

## SESSION 15

### Role of Judiciary on Environment and Conservation

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## **1. Judicial Trends in Conservation**

### **1.1. Introduction**

The Environment related Laws are enacted by the Indian Parliament under Articles 252 and 253 of the Constitution of India. The Water (Prevention and Control of Pollution) Act, 1974 was promulgated as a Central Legislation under Article 252 of the Constitution. Since, the "water" is listed under the State list, a Resolution from two or more State Assemblies empowering the Parliament to enact the Legislation on the State List was required. The Water (Prevention and Control of Pollution) Act, 1974 became effective at the State level when it was adopted by the concerned State Assemblies. The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were promulgated under Article 253 of the Constitution of India, which empowered the Parliament to enact legislations on such matters as necessary for compliance of International Agreements in which India has been a party.

Since 1974, some of the major environmental enactments which have been passed by the Parliament are as follow:

- The Water (Prevention and Control of Pollution) Act, 1974: (6 of 1974)
- The Water(Prevention and Control of Pollution)Cess Act,1977:(36 of 1977)
- The Air (Prevention and Control of Pollution) Act, 1981: (14 of 1981)
- The Environment (Protection) Act, 1986: (29 of 1986)
- The Public Liability Insurance Act, 1991: (6 of 1991)
- The National Environment Tribunal Act, 1995: (27 of 1995)
- The National Environment Appellate Authority Act, 1997: (22 of 1997)

In addition to these Acts, several Rules have also been incorporated under the Environment (Protection) Act, 1986. These Acts and Rules are important guidelines to sort out the environmental problems. Some of the major Rules notified are:

- The Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organism Genetically Engineered or Cells Rules, 1989
- The Hazardous Wastes (Management and Handling) Rules, 1989
- The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989

- The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996
- The Bio-Medical Waste (Management and Handling ) Rules, 1998
- The Recycled Plastics Manufacture and Usage Rules, 1999
- The Municipal Solid Wastes (Management and Handling) Rules, 2000
- The Noise Pollution (Regulation and Control) Rules, 2000
- The Ozone Depleting Substances (Regulation) Rules, 2000
- The Batteries (Management and Handling) Rules, 2001

The Constitution of India has basic features in respect of the power of judicial review by the Supreme Court. Under Part III of the Constitution, which guarantees fundamental rights to the people and under Part IV, the State is under obligation to implement the Directive Principles. Article 39-A of the Constitution provides "Right of Access to Courts" to the citizens. In exercise of its powers of judicial review, the Court enforces the constitutional and legal rights of the underprivileged by transforming the right to life under Article 21 of the Constitution and by interpreting the Articles 48-A and 51 A (g) of the Constitution. The Hon'ble Supreme Court of India has given a new dimension to the environmental jurisprudence in India with a view to meeting the problems in the environmental field.

The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. PIL in Indian Law has been introduced by the Hon'ble judges. The traditional concept of *Locus Standii* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, environmentally conscious individuals, groups or NGOs may have access to the Supreme Court/High Courts by way of PIL. The Hon'ble Supreme Court while taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

The Constitution of India is a dynamic and living tree and is not a static document. The Courts have to interpret the Constitution keeping in view the needs of the present generation. Some of the leading public interest litigations are Taj Mahal case, Hazardous industries matter in Delhi, Vellore Citizen's Welfare Forum case and Rural litigation and Entitlement Kendra case relating to lime stone queries in Dehradun, *etc.*

## 1.2. Sustainable environmental governance and the Constitution

Sustainable environmental governance constitutes one of the most important pillars for the full and effective implementation of international and national environmental laws. It requires the setting up of institutions from the local to the international level that can deliver effective, fair and equitable environmental management.

Sustainable environmental governance is also related to the fulfillment of human rights, in particular with regard to the links between environmental management and the realization of specific human rights. Further, it is directly related to issues of equity, for instance concerning the situation of women in environmental management (gender concerns) or the relations between states in international law (differential treatment).

The Supreme Court of India in numerous matters elaborated the scope of Article 21 of the constitution of India, which deals with protection of life and personal liberty - *No person shall be deprived of his life or personal liberty except according to procedure established by Law.*

In the matter of *Rural Litigation and Entitlement Kendra Vs State of U.P.*, the Hon'ble Supreme court held that the right to unpolluted environment and preservation and protection of nature's gifts has also been conceded under Article 21 of the Constitution of India. The Constitutional provisions provide the bed-rock for the framing of environmental legislations in the country.

Article 48-A of the Constitution deals with the Protection and Improvement of Environment and Safeguarding of Forests and Wildlife – *The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country* . On the basis of the said provisions, the Environment (Protection) Act, 1986 and the Wild Life (Protection) Act, 1972 (as amended in 1986) have been enacted by the Parliament.

Under Part IV-A of the Directive Principles of State Policy, Fundamental Duties have been added under Article 51-A by the 42 nd Amendment of the Constitution in 1976. Under Article 51-A(g) provides the Fundamental Duties with respect to the environment which includes - *To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.*

- **Article 32 and 226 of the Constitution**

Articles 32 and 226 are the provisions of the Constitution that together provide an effective guarantee that every person has a fundamental right of access to courts. Article 32 confers power on the Supreme Court to enforce the fundamental rights. It provides a guaranteed, quick and summary remedy for enforcing the Fundamental Rights because a person can go straight to the Supreme Court without having to go through the dilatory process of proceeding from the lower to higher court as he has to do in other ordinary litigation. The Supreme Court is thus constitution the protector and guarantor of the fundamental rights.

The High courts have a parallel power under Article 226 to enforce the fundamental rights. Article 226 differs from Article 32 in that whereas Article 32 can be invoked only for the enforcement of Fundamental Rights, Article 226 can be invoked not only for the enforcement of Fundamental Rights but for any 'other purpose' as well. This means that the Supreme Court's power under Article 32 is restricted as compared with the power of a High Court under Article 226, for, if an administrative action does not affect a Fundamental Right, then it can be challenged only in the High Court under Article 226, and not in the Supreme Court under Article 32. Another corollary to this difference is that a PIL (Public Interest Litigation) writ petition can be filed in Supreme Court under Article 32 only if a question concerning the enforcement of a fundamental right is involved. Under Article 226, a writ petition can be filed in a High court whether or not a Fundamental Right is involved.

