persons affected by environmental depredations. A major advancement was made when the judiciary started entertaining letters, telegrams, any other informal communication as writ petitions which cut much procedural delays. Meaning of articles was again expand to cover PILs which prayed for justice for a Majority of people rather than for an individual. All together these measures brought new dimension in Indian jurisprudence and established PIL as effective weapon to bring accountability and justice to the oppressed section of the society.

### B. Legislative Framework Governing PIL

PIL is not defined as such in the laws of India but arises within the constitutional and judicial system. It worked out to be means of getting social justice and changes in governance, which established the judiciary as not passive bench but an active one that enforces the basic rights of the citizens, as well as fights for the rights' changes, if necessary.

#### 1.2. Relevant Articles of the Consti. of India

A. Article 21<sup>1231</sup> – It is most of the time elaborately stated that 'right to life' and 'personal liberty' includes right to livelihood, shelter, clean environment, education, health, and speedy trial. Some common social, economical and environmental issues are invoked under Article 21 of PILs.

B. Article 32<sup>1232</sup> – Outlines the constitutional right and gives the Supreme Court the power to enforce these rights through Writs of habeas corpus, Mandamus, Certiorari, Prohibition and Quo warranto. It is under this article that PILs are initiated to seek redress for violations of human rights of the persons who cannot sue on their own.

<sup>1231</sup> INDIA CONST. Art. 21.

<sup>1232</sup> INDIA CONST. Art. 32.

C. Article 226<sup>1233</sup> – The Acts grants all the powers to the HC like the SC of India to issue Writs for enforcement of FR and other Legal Rights and to give the PIL at the State Level.

D. Directive Principle of State Policy<sup>1234</sup> (Part IV) – Although they are non-justifiable these principles assist the judiciary in formulating decision that seeks to bring the issue of social justice. Article 39A<sup>1235</sup> emphasizes providing free legal aid to ensure justice is accessible to all. Sometimes PILs attempt to enforce these principles through Articles 32 or 226 alternatively.

### 1.3. Guidelines Established by the Supreme Court for Filing PILs

The guidelines for filing PIL in India was set by the Hon'ble SC of India in case of State of Uttaranchal vs. Balwant Singh Chauhal and Ors.<sup>1236</sup> In this case, the Court called for cases to ensure high standards of PILs and non-abuse of this procedure for fake public interest.

#### Guidelines Established –

A. Encouragement of Genuine PIL – The Court Point out that, while they should be encouraged, the courts should 'deem' them while at same Point , discouraging bad faith PILs filed for ulterior purposes.

B. Verification of Petitioner Credentials: Before embracing a PIL, the court has exercised its jurisdiction to primarily scrutinize the locus standi of the petitioner.

C. Assessment of Public Interest: Substantial public interest is required for the court to admit a petition as per the laws of the country. This includes; making sure that the petition addresses a real public harm or injury.

D. Priority for Urgent Matters: Petitions that are likely to affect the general populace, the need for the decision urgently, and the severity of the

violation should be considered more than other types of cases.

E. Discouragement of Frivolous Petitions: The guidelines emphasise against filing a petition by a person known for pestering others or with malicious intent, it may entail exemplary costs.

F. High Court Rules: The Supreme Court suggested that each High Court create the set of rules that should regulate PILs to eliminate abuses.

These guidelines were intended to protect the interest and sacredness of PIL to act as a social tool against oppression rather than to be used as a tool to present someone's complaints or mere issues.

### **C. Judiciary Role in Promoting PIL**

A PIL has come to be regarded as an important means of social change and to give legal sanction to it the Supreme Court of India has embarked on a journey of enlarging the concept of justice by entertaining PIL. The Court has come down to realism of justice from the formalism of text interpretation; through dynamic interpretation of the constitutional provisions, the Court has brought its jurisprudence in tune with the need of the society. The socio-economic rights approach has come out clearly in many decisions where the Court has ingeniously found support under Constitution provisions such as Article 14<sup>1237</sup> , 21<sup>1238</sup> , and 32<sup>1239</sup> in so far as they vindicate socio-economic rights and establish inequality

Further, the Supreme Court has also been following welfare schemes and administrative measures so as to close the gap between law and government. For example, PILs have been used for proper implementation of policies on food security, affordable housing and environmentalism. There are some examples of PUCL v. UOI<sup>1240</sup> is an example of the kind of active judicial involvement in the protection of basic

<sup>1233</sup> INDIA CONST. Art. 226.

<sup>1234</sup> INDIA CONST. Part IV, Directive Principles of State Policy.

<sup>1235</sup> INDIA CONST. Art., 39 cl. A.

<sup>1236</sup> State of Uttaranchal vs. Balwant Singh Chauhal and Ors., 2010 (3) SCC 402.

<sup>1237</sup> INDIA CONST. Art. 14.

<sup>1238</sup> Ibid 2.

<sup>1239</sup> Ibid 3.

<sup>1240</sup> People Union of Civil Liberties vs Union of India, AIR 1997 SC 568.

human rights, where the Court has dealt with hunger and malnutrition by issuing directions on the Public Distribution System.

These interventions on the part of the SC completely transformed law without legislating horizons of justice, but also made itself a champion of the poor as well as a harbinger of change.

#### 1.4. Role of High Courts in Addressing PILs at the State Level

The High Courts across the Indian state prove equally effective in supporting the SC in its endeavour to increase access to justice especially through PIL in context of state specific grievances. They act as other courts where one or several individuals and groups which often cannot directly appeal to the apex court can gain access to. Problem focused and nearest to the people, High Courts have played a substantial role in judicial activism that has endeavoured to weave positive native changes into the fabric of constitutional democracy; often doing so through transformative judgments.

The High Courts have dealt with various and contemporary problems in interest such as the control of pollution and conservation of the environment, protection of the rights of the tribal people and the proper enforcement of the state's welfare activities. For instance, *Olga Tellis v. Bombay Municipal Corporation*<sup>1241</sup> High Court actively promoted the right to livelihood of the slum dwellers, which was later supported by the Supreme Court. This ruling established the judiciary as a referee between developmental goals and rights of vulnerable groups of people. In the same way, High Courts have remained very much involved in dealing with environmental issues, making orders that call for control of pollution by industries, preservation of forest and implementation of state laws on the environment.

Thus, the changes in the judiciary's perception of the role of PIL have broadened its role to a more robust constitutional watchdog to balance the excesses of bureaucracy and unfair social policies. But this has also brought with it fears of abuse of the process and increase in asserting the authority of judges. Situations when PILs are filed out of some petty or personal vendetta is an attempt to undermine the effectiveness of this particular instrument. Furthermore, there is a danger to flood constitutional areas of the legislature or the executive with judicial decisions and harm the principles of the separation of powers. Hence the judiciary still stands up for the prosecution of the dreams of the deprived while at the same time has to be very careful not to derail or encroach on the sovereignty of the other arms of government in that particular state.

#### **2. IMPACT OF PIL IN SECURING JUSTICE**

PIL has taken a new turn in domain of the judiciary making legal aid accessible, protecting socio-economic rights, and making government responsible. Based on social justice and constitutionalism principle, PIL has shifted the conventional definition of litigation this way that allowed courts to embrace issues of public interest beyond personal complain. The judiciary not only continues to perform the role of a guardian of the Consti but also becomes a social engineer.

##### **A. Access to Justice for Marginalized Communities**

PIL has become an innovative method through which lower and weaker sections of society can get their rights enforced and authorities made responsible for biased policies in India. As this judicial innovation has remained, people and organizations have been able to take cases to the courts on behalf of other persons, groups, companies, which cannot on their own or due to lack of funds, knowledge or capacity to seek redress in courts and thus enhance access to justice for all.

<sup>1241</sup> *Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR 180.

## 2.1. Some Landmark Cases Addressing lives of Vulnerable Groups:

### 1. Hussainara Khatoon v. State of Bihar<sup>1242</sup> (1979):

This case has brought out the pathetic situation of undertrial prisoners in Bihar jails who are detained for more number of years than the maximum sentence prescribed for the crime they are accused of. This resulted in the changes that are work of Supreme Court: the provision of free legal aid, increase of the rates of trials, and attention to prisons. It highlighted again the Judiciary Duty in preserving the Article 21 Right to Life and Personal Liberty specially of those who are less privileged financially.