The provision of legal aid is fundamental to promoting access to courts. The Supreme Court of India has taken imaginative measures to promote access to justice when people would otherwise be denied their fundamental rights. It has done this by the twin strategy of loosening the traditional rules of locus standi, and relaxing procedural rules in such cases. Thus where it receives a letter addressed to it by an individual acting pro bono publico, it may treat the letter as a writ initiating legal proceedings. In appropriate cases it has appointed commissioners or expert bodies to undertake fact-finding investigations. Thus, the mechanism of PIL now serves a much broader function than merely espousal of the grievances of the weak and the disadvantaged persons. It is now being used to ventilate public grievances where the society as a whole, rather than a specific individual, feels aggrieved.

Several sections of the constitution such as Articles 13 (Laws inconsistent with or in derogation of the fundamental rights (are void)); 14 (Equality before law); 20 (Protection in respect of conviction for offenses); 21 (Protection of life and personal liberty); 22 (Protection against arrest and detention in certain cases); 38 (State to secure a social order for the promotion of welfare of the people); 39

(Certain principles of policy to be followed by the State) have been interpreted in conjunction with Article 32 and 226 to extend right of access to courts and judicial redress in various matters.

### **Article 32 Remedies for enforcement of rights conferred by this Part**

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

### **Article 226 Power of High Courts to issue certain rights**

- (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is

received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

## **2. Public Interest Litigation**

### **2.1. Introduction**

Public interest Litigation (PIL) means a litigation filed in a court of law, for the protection of "Public Interest", such as pollution, Terrorism, Road safety, constructional hazards etc.

PIL is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a PIL can be filed. For example:

- Violation of basic human rights of the poor
- Content or conduct of government policy
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights.

Economic or market based instruments for pollution control has been in the policy agenda of the Indian Ministry of Environment and Forests for a decade now. In the meantime, the law of pollution liability endorsed through environmental public interest litigation (PIL), and resultant judicial activism during the late 1980s and 1990s, has performed as indirect market based instruments of pollution management in India. While a purely judicial approach to environmental management can neither be effective or efficient, this paper argues that PIL has played a significant role in India's pollution management system. As a result new environmental legislation have been established, and economic incentives have been created for polluters to increase abatement (to reduce the risk of environmental damage costs). This has ultimately helped in the growth of a new environment market, where foreign investors perceive that PIL and judicial activism is a significant driving force behind the growth of the new market.

PIL has created a ray of hope in the dark universe of injustice. The air of judicial enforcement rushes in to fill the vacuum caused by administrative abdication. It is PIL that confronts that one and invites resolution by the other. Environmental control is also the subject matter of PIL. It covers environment, ecology, degradation of forests in forest cover area; air, water pollution; vehicular, industrial, noise pollution; the aqua, eco system, wildlife starvation, smoking and public health.

## **2.2. Public Interest Litigation in India**

The development of public interest litigation in India has been one of the important legal developments of the past couple of decades. The following publications analyse specific aspects of public interest litigation. Some of them focus on the environment specifically while others are of more general import.

In Black's Law Dictionary, PIL is describe as: "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected." Public Interest Litigation's explicit purpose is to alienate the suffering off all those who have borne the burnt of insensitive treatment at the hands of fellow human being. Transparency in public life & fair judicial action are the right answer to check increasing menace of violation of legal rights. Traditional rule was that the right to move the Supreme Court is only available to those whose fundamental rights are infringed.

Nevertheless, the Supreme Court in its recent rulings considerably relaxed this traditional rule. The fundamental rules as developed by Supreme Court are as follows:

- **How to file the PIL and what is the Procedure?**

“PIL” is filed in the same manner, as a writ petition is filed.

If a PIL is filed in a High Court, then two (2) copies of the petition have to be filed (for Supreme Court, then (4)+(1)(i.e.5) sets) Also, an advance copy of the petition has to be served on the each respondent, i.e. opposite party, and this proof of service has to be affixed on the petition.

A Public Interest Litigation (PIL) can be filed in any High Court or directly in the Supreme Court. It is not necessary that the petitioner has suffered some injury of his own or has had personal grievance to litigate. PIL is a right given to the socially conscious member or a public spirited NGO to espouse a public cause by seeking judicial for redressal of public injury. Such injury may arise from breach of public duty or due to a violation of some provision of the Constitution. Public interest litigation is the device by which public participation in judicial review of administrative action is assured. It has the effect of making judicial process little more democratic.

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.
- » This is a powerful safeguard and has provided immense social benefits, where there is essentially failure on the part of the executive to ameliorate the problems of the oppressed citizens. Considering the importance of this subject, three articles from the web on the subject are reproduced hereunder.

A Court fee of Rs. 50 , per respondent (i.e. for each number of party, court fees of Rs 50) have to be affixed on the petition. Proceedings, in the PIL commence and carry on in the same manner, as other cases. However, in between the proceedings if the Judge feels that he may appoint the commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems, etc. After filing of replies, by opposite party, or rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

- **When a PIL can be filed?**

PIL can be filed only in a case where “Public Interest” at large is affected. Merely because, only one person is affected by state inaction is not a ground for PIL.

There are some of the possible areas where PIL can be filed:

- a) Where a factory/ industry unit is causing air pollution, and people nearby are getting affected.
- b) Where, in an area/ street there are no street lights, causing inconvenience to commuters.

- c) Where some “Banquet Hall” plays a loud music, in night causing noise pollution.
- d) Where some construction company is cutting down trees, causing environmental pollution.
- e) Where poor people, are affected, because of state government’s arbitrary decision to impose heavy “Tax”.
- f) For directing the police/ Jail authorities to take appropriate decisions in regards to jail reforms, such as segregation of convicts, delay in trial, before the court on remand dates.
- g) For abolishing child labour, and bonded labour.
- h) Where rights of working women are affected by sexual harassment.
- i) For keeping a check on corruption and crime involving holders of high political officer.
- j) For maintaining Roads, Sewer etc in good condition.
- k) For removal of Big Hoarding and signboards from the busy road to avoid traffic problem.

- **Who can file the PIL?**

Earlier it was only a person whose interest was directly affected along with others, whereby his fundamental right is affected who used to file such litigation. Now, the trend has changed, and, any Public-spirited person can file a case (PIL) on behalf of a group of person, whose rights are affected. It is not necessary, that person filing a case should have a direct interest in this PIL.

For e.g. a person in Bombay, can file a PIL for, some labour workers being exploited in Madhya Pradesh or as someone filed a PIL in supreme court for taking action against a Cracker factory in Sivakasi Tamilnadu, for employing child labour or the case where a standing practicing lawyer filed a PIL for release of 80 under trials in a jail, than the period prescribed as punishment for offence, for which they were tried. It is clear that, any person can file a PIL on behalf of group of affected people. However, it will depend on every facts of case, whether it should be allowed or not.

- **Against whom a PIL can be filed?**

A PIL can be filed against a State/ Central Govt., Municipal Authorities, and not any private party. However, “Private party” can be included in the PIL as “Respondent”, after making concerned state authority, a party. For example- if there is a Private factory in Delhi, which is causing pollution, then people living nearby, or any other person can file a PIL against the Government of Delhi, Pollution Control Board, and against the private factory. However, a PIL cannot be filed against the Private party alone.

- **Can a Letter Explaining Facts to Chief Justice be Treated as a PIL?**

In early 90’s there have been instances, where judges have treated a post card containing facts, as a PIL. Many PIL has been filed on this basis in the past. Since, many people have tried to misuse the privilege of PIL, the court has required a detailed narration of facts and complaint, and then decide whether to issue notice and call the opposite party. However, as there is no statute laying down rules and regulations for a PIL still the court can treat a letter as a PIL. However, the letter should bring the true and clear facts, and if the matter is really an urgent one, the court can treat it as a PIL. Even a writ petition filed by the aggrieved person, whether on behalf of group or together with group can be treated as a PIL.

- **What are the various reliefs available by PIL?**

There are many kinds of remedies, which can be given in a PIL, to secure the public interest, at large. They are:

- (a) The court can afford an early interim measure to protect the public interest,
- (b) The court may appoint a committee, or commissioner to look into the matter and
- (c) The court may also give final orders by way of direction to comply within a stipulated time

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.

Among the numerous factors that have contributed to the growth of PIL in this country, the following deserve special mention:

» 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.

» 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.

» 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

» 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, barfettters and hand cuffing in prisons, etc.

» 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.

» 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.

• **When and how to File a PIL**

1. Making an informed decision to file a case.

2. Consulting all affected interest groups who are possible allies.

3. Things to be kept in mind:

i. Litigation can be expensive.

ii. Litigation can be time consuming.

iii. Litigation can take away decision making capability/strength from communities.

iv. An adverse decision can affect the strength of the movement.

v. Litigation involvement can divert the attention of the community away from the real issues.

4. If you have taken the decision:

i. Collect all the relevant information

ii. Be meticulous in gathering detail for use in the case. If you plan to use photographs, retain the negatives and take an affidavit from the photographer. Retain bills.

iii. Write to the relevant authorities and be clear about your demands.

iv. Maintain records in an organized fashion.

v. Consult a lawyer on the choice of forum.

vi. Engage a competent lawyer. If you are handling the matter yourself make sure you get good legal advice on the drafting

vii. A PIL can be filed only by a registered organization. If you are unregistered, please file the PIL in the name of an office bearer/member in his/her personal capacity.

viii. You may have to issue a legal notice to the concerned parties/authorities before filing a PIL. Filing a suit against the government would require issuing a notice to the concerned officer department at least two months prior to filing.

The genesis of 'judicial activism' lies in the evolution of public interest litigation. Under the Indian Constitution, the Supreme Court and high courts can be approached in case of a violation of fundamental rights. However, it was the person whose rights had been directly affected who could petition the court. This rule, prohibiting the filing of cases on behalf of other individuals, was followed for almost three decades.

PIL evolved as an innovative departure from the rules, in tune with the socio-economic condition of our society. Even in the field of environmental jurisprudence, in cases like the Sriram oleum gas leak incident in 1985, in Delhi, the court evolved principles of corporate liability and awarded compensation to the injured workers and people living around the factory.

Gradually, the court began entertaining public interest petitions that were not solely on behalf of the exploited sections. Some of the petitions dealt with social ills like corruption and the criminalisation of politics. Others were about the protection of ancient monuments like the Taj Mahal, the tombs of Zauq and Ghalib. River pollution, destruction of forests, waste management and environmental conservation began to constitute another huge chunk of PILs.

People turned to the judiciary as a panacea for all ills, and the courts seem to have accepted their own omnipotence. Cases like the hawala, Bofors and fodder scam are all household names today. And yet, corruption is prevalent in the courts themselves, and the apex court has not been able to cleanse its own backyard while attempting to root out corruption from the entire country.

Today, PIL is an ever-expanding universe. Any and everything, from the selection of the cricket team to the construction of a flyover, falls within its domain. Simultaneously, a large number of funded and non-funded CSOs, in the shape of

committees, centres and human rights networks with the primary objective of filing PILs, have mushroomed and are part of the litigating constellation.

From the PIL's humble beginnings as champion of the poor and exploited, public interest litigation is moving in a diametrically opposite direction. There was a time when the courts would provide relief from the harsh, arbitrary actions of the executive, reflected in, say, the grant of a stay on the demolition of slums on grounds of lack of a rehabilitation plan or hardship of the monsoons, or school examinations. Today, slum demolitions are being directed on orders from the courts. In fact, the tables have turned. Today, it's the executive and legislature that are trying to put a relief and rehabilitation scheme in place before such demolitions. The courts, on the other hand, are declaring that demolitions should be carried out immediately, rendering scores of people homeless.

A similar trend is reflected in a large number of PIL areas. Thus, in the decision to shift heavy industries out of Delhi, the court heard public interest litigant M C Mehta, the owners of the industries, and the government, but denied the opportunity to be heard to the workers whose right to life and livelihood was going to be affected by the decision.