### 2. People's Union for Democratic Rights v. Union of India<sup>1243</sup> (1982):

This Case Also known as the Asiad Workers' Case, this PIL has been lodged to protest the working conditions of the workers who were hired for constructing the facilities for the 1982 Asian Games in Delhi. The Supreme Court stressing the need for implementation of labor laws especially the Minimum Wages Act pointed out that failure to pay the set minimum wages amounted to forced labour, contrary to Article 23 of the Consti. This case expanded the meaning of PIL and it was held that the violation of rights of a section of the society might be brought to the notice of the court even when the rights themselves had not been directly infringed by the affected parties.

### 3. Sheela Barse v. Union of India<sup>1244</sup> (1986):

This case was filed by a Journalist-Activist who mainly focused on the problem of violence against women and children in custody. The SC ordered practical procedures to protect these endangered categories of people: provision of legal counsel for oneself and others, the separation of women and juvenile prisoners, and the constant monitoring process to avoid a violation of rights. The judgment was typical of

the judiciary in the United States in the effort to humanise the criminal justice system and guarantee the dignity of vulnerable persons in custody.

## 2.2. Role of NGOs and Social Activists in Filing PILs

PIL has been strengthened by the lawyers of Non Governmental Organizations (NGO) and social activists and has been taken to fame all over the country for public interest and social cause. These stakeholders are typically in the know about a particular field and will have resources and a strong interest in fighting injustice, the often unheard voices of communities who can't afford a lawyer. Both worked tirelessly to file and work on PILs that have shaped this tool in its development.

The 'Centre for Public Interest Litigation' (CPIL) and the Environmental Support Group (ESG) are some of the such Non Governmental Organizations. The CPIL has an impressive record of activist PIL in the areas of political and administrative corruption, the environment, human rights, health and education. For instance, it has been involved in schemes such as 2G spectrum allocation scam and coal block allocations, which address a systemic issue, and therefore ensure high levels of transparency and accountability in the governance system.

Similarly, the ESG has concentrated on the conservation of the environment and indigenous people's rights, with the organization filing PILs to address environmental unfriendly policies and policies on sustainable development. These organizations are good advocates of public causes because they understand the regulatory requirements and have the capacity to conduct research.

Social activists too have used PILs for advocacy Social activists have also used PILs as tool for advocacy Popularly known as PIL is often perceived simply as a method or technique of litigation pursued in the court of law. Medha Patkar, through the Narmada Bachao Andolan,

<sup>1242</sup> Ibid 1.

<sup>1243</sup> People's Union for Democratic Rights v. Union of India, 1982 AIR 1473.

<sup>1244</sup> Sheela Barse v. Union of India, 1986 AIR 1773.

uses PILs to highlight displacement due to large number of dams on the Narmada River asking for better relocation for the displaced and Environmental Impact Assessments. Though these efforts were producing mixed results, they have initiated a debate across the nation regarding development and displacement. Likewise, Aruna Roy a major player in the Right to Information (RTI) also strategically used PILs to bring in features such as transparency and lodge people's power against the authorities. Such activists as her work closely with the affected groups to guarantee their involvement in the legal actions they pursue for the enforcement of the orders by the courts.

Their participation guarantees that directions given by the judiciary are not only given, but also followed closely. Through PILs, NGOs and activists have institutionalized judiciary as an active agent of change, justice and equality in India.

### **B. Socio-Economic Rights and Environmental Justice**

Their participation ensures that directions given by the judiciary are not only given but also followed to the latter. By way of PILs, NGOs and activists have ensconced judiciary as an efficient change-maker, justice deliverer and equalizer in India.

Right to health has been an area of concern on PILs, such as Paschim Banga Khet Mazdoor Samity v. State of West Bengal<sup>1245</sup> (1996) speaking about the responsibility of the state in ensuring proper health care centres. The court held that denial of timely medical treatment that was a violation of the art. 21 of the Consti right to life. This judgment ensured that governments extended healthcare facilities especially in the rural areas, and equally ensured rise of emergency health care services.