Protection of the environment is an area in PIL where the people versus environment paradigm has been constructed. But in cases such as the ongoing Godavarman case, the judiciary issued directions to evict tribals and other villagers from sanctuaries, national parks and tiger reserves. The right to life and livelihood of thousands of people residing in these areas does not find much place in the developing environmental jurisprudence.

The declining authority of the legislature and executive has led to ever-increasing activism by the judiciary in these areas. The role of the judiciary was understood to be interpreting the laws made by the legislature. However, the Supreme Court evolved the doctrine that in areas where no law had been made by the legislature, the judiciary could create a law to address the problems and issues raised in petitions. For instance, in the absence of legislation, the court laid down guidelines and mechanisms with respect to sexual harassment in the workplace, in the famous Vishakha judgment.

In the sphere of environmental jurisprudence, the Supreme Court created the five-member Central Empowered Committee (CEC) which functions like a judicial body and gives recommendations. Generally, appointment to statutory bodies created under legislation is a prerogative of the executive. However, on the recent issue of appointments to the Forest Advisory Committee, the judges reacted with indignation to the environment ministry's rejection of the names suggested by the CEC and endorsed by the court.

The Supreme Court has been, and remains, a political institution. The role it plays varies with the nature of the polity, the strength and stability of the Centre, and the prevalent mood in the country. Today, in an era of coalition politics, a weak and wilting Centre, and the eroded credibility of the legislature and executive, the judiciary has taken centre stage. But is it time to put the genie back in the bottle and confine the courts' public interest jurisdiction to its original purpose of being permissible solely on behalf of the poor and exploited?

### **2.3. A few case studies**

During the last few years, Judicial Activism has opened up a new dimension for the Judicial process and has given a new hope to the millions who starve for their livelihood. There is no reason why the Court should not adopt activist approach similar to Court in America, so as to provide remedial amplitude to the citizens of India.

Supreme Court has now realised its proper role in welfare state and it is using its new strategy for the development of a whole new corpus of law for effective and purposeful implementation of Public Interest Litigation. One can simply approach to the Court for the enforcement of fundamental rights by writing a letter or post card to any Judge. That particular letters based on true facts and concept will be converted to writ petition. When Court welcome Public Interest Litigation, its attempt is to ensure observance of social and economic programmes frame for the benefits of have-nots and the handicapped. Public Interest Litigation has proved a boon for the common men. Public Interest Litigation has set right a number of wrongs committed by an individual or by society. By relaxing the scope of Public Interest Litigation, Court has brought legal aid at the doorsteps of the teeming millions of Indians; which the executive has not been able to do despite a lot of money is being spent on new legal aid schemes operating at the central and state level. Supreme Court's pivotal role in expanding the scope of Public Interest Litigation as a counter balance to the lethargy and inefficiency of the executive is commendable.

**Peoples Union for Democratic Rights v. Union of India** ( A.I.R.. 1982 , S C 1473). The court now permits Public Interest Litigation or Social Interest Litigation at the instance of " Public spirited citizens" for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participate justice and

standing in civil litigation of that pattern must have liberal reception at the judicial door steps.

**In the Judges Transfer Case - AIR 1982, SC 149:** Court held Public Interest Litigation can be filed by any member of public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress. This is absolutely necessary for maintaining Rule of law and accelerating the balance between law and justice.

It is a settled law that when a person approaches the court of equity in exercise of extraordinary jurisdiction, he should approach the court not only with clean hands but with clean mind, heart and with clean objectives.

**Shiram Food & Fertilizer case AIR (1986) 2 SCC 176 SC** through Public Interest Litigation directed the Co. Manufacturing hazardous & lethal chemical and gases posing danger to life and health of workmen & to take all necessary safety measures before re-opening the plant.

**In the case of M.C Mehta V. Union of India (1988) 1 SCC 471 -** In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions , as he is the person interested in protecting the lives of the people who make use of Ganga water.

**Parmanand Katara V. Union of India - AIR 1989, SC 2039 :-** Supreme Court held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

**Council For Environment Legal Action V. Union Of India - (1996)5 SCC281 :** Public Interest Litigation filed by registered voluntary organisation regarding economic degradation in coastal area. Supreme Court issued appropriate orders and directions for enforcing the laws to protect ecology. A report entitled "Treat Prisoners Equally HC" published in THE TRIBUNE , Aug 23 Punjab & Haryana High Court quashed the provisions of jail manual dividing

prisoners into A , B & C classes after holding that there cannot be any classification of convicts on the basis of their social status, education or habit of living .This is a remarkable ruling given by High Court by declaring 576-A paragraph of the manual to be " Unconstitutional".

**State V. Union Of India - AIR 1996 Cal 181 at 218 :** Public Interest Litigation is a strategic arm of the legal aid movement which intended to bring justice. Rule Of Law does not mean that the Protection of the law must be available only to a fortunate few or that the law should be allowed to be abused and misused by the vested interest. In a recent ruling of Supreme Court on " GROWTH OF SLUMS" in Delhi through Public Interest Litigation initiated by lawyers Mr. B.L. Wadhwa & Mr. Almitra Patel Court held that large area of public land is covered by the people living in slum area . Departments despite being giving a dig on the slum clearance, it has been found that more and more slums are coming into existence. Instead of "Slum Clearance", there is "Slum Creation" in Delhi. As slums tended to increase; the Court directed the departments to take appropriate action to check the growth of slums and to create an environment worth for living.

#### **2.4. Flaws in the PIL system in India**

Though the Constitution of India guarantees equal rights to all citizens, irrespective of race, gender, religion, and other considerations, and the "directive principles of state policy" as stated in the Constitution obligate the Government to provide to all citizens a minimum standard of living, the promise has not been fulfilled. The greater majority of the Indian people have no assurance of two nutritious meals a day, safety of employment, safe and clean housing, or such level of education as would make it possible for them to understand their constitutional rights and obligations. Indian newspapers abound in stories of the exploitation - by landlords, factory owners, businessmen, and the state's own functionaries, such as police and revenue officials - of children, women, villagers, the poor, and the working class.