In the sphere of education, PILs have put down a strong base for making education a part of fundamental rights. In Education is one of the

facets of right to life under Art 21 as laid in the Unni Krishnan v. State of Andhra Pradesh<sup>1246</sup> (1993). It also provided the basic idea of Free and compulsory education of children in the age of group 6-14 years leading to the 'Right of Children to Free and compulsory education Act, 2009<sup>1247</sup>. This Act equated education with a right and forced the states to make education available, adequate and appropriate for all, especially for those in need.

Likewise, PILs have brought about a change in the labour rights Shrimati Vidyabharti and others vs Union of India and others<sup>1248</sup>, PILs have dealt with cases relating to bonded labour, child labour and hazardous working conditions. In Bandhua Mukti Morcha v. UOI<sup>1249</sup>(1984) the SC has reiteration its stand on the complete eradication of bonded labour by stressing on the provisions of the Bonded Labour System (Abolition) Act, 1976<sup>1250</sup>. The court's active approach the thousands of bonded labours were released and rehabilitation along with improving the accountability of enforcement agencies. In addition, PILs specific to children at work and occupational safety has led to changes in labour legislation to extend appropriate protection to workers exposed to dangerous conditions.

PILs have re-oriented the matter of governance by making socio-economic rights especially for the affected groups to be appreciated and implemented. In this way, the judiciary controlling the state and providing legal requirements for its changes, it has promoted values of justice in the provision of health, education, and decent work, becoming an inclusion promoter.

<sup>1245</sup> Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996 4 SCC 37.

<sup>1246</sup> Unni Krishnan v. State of Andhra Pradesh, 1993 AIR 2178.

<sup>1247</sup> THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.

<sup>1248</sup> Shrimati Vidyabharti and ors vs Union of India and ors., AIR 1996 MAD 427.

<sup>1249</sup> Bandhua Mukti Morcha v. Union of India, 1984 AIR 802.

<sup>1250</sup> THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976. (ACT NO. 19 OF 1976)



### 2.3. Landmark Cases Addressing Environmental Issues

PIL has thus helped India to gain consciousness about environmental issues demanding the government and industries to act more responsibly. Many of the PIL cases that has been taken up are of great importance in environmental conservation as they set legal precedent that is now part of the Govt. of India's environmental policy.

#### 1. M.C. Mehta v. Union of India<sup>1251</sup> (1986)

This case has Played Crucial in the development of the environmental legal regime in India. Most of the Indians use water from the Ganga River for their daily needs and consequently, the environmental activist M.C Mehta led a PIL against industrial pollution of the river. Consequently, the Supreme Court has provided a basis for the formulation of the so called "polluter pays" principle as a guideline that identifies that it is the polluter's responsibility to account for environmental loss. This case also required formulation of more rigid industrial code and establishment of effluent treatment plants for not directly releasing industrial waste into the Ganga. The judgment, it was noted, laid significant importance to the responsibility of the state to prevent water bodies from pollution and established the state's responsibility for environmental conservation in industrial activities.

#### 2. T.N. Godavarman Thirumulpad v. Union of India<sup>1252</sup>(1996)

This case can be considered the turning point of the legal regulation of forest protection in India. It contained measures for the safeguard of the forests and the banning of illicit deforestation. The Supreme Court while delivering its judgment in the case accepted the principles of sustainable development meaning that the development activities being undertaken have to be harmonized with conservation of the

environment. The Court called for formulation of a forest policy to sustain the forest resource base of India and the ecosystem supports that they offer like bio-diversity support, carbon sinks etc. As a result the so called 'forest governance structures' were created as well as more stringent regulations confronting commercial activity in the forests.

#### 3. Vellore Citizens Welfare Forum v. Union of India<sup>1253</sup> (1996)

Supreme Court, in this case, highlighted Sustainability development, which is the combination of economic development and environmental conservation. The Court also developed the precautionary principle, in which the threat of serious environmental degradation should be remedied by preventing the risk, even if the danger is not scientifically proven. In fact, it was the case with regard to the tanneries polluting the environment in Tamil Nadu, and also, as per the directions issued by the Court with regard to the order in the case, the measures had become stricter in the matter of industrial pollution and waste disposal. The environmental policies and Industrial strategies in India were shaken in this case, and the industries were asked to come clean and mitigate negative impacts on the environment.