Though India's higher courts and, in particular, the Supreme Court have often been sensitive to the grim social realities, and have on occasion given relief to the oppressed, the poor do not have the capacity to represent themselves, or to take advantage of progressive legislation. In 1982, the Supreme Court conceded that unusual measures were warranted to enable people the full realization of not merely their civil and political rights, but the enjoyment of economic, social, and cultural rights, and in its far- reaching decision in the case of PUDR [People's

Union for Democratic Rights] vs. Union of India [1982 (2) S.C.C. 253], it recognised that a third party could directly petition, whether through a letter or other means, the Court and seek its intervention in a matter where another party's fundamental rights were being violated. In this case, adverting to the Constitutional prohibition on "begar", or forced labor and traffic in human beings, PUDR submitted that workers contracted to build the large sports complex at the Asian Game Village in Delhi were being exploited. PUDR asked the Court to recognize that "begar" was far more than compelling someone to work against his or her will, and that work under exploitative and grotesquely humiliating conditions, or work that was not even compensated by prescribed minimum wages, was violative of fundamental rights. As the Supreme Court noted,

The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil. Thus the court was willing to acknowledge that it had a mandate to advance the rights of the disadvantaged and poor, though this might be at the behest of individuals or groups who themselves claimed no disability. Such litigation, termed Public Interest Litigation or Social Action Litigation has given the court "epistolary jurisdiction".

There is an urgent need to expand old rights and create new rights. Indeed, the success of legal advocacy needs to be viewed by the social activist in these terms and not merely in terms of winning or losing cases. For instance, although Haksar and others, as part of their work on promoting human rights in Northeastern India, have been unsuccessful in their decade-long effort to get the Armed Forces Special Power Act repealed, they have succeeded in getting the provision in the criminal procedure code that women be searched only by women extended to the army. Similarly, it is important to try and create new rights based on a vision of the future. For instance Article 14 of the Indian Constitution treat both an MNC and a citizen equally despite the inherent and yawning inequality between the two. Therefore if a citizen's rights are to be fully protected in the wake of increasing MNC activity in the national economy, one needs to critique the concept of equality in liberal theory and develop new ideas on equality. The filing of test cases is one way of developing these new ideas.

The same holds true for individual rights vs. collective rights. The prevailing legal

system recognizes only private property - where the owner has the right against the whole world - and public property, which belongs to the state. However, before the imposition of the British legal system there existed a whole tradition of common property which now has no recognition in law. As a result all forms of collective or shared realities whether they are in the realm of rights, relations, practices or knowledge have no place in the present legal scheme even though they are vital for human survival. They are not part of the language of legal discourse, either of the judges or lawyers and mention of these rights as 'collective human rights' is met with surprise, skepticism and often cynicism.

Given the above scenario, one of the most difficult tasks is to find a lawyer with a vision who is able to see the bigger picture and be prepared to fight for it. These calls for sensitizing the lawyers on an ongoing basis and not restrict this activity to the peculiarities of a specific case. In addition, there is a need to sensitize law students in order to build a body of public interest lawyers in this country.

Part of the reason why there are few public interest lawyers in India is due to how poorly it pays. Public interest lawyers in the US (sometimes derisively called 'ambulance chasers') are easier to find. They largely operate on a 'no-win, no-fee' basis, given the huge damages that are awarded by US courts and which are then split between the client and the lawyer. In India even where free legal aid is provided - as it is to Scheduled Casts and Scheduled Tribes, industrial workers, women, bonded laborers, etc., public-spirited lawyers end up paying out of their pocket as the amounts that are fixed for even photocopying of documents do not cover the cost of the service. In the U.K., where courts like those in India don't award massive damages, there has been an innovation in legal aid with wealthy benefactors pitching in to underwrite legal costs. One property developer underwrote the legal costs of a large number of arthritis patients who sued for compensation for side effects they suffered from the drug Opren. Similarly Sir James Goldsmith, billionaire financier and father-in-law of Imran Khan, set up the Goldsmith Libel Fund which provided support to a motley assortment of libel defendants.

Nevertheless, it is debatable if such private initiative would be forthcoming, or indeed welcome, to support PIL cases involving the poor and the marginalised. Activists, however, need to seriously consider the issue of getting more public-spirited lawyers to enter the fray.

### **3. Role of Legislators**

#### **3.1. Parliamentary Standing Committee on Environment**

The economic development of a modern and progressive society will have to be complimented with the sustenance of environment. Coping with climate change, tackling water crisis, preserving forests and biodiversity and green accounting are some of the measures necessary for sustainable development. In India, there is a full-fledged Ministry of Environment and Forests and also a Parliamentary Standing Committee on Science and Technology, Environment and Forests. There is also the Prime Minister's Council on Climate Change, with representation of key Ministries, experts, industry and media to guide the integration of climate change in national development.

The Indian Parliament takes 'Global Warming and Climate Change' with utmost seriousness, conscious that it has a major and important role to play in reversing the present trend. India regularly has debates in Lok Sabha and the Rajya Sabhs on the subject. India is also in the process of finalization of the constitution of the Parliamentary Forum on Global Warming and Climate Change to build on the interest that has been generated to enable Parliamentarians to contribute more meaningfully in this regard.

The Parliamentary Standing Committee on Science and Technology, Environment and Forests works under the Department of Science and Technology. The Department was established in May 1971, with the objective of promoting new areas of Science & Technology and to play the role of a nodal department for organizing, coordinating and promoting Science and Technology activities in the country.

### 3.2. Cabinet Committee on Economic Affairs

In responding to the challenges of governing in a modern society, Prime Ministers have utilized committees of Ministers to maintain the effectiveness of the Cabinet as a decision-making forum. These committees operate as an extension of the Cabinet to examine specific issues in detail and to make recommendations for final decision by the Cabinet as a whole. The Prime Minister decides the composition, organization, and methods of operation of the Cabinet and the committees of Cabinet.

Cabinet Committees provide a framework for focus, collective consideration of and decisions on key areas and major policy issues. The present Government has established six Cabinet Committees, out of which the Cabinet Committee on Economic Affairs is one. It consists of the following ministers:

1. Minister for Finance (Chairman)
2. Minister for Economic and Business Affairs
3. Minister for Culture
4. Minister for the Interior and Health

**Public Interest Litigation**, in [Indian law](#), means [litigation](#) for the protection of [public interest](#). It is [litigation](#) introduced in a [court of law](#), not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism.

Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognisance of the matter and proceed [suo motu](#) or cases can commence on the petition of any public-spirited individual.

## Origins Of PIL

Prior to the 1980s, only the aggrieved party could approach the courts for justice. However, post 1980s and after the [emergency era](#), the apex court decided to reach out to the people and hence it devised an innovative way wherein a person or a civil society group could approach the supreme court seeking legal remedies in cases where public interest is at stake. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer were among the first judges to admit PIL's in the court.<sup>[1]</sup> Filing a PIL is not as cumbersome as any other legal case and there have been instances when even letters and telegrams addressed to the court have been taken up as PILs and heard by the court.<sup>[citation needed]</sup>

## [\[edit\]](#) Examples of PIL

The Bombay High Court on [31 August](#), 2006 directed the broadcasters to give an undertaking that they will abide by the Cable Television Network Act 1995 as well as the court's orders by tomorrow, in view of larger public interest.

A division bench comprising Justices R M Lodha and S A Bobde were hearing a Public Interest Litigation (PIL) filed by Professor Pratibha Nathani of St Xavier's College alleging that films without certification by the Censor Board for Film Certification (CBFC) allowing 'free public exhibition', were being shown on cable channels, which have a bad impact on children. Hence, such films should not be shown and action be taken against those still running such content on their channels.

The court on [23 August](#) had allowed the cable operators and channels to screen only 'U' and 'U/A' certified films.

However, before that order, the police had taken action against the Multi-system operators and seized their decoders due to which they could not telecast certain channels. Assistant Commissioner of Police Sanjay Apranti told the court that they did not have a problem if the channels provided the cable operators with new decoders.

Also, Zee Television and Star Television networks applied for the declaration in writing that they would abide by the said Act and court orders.

The court also directed seven channels -- Star Movies, Star One, Star Gold, HBO, ZEE Movies, AXN and Sony Max -- to furnish a list of all the films that they were to screen to the police.

## **[[edit](#)] Empirical study on PIL results**

According to a controversial study by Hans Dembowski, PIL has been successful in the sense of making official authorities accountable to civil society organisations. While this social scientist also found some effect on the ground level, PIL cases dealing with major environmental grievances in the Kolkata agglomeration did not tackle underlying problems such as inadequate town planning. Dembowski's book "Taking the State to Court - Public Interest Litigation and the Public Sphere in Metropolitan India" was originally published by Oxford University Press in 2001. The publisher, however, soon discontinued distribution because of contempt of court proceedings started by the Calcutta High Court. The author, who claims he was never officially notified by the Court, has since republished the book online with the Germany-based NGO Asia House: [\[1\]](#).

The **Fundamental Rights**, **Directive Principles of State Policy** and **Fundamental Duties** are sections of the [Constitution of India](#) that prescribe the fundamental obligations of the State<sup>-</sup> to its citizens and the duties of the citizens to the State. These sections comprise a constitutional [bill of rights](#) and guidelines for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the [Constituent Assembly of India](#).

The *Fundamental Rights* are defined as the basic [human rights](#) of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, [caste](#), creed or gender. They are enforceable by the courts, subject to specific restrictions.

The *Directive Principles of State Policy* are guidelines for the framing of laws by the government. These provisions—set out in Part IV of the Constitution—are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

The *Fundamental Duties* are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties—set out in Part IV–A of the constitution—concern individuals and the nation. Like the Directive Principles, they are not legally enforceable.

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## [\[edit\]](#) History

*Main articles:* [Indian independence movement](#) and [Constitution of India](#)

The development of constitutional rights in India was inspired by historical documents such as [England's Bill of Rights](#), the [United States Bill of Rights](#) and [France's Declaration of the Rights of Man](#).<sup>[1]</sup>

In 1928, an [All Parties Conference](#) of representatives from Indian political parties proposed constitutional reforms for India. This 11-member committee, led by [Motilal Nehru](#), had been called into existence as a formal instrument to complement the widespread [civil disobedience](#) campaigns of the 1920s. These mass campaigns had originally been a response to the [Rowlatt Acts](#), which in 1919 had given the British colonial government the powers of arrest and detention, conduction of searches and seizures without warrants, restriction of public gatherings and censorship of the press. Demanding [dominion](#) status and elections under universal suffrage, the committee called for

guarantees of rights deemed fundamental, representation for religious and ethnic minorities and limitations on government powers.

In 1931, the [Indian National Congress](#), at its [Karachi](#) session, adopted resolutions defining, as well as committing itself to the defence of fundamental civil rights, including socio-economic rights such as [minimum wage](#), the abolition of [untouchability](#) and [serfdom](#).<sup>[21][3]</sup> Committing themselves to [socialism](#) in 1936, the leaders of the Congress party took examples from the [Soviet constitution](#), which inspired the fundamental duties of citizens as a means of collective, patriotic responsibility.

The task of developing a constitution for an independent India was undertaken by the Constituent Assembly of India, which composed of elected representatives under the presidency of [Rajendra Prasad](#). The assembly appointed a [constitution drafting committee](#) headed by [Bhimrao Ramji Ambedkar](#). The process was influenced by the adoption of the [Universal Declaration of Human Rights](#) by the [U.N. General Assembly](#) on 10 December 1948. The declaration called upon all member States to adopt these rights in their constitutions. The Fundamental Rights and Directive Principles were included in the final draft of the constitution promulgated on 26 November 1949, while the Fundamental Duties were later added to the constitution by the [42nd Amendment Act](#) in 1976.<sup>[4]</sup> Changes in Fundamental Rights, Directive Principles and Fundamental Duties require a [constitutional amendment](#), that must be passed by a two-thirds majority in both houses of [Parliament](#).