The cases that best represent the growing use of PIL to facilitate environmental justice in India as well as government and industries that pollute. These judgments have set down measures which have had a significant impact on the development of Indian environmental laws and implementation of International Environmental standards.

### 2.4. PIL as a Tool for Accountability and Good Governance

PIL has been tirelessly working to give the government accountability and sharpening the administrative policies for welfare departments that try to help the needy groups of society. PILS have thus made sure that governmental

<sup>1251</sup> M.C. Mehta v. Union of India, 1987 AIR 1086.

<sup>1252</sup> T.N. Godavarman Thirumulpad v. Union of India, AIR 2006 SC 1774.

<sup>1253</sup> Vellore Citizens Welfare Forum v. Union of India, 1996 (5) SCC 647.

policies, programs and projects are put to work well and fairly where there are administrative lapses or where resources are likely to be channelled to needy societies.

### 2.5. Impact on Governmental Policies and Administrative Practices

The free food-based programme such as Mid – Day Meal Scheme which was designed to provide free and nutritional meals to school going children has also been brought under the scanner of PIL with the noble intention of the proper implementation of the scheme. The cases such as PILs by educational and child welfare organizations have created awareness about matters such as quality and quantity of food as well as its delivery. Similar also is the law as laid down in the case of *Social Jurist v. Styles of the Government of NCT of Delhi (2007)*<sup>1254</sup> the Supreme Court was directed to enhance the Mid-Day Meal Scheme through ensuring that; The Mid-Day Meals were nutritious; School Mid-Day Meals were hygienically prepared; Free Mid-Day Meals were provided throughout schools. The court also ruled that the scheme must be implemented in all schools that rely on the services, and that the authorities must make sure the directives are followed.

Issues of misuse of governmental money and defects in delivery structures which have entailed judicial scrutiny and intercession have also been created by PILs. The judiciary has, in several cases, stepped in to ensure that welfare programmes are delivered to the target population without undue delay or embezzlement, and that funds are used for that purpose. This has led to good governance and appropriate responsive administration in the delivery of sensitive social services to the disadvantaged groups.

### 2.6. Examination of Transparency and Anti-Corruption Measures Through PIL

PIL has turned out to be an important weapon in the battle against corruption and crusade of transparency in Indian governance. PILs have also used the legal means to fight corruption and to bring about reforms that increase the responsibility of public bodies. Different legal interventions that have changed the culture of accountability in various public officials and institutions with a view to bring in an improved working governance system have been discussed in this paper.

#### 1. *Vineet Narain v. UOI*<sup>1255</sup>(1998):

This particular case was landmark in dealing with corruption issue within the investigative agencies of India. The PIL was filed by a journalist Vineet Narain for the formulation of guidelines to make CBI independent of political influence. The Apex Court gave directions to maintain the CBI's autonomy in order to provide needed check in the realm of corruption, thus strengthening the agency. In *Vineet Narain's* case the court formulated the so called “Vineet Narain Guidelines,” which state that the directors of CBI have to be appointed through a consultation process and not by political nomination, and the agency has to present itself before the court on the ongoing probe into high-profile cases. These measures were intended to increase the openness of investigations and preserve them from political interference, which should increase the effectiveness of the system.

#### 2. *Centre for Public Interest Litigation v. UOI*<sup>1256</sup>(2012 – 2G Spectrum Case):

This particular PIL brought radical changes for the rules of the corporate governance and increased the level of governmental transparency. The case originated from alleged scams practiced during the sale of 2G spectrum licenses in 2008 that is characterized

<sup>1254</sup> *Social Jurist v. Styles of the Government of NCT of Delhi*, AIR 2018 DEL 1943.

<sup>1255</sup> *Vineet Narain v. Union of India*, 1996 SCC (2) 199.