## [\[edit\]](#) Fundamental Rights

*Main article: [Fundamental Rights in India](#)*



[Jawaharlal Nehru](#) signing the [Constitution of India](#) on 24 January 1950

The Fundamental Rights — embodied in Part III of the constitution — guarantee civil liberties such that all Indians can lead their lives in peace as citizens of India. The six fundamental rights are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies.<sup>[5]</sup>

These include individual rights common to most [liberal democracies](#), incorporated in the fundamental law of the land and are enforceable in a court of law. Violations of these rights result in punishments as prescribed in the [Indian Penal Code](#), subject to discretion of the [judiciary](#). These rights are neither absolute nor immune from constitutional amendments. They have been aimed at overturning the inequalities of pre-independence social practises. Specifically, they resulted in abolishment of untouchability and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They forbid [human trafficking](#) and [unfree labour](#). They protect cultural and educational rights of ethnic and religious [minorities](#) by allowing them to preserve their languages and administer their own educational institutions.

All people, irrespective of race, religion, caste or sex, have the right to approach the [High Courts](#) or the [Supreme Court](#) for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. In public interest, anyone can initiate litigation in the court on their behalf. This is known as "[Public interest litigation](#)".<sup>[6]</sup> High Court and Supreme Court judges can also act on their own on the basis of media reports.

The Fundamental Rights emphasise equality by guaranteeing to all citizens the access and use of public institutions and protections, irrespective of their background. The rights to life and personal liberty apply for persons of any nationality, while others, such as the freedom of speech and expression are applicable only to the [citizens of India](#) (including [non-resident Indian](#) citizens).<sup>[7]</sup> The right to equality in matters of public employment cannot be conferred to [overseas citizens of India](#).<sup>[8]</sup>

Fundamental Rights primarily protect individuals from any arbitrary State actions, but some rights are enforceable against private individuals too.<sup>[9]</sup> For instance, the constitution abolishes untouchability and prohibits *begar*. These provisions act as a check both on State action and actions of private individuals. Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of national interest. In the *Kesavananda Bharati vs. state of Kerala case*, the Supreme Court ruled that all provisions of the constitution, including Fundamental Rights can be amended.<sup>[10]</sup> However, the Parliament cannot alter the basic structure of the constitution like secularism, democracy, federalism, separation of powers. Often called the "Basic structure doctrine", this decision is widely regarded as an important part of Indian history. In the 1978 *Maneka Gandhi v. Union of India* case, the Supreme Court extended the doctrine's importance as superior to any parliamentary legislation.<sup>[11]</sup> According to the verdict, no act of parliament can be considered a law if it violated the basic structure of the constitution. This landmark guarantee of Fundamental Rights was regarded as a unique example of judicial independence in preserving the sanctity of Fundamental Rights.<sup>[11]</sup>

The Fundamental Rights can only be altered by a constitutional amendment, hence their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures.<sup>[12]</sup> The imposition of a [state of emergency](#) may lead to a temporary suspension of the rights conferred by Article 19 (including freedoms of speech, assembly and movement, etc.) to preserve national security and public order. The President can, by order, suspend the right to constitutional remedies as well.

<a href="#">Rights</a>
<p><b>Theoretical Distinctions</b></p> <p><i>Conceptual Distinctions</i>  <a href="#">Natural and legal rights</a>  <a href="#">Claim rights and liberty rights</a>  <a href="#">Negative and positive rights</a>  <a href="#">Individual rights</a> and <a href="#">Group rights</a></p> <p><i>Substantial Distinctions</i>  <a href="#">Civil and political rights</a> and  <a href="#">Economic, social and cultural rights</a>  <a href="#">Three generations of human rights</a></p>
<p><b>Areas of Concern</b></p> <p><i>Particular Groups</i>  <a href="#">Animal rights</a> and <a href="#">Human rights</a>  <a href="#">Children's rights</a> and <a href="#">Youth rights</a>  <a href="#">Fathers' rights</a> and <a href="#">Mothers' rights</a>  <a href="#">Men's rights</a> and <a href="#">Women's rights</a></p> <p><i>Particular Rights</i>  <a href="#">Labor rights</a>  <a href="#">LGBT rights</a>  <a href="#">Reproductive rights</a>  <a href="#">Right of self-defense</a></p>
<hr/> <p>This box: <a href="#">view</a> • <a href="#">talk</a> • <a href="#">edit</a></p>



Huge rallies like this one in [Kolkata](#) are commonplace in [India](#).

## [\[edit\]](#) Personal rights

The right to equality is one of the chief guarantees given in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights, guaranteeing equality of all citizens before law, social equality, equal access to public areas, equality in matters of public employment, the abolition of untouchability and of titles.<sup>[13]</sup> However, reservations (i.e, quotas in jobs, education, etc.) can be made for women, children, [scheduled castes](#) and [scheduled tribes](#).

The State cannot discriminate against anyone in the matters of employment except for the implementation of any mandated quotas, though exceptions can be made where specific knowledge is required. To preserve religious freedom, the holder of an office of any religious institution should be a person professing that particular religion.<sup>[14]</sup> The right to equality in matters regarding public employment is not conferred to [overseas citizens of India](#).<sup>[8]</sup> The practise of untouchability has been declared an offence punishable by law. The State cannot confer any titles and the citizens of India cannot accept titles from a foreign State. Indian aristocratic titles such as *Rai Bahadurs* and *Khan Bahadurs* have been abolished. However, military and academic distinctions can be conferred on the citizens of India. Awards such as the *Bharat Ratna* "cannot be used by the recipient as a title."<sup>[15]</sup> A ruling by the Supreme Court on 15 December 1995 upheld the validity of such awards.



A statue of the legendary king [Manuneechi Cholan](#), who stood for fairness and justice, inside the [Madras High Court](#) campus.

The Right to freedom is stated in Articles 19, 20, 21 and 22 with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom encompasses the [freedom of expression](#), the [freedom to assemble](#) peacefully without arms, the freedom to form associations and unions, the freedom to move freely and settle in any part of the territory of India and the freedom to practise any profession.<sup>[161]</sup> Restrictions can be imposed on all these rights in the interest of security, decency and morality. The constitution guarantees the right to life and personal liberty. Protection with respect to conviction for offences, protection of life and personal liberty and the rights of a person arrested under ordinary circumstances<sup>[171]</sup> are laid down in the right to life and personal liberty.