<sup>1256</sup> *Centre for Public Interest Litigation v. Union of India*, AIR 2020 SCC 5075.

by corruption and absence of bureaucratic transparency. Due to interference of the Supreme Court, it annulled 122 telecom licenses that were issued in an improper manner that caused the government of India huge amounts of losses. In its judgment the Court underlined the principles of open distribution of public resources and establishing rule of transparency not only for the future auctions but for almost all actions of the govt. authorities. The same case also led to numerous changes in the aspect of distribution of government resources and placing more consideration on auctions and fair competition.

### 3. Right to Information (RTI) :

RTI Act, 2005<sup>1257</sup> has remained a subject of PILs in its enforcement and extension across the country. Some of the activists and NGOs have used PILs to prosecute requests for RTI provisions to allow citizens to obtain records from the govt. or prosecute officials who are in breach of the law. Under the 'RTI Act' citizen can ask for information from the public authorities and that makes governance transparent. They have also helped to force government departments to obey the law, provide citizens with data on government expenditures, policies and actions. In several cases PILs have been used to challenge the denial of information by public authorities and thus strengthens the concept of 'right to information' as part of right to democracy in India.

In these PIL cases, apart from dealing with such immediate problems of corruption, they have brought new legal standards of political behaviour questioning corruption and ushering in an era of more transparent political culture.

### 3. CRITICISM AND CHALLENGES OF PIL

Even though PIL has been reported to have revolutionized the functioning of the judiciary to deliver justice with ease and enhance good governance, the concept has faced criticisms and main challenges. Critics have pointed out

problems like abuse of process, excesses of judiciary, and structural problems making the efficiency and indeed the egalitarian nature of the mechanism questionable.

#### A. Misuse of PIL

##### 3.1. Filing of Frivolous PILs and Their Implications on the Judiciary

In India, the filing of scandalous or dilatory PILs is emerging as an area of concern for common law courts due to the loss of gatekeeping function because of the liberalized locus standi rules. For all the roles PILs have played in opening the doors to justice and dealing with questions of public interest they carry with them the potential of negative effects in terms of the nature and operation of the judiciary if the provision is abused.

##### ➤ Frivolous or Vexatious PILs:

Frivolous PILs are the PILs that have no real public interest at all but are filed with actual purpose of publicity, to harm political opponents, or to vend any personal agenda. These petitions are not usually anchored on real matters of public interest but are employed to further other parochial concerns with the use of the PIL mechanism.

Examples of frivolous PILs include petitions filed by individuals or groups to:

Seek publicity: This is because some of the petitioners who apply for the permission to file PILs intend to do so in an area of media focus though the issues being raised are not of great public concern.

Political targeting: At times, PILs are utilised in order to politically defeat the opponents or to sully the image of the adversaries.

Unfounded claims: Filing PILs to solve problems that are not problems or those grievances which are being dealt with through some other legal mechanisms or governmental procedures.

These PILs rely on some inflated or misconstrued concern and nearly always lead to no actual improvement. Rather, they distract

<sup>1257</sup> THE RIGHT TO INFORMATION ACT, 2005.

the court from genuine and significant subject matters of the public interest.

➤ Implications on the Judiciary:

It becomes necessary to analyse the consequences arising out of filing of frivolous or vexatious Public Interest Litigations (PILs) on judiciary which is already overburdened with load of cases. Firstly, such PILs cause wastage of scarce judicial time because they are not real cases. In particular, Courts experience a high caseload of matters to handle, yet they spend time and effort to consider petitions that may not be worthy or are not in the public interest. Not only does this prolong the time taken to hear and determine such important cases but also brings the smooth running of the judiciary into disrepute. Secondly, frivolous PILs initiative point undermines the public confidence in the judiciary. It is wrong for courts to exercise their jurisdiction when the petitions are filed with the intention of targeting a political appointee or the desire to gain publicity. This alters of the judiciary and doubt simple justice and the judiciary in its ability to deliver fair and unbiased justice. Thirdly, the disdain on congested courts escalates with the filing of non-fundamental PILs. The judges are pinned down on issues that do not call for their involvement thus contribute to the congestion and this leads to accumulation of cases. For this reason, actual and bona fide claims and applications from the public are slowed down as people become increasingly dissatisfied with the judicial system.

## B. Case law on Misused PILs

### 3.2. Political Weaponization of PILs:

PIL in India has remained vulnerable to political exploitation where the instrument designed to redress genuine public issues becomes the instrument to further political vendetta or advance political party's partisan political vendetta. Political parties are known to approach the Supreme Court through PILs with a view of getting political advantage over their rivals not because they care for the society, but to score a 'brownie' point against their

opponents. This misuse of PILs is not only wrongly placing the judiciary in centre stage of justice delivery but also complicating the identity of judiciary.

Subhash Agarwal v. UOI<sup>1258</sup>: The case of PIL whereby people wanted transparency in the judiciary, particularly in the declaration of assets by those in higher judiciary. Although the filed petition was couched in the language of promoting accountability, having been filed by Subhash Agarwal, there was a question mark over the bona fides of the petitioner, that is, if the intention behind the petition was to serve the public interest or to advance the petitioner's pole- and the political interests. It remains to conclude that the case described above illustrates some crucial experiences of PILs when they give way to the priorities of individuals or political parties instead of the public interest.

Ashok Kumar Pandey v. State of West Bengal<sup>1259</sup> (2004): The Court dismissed the PIL and cautioning that such route is not to be abused because it occupies precious judicial time. The Court also reminded that the judiciary should not encourage protective litigation if the PILs are filed with some other improper motives.

Kushum Lata v. UOI<sup>1260</sup> (2006): The Court said that there should be no PILs mostly for publicity or PILs with certain vested interests. He said it steered a sharper focus on the PILs to address significant public interest matters.

### 3.3. Corporate Rivalry and the Abuse of PILs:

Business people have also been known to use PILs as a way of promoting their business ventures through filing petitions that would in one way or another delay the business of their counterpart. In such cases, the PILs are filed in the name of public interest while in actuality they are meant to act as barriers to competitors for other business ventures. These corporate initiated PILs may concern business operations or development projects and address

<sup>1258</sup> Subhash Agarwal v. Union of India, Civil Appeal no. 10044/2010.

<sup>1259</sup> Ashok Kumar Pandey v. State of West Bengal, 2004 (3) SCC 349.

<sup>1260</sup> Kushum Lata v. Union of India, AIR 2006 SC 2643.

environmental, health or safety issues which are not in the true public interest but which are in fact designed to hold up competitors.

Corporative misuse of PILs not only imposes a burden on judiciary but also threatens to erode the public faith on PILs as an instrument for social remedial mechanisms. Basically, when PILs are being used as weapons in business battles, it demeans their usage in. So the solution has to be in more stringent provisions of the law and checks on the liberal filing of PILs, especially when corporates are involved, and keep Public Interest in its rightful place.

### **C. Judicial Overreach and the Separation of Powers**

#### 3.4. Debate Over the Boundaries of Judicial Intervention

Interference of judiciary in the domains considered to be the domain of the legislatures or the executives has been a subject of long-standing controversy in India especially regarding the issue of the distribution of powers among the three limbs of the government.

##### ➤ Judicial Activism vs. Overreach:

Judicial activism involves the active involvement of a court to assert its constitutional rights, enforce accountability and fill governance deficits resulting from legislation or executive paralysis. Legal activism is mostly appreciated when the courts act in Favor of the vulnerable, or when the courts are defending the environment, or constitutionalism. For example, the famous case like Vishaka v. State of Rajasthan<sup>1261</sup>(1997) wherein the SC has gave guidelines for protection against sexual harassment namely the decisions are hailed as classic examples of judicial activism to compensate for legislative inaction. However, one gets a conception of Judicial imperialism when the judiciary steps out of its constitutional roles prescribed to it by the constitution; that of interpreting the constitution and interpreting laws, to that of legislation and policy-making

which are the preserve of legislature or the executive arms of government respectively. Such cases distort the clearing of powers and give rise to questions on democracy. Courts are, thus, more likely to overstep into the domain of the other branches, to carry out policy implementation, to which they are not suited, in terms of knowledge or the means they have at their disposal.

#### 3.5. Impact on Legislative and Executive Branches

This risk can provide a powerful disincentive to governments who wish to implement radical or new policies and where the judiciary might strike down the measures because of constitutional concerns, legal or otherwise, political sensitivity or controversy of policy areas such as economic reform or social justice. This concern emanates from the view that these preventive measures may be declared unconstitutional, unlawful, or even intrusive, arbitrary, excessive or infringing free and democratic rights. Such judicial activism, as a positive attempt to safeguard the principles of the Consti and the principles of legalism, tends to stifle policymaking. The various governments may prefer incremental tactics and, in some cases, enact limited policies minimising bold and radical interventions that might lead to their clients' legal challenge or judicial review. This reluctance is especially so where policy choices are taken when articulating public interests vis-à-vis the private realm, or where legislation relates to novel legal issues since judicial risk is added to the equation. As a result, it leads to stagnation of development and impairs the government in its capacity to provide solutions to the current emerging social challenges.

### **D. Inadequate Infrastructure and Backlog in the Judiciary**

#### 3.6. Analysis of the Effect of Increased PIL Filings on Court Efficiency

Burden on the Judiciary: PILs increase the burden that many overworked courts have to

<sup>1261</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

bear in disposing off cases that are already on their docket. For instance, the Supreme Court has millions of cases pending at its disposal, and an increasing number of them are PILs.

**Priority Dilution:** A lot of resources and attention has been placed on PILs which causes lag in civil, criminal and commercial cases which stagnates justice for normal litigants.

### 3.7. Recommendations for Improving the Judicial Response to PIL

**Screening Mechanisms:** Courts should afford even lesser credibility to the 'public interest' claimed in the PIL petitions than they currently do, especially at the admission stage to dispel unmeritorious or vicious petitions. To provide specialized and effective direction to PIL, setting up of PIL benches in HC and the SC or malicious petitions. Establishment of dedicated PIL benches in HC and the SC to ensure focused and efficient handling.

**Adherence to Guidelines:** The guidelines should be implemented to the letter and where the petitioner is taken through the court, the petitioner must show genuine public interest and that he/she has exhausted all other legal avenues.

**Infrastructure Development:** Hire more people for the judiciary, more judges and clerks and equip the courts adequately with technology for handling of PILs and other cases whose disposal has been hampered by lack of manpower and infrastructure.

**Promote Alternate Dispute Resolution (ADR):** Promote pre-litigation adoption of other forms of ADR such as mediation and arbitration where the problem is systematic and can be addressed outside the context of trial process.

### **CONCLUSION:**

In Conclusion, PIL has transformed Indian Judicial to a greater extent by establishing a Powerful tool for Protection of FR. Its development by Supreme Court judges P.N. Bhagwati and V.R. Krishna Iyer has done away with rigid restrictions of locus standi which has

helped deprived sections of society to go to the courts directly. The creative deployment of provisions of Articles 32 & 226 read along with the liberal construction of Art 21 has helped the judiciary to intervene in issues as diverse as environmentalism, gender justice, rights of prisoners, and the poor.

Some of these landmark cases include; Hussainara Khatoon v. State of Bihar<sup>1262</sup>, Vishakha v. The State of Rajasthan<sup>1263</sup>, and M.C. Mehta v. Union<sup>1264</sup> of India PIL in the case and others as well as in the case of Centre for show how PIL can be used to fight against structural injustices, check the excesses of the executive branch of government, and advance the progressive values of the Constitution of India. Nevertheless, as you will read in this paper, this powerful mechanism is not without its obstacles. The fact that PIL is being used for frivolous or mala fide intentions along with the pressure it brings to an over taxed judiciary only stresses the need for having some procedural safeguards. Even though, judicial activism plays central roles in the development of Public Interest Litigation, it should be done with a great deal of responsibility so as not to trespass constitutional mandates and functions of other branches of government.

Thus, further PIL's effectiveness is to be maintained, it is necessary to avoid both its excessive legalisation and its bureaucratisation. For reducing misuse, but at the same time maintaining the holy status of this tool, improved screening mechanisms, compliance with existing legal standards and rules, and infrastructural changes within judiciary are inevitable. Over the long term, a balance between activism and constitutional manners will allow PIL to remain an integral part of justice and equality, accountability and good governance in line with the constitution of India.

<sup>1262</sup> Ibid 1.

<sup>1263</sup> Ibid 32.

<sup>1264</sup> Ibid 22.

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