The Right to freedom of religion'—covered in Articles 25, 26, 27 and 28—provides [religious freedom](#) to all citizens and preserves the principle of secularism in India. According to the constitution, all religions are equal before the State. Citizens are free to preach, practise and propagate any religion of their choice.<sup>[181]</sup> Several distinct and often controversial practises, such as the wearing and carrying of [kirpans](#) is included in the profession of [Sikhism](#) and protected under law.<sup>[181]</sup> Religious communities can set up charitable institutions of their own, subject to certain restrictions in the interest of public order, morality and health. No person can be compelled to pay taxes for the promotion of a religion and a State-run institution cannot impart education that is associated with a particular religion.

## [\[edit\]](#) Economic and social rights

The cultural and educational rights—given in Articles 29 and 30—are measures to protect the rights of ethnic and religious minorities. Any community that has a language and a script of its own has the right to conserve and develop them.<sup>[191]</sup> No citizen can be discriminated against for admission in State or State-aided institutions.<sup>[191]</sup> All religious and ethno-linguistic communities can set up their own educational institutions in order to preserve and develop their own culture.<sup>[201]</sup> In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution.<sup>[201]</sup> The right to education at elementary level has been made one of the Fundamental Rights under [right to life and personal liberty](#) by the 86th constitutional amendment of 2002.<sup>[211]</sup>

[Child labor](#) and [Begar](#) is prohibited under Right against exploitation.

The Right against exploitation, given in Articles 23 and 24 provides for the abolition of human trafficking,<sup>[221]</sup> and the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.<sup>[231]</sup> Child labour is considered a violation of the spirit and provisions of the constitution. *Begar* (forced and unfree labour), practised in the past by landlords, has been declared a crime punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is prohibited by law. An exception is made in employment without payment for services for public purposes, such as compulsory military [conscription](#).<sup>[221]</sup>

The Right to constitutional remedies empowers the citizens to approach a [court](#) of law to appeal against denial of the Fundamental Rights. For instance, in case of imprisonment, the person can ask the court to see if it is in accordance with the provisions of the law of the country. If the court finds that it is not, the person will be released from custody. This procedure of asking the courts to preserve or safeguard the citizens' Fundamental Rights can be done in various ways. The courts can issue [writs](#), namely [habeas corpus](#), [mandamus](#), [prohibition](#), [quo warranto](#) and [certiorari](#).<sup>[241]</sup> When a national or state emergency is declared, this right is suspended by the central government.

The Right to property was a former Fundamental Right under Article 32 before it was revoked by the 44th Amendment Act of 1978.<sup>[25]</sup> A new article, Article 300-A,<sup>[26]</sup> was added to the constitution which provided that no person shall be deprived of his property, except by the authority of law. If a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay any compensation. The aggrieved person will have no right to move the court under Article 32. The right to property is no longer a fundamental right, though it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law.<sup>[27]</sup>

## **[edit]** Directive Principles of State Policy

*Main article: [Directive Principles in India](#)*

The Directive Principles of State Policy, embodied in Part IV of the constitution, are directions given to the central and state governments to guide the establishment of a just society in the country. According to the constitution, the government should keep them in mind while framing laws, even though they are [non-justiciable](#) in nature. Directive Principles are classified under the following categories: [Gandhian](#), social, economic, political, administrative, legal, environmental, protection of monuments, peace and security.<sup>[28]</sup>

The Directive Principles act as a check on the government; theorised as a yardstick in the hands of the people to measure the performance of the government. Article 31-C,<sup>[29]</sup> added by the 25th Amendment Act of 1971, seeks to upgrade the Directive Principles.<sup>[30]</sup> If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid on the grounds that they take away the Fundamental Rights. In case of a conflict between Fundamental Rights and Directive Principles, if the latter aim at promoting larger interest of the society, the courts will have to uphold the case in favour of Directive Principles.<sup>[29]</sup>

The Directive Principles commit the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight [economic inequality](#).<sup>[31]</sup> The State must continually work towards providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, protection against exploitation and reduce the concentration of wealth and means of production from the hands of a few.<sup>[32]</sup> The State must provide free [legal aid](#) to ensure that opportunities for securing justice are not denied to any citizen for reason of economic or other disabilities.<sup>[33]</sup> The State should work for organisation of village [panchayats](#), provide the [right to work](#), [education](#) and public assistance in certain cases,<sup>[34]</sup> as well as the provision of just and humane conditions of work and maternity relief.<sup>[35]</sup> A living wage and safe working conditions for citizens must be ensured, as must their participation in the management of industries. The State is encouraged to secure a [uniform civil code](#) for all citizens,<sup>[36]</sup> provide free and compulsory education to children,<sup>[37]</sup> and to work for the economic uplift of [scheduled castes](#), [scheduled tribes](#) and [other backward classes](#).

The Directive Principles commit the State to raise the standard of living and improve public health.<sup>[38]</sup> It should also organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of [cows](#), [calves](#), other milch and draught cattle.<sup>[39]</sup> The State must safeguard the environment and wildlife of the country.<sup>[40]</sup> The State must ensure the preservation of monuments and objects of national importance and separation of judiciary from executive in public services.<sup>[41]</sup> The State must also strive for the maintenance of international peace.<sup>[42]</sup>

The Directive Principles have been amended to meet definite objectives. Article 45, which ensures *Provision for free and compulsory education for children*,<sup>[37]</sup> was added by the [86th Amendment Act, 2002](#).<sup>[21]</sup> Article 48-A, which ensures *Protection of the environment and wildlife*,<sup>[40]</sup> was added by the [42nd Amendment Act, 1976](#).<sup>[4]</sup>

## **[edit]** Fundamental Duties

The Fundamental Duties of citizens were added by the 42nd Amendment Act in 1976.<sup>[41]</sup> The ten Fundamental Duties—given in Article 51-A of the constitution—can be classified as either duties towards self, duties concerning the environment, duties towards the State and duties towards the nation.<sup>[43]</sup> The 11th Fundamental Duty, which states that every citizen "*who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years*" was added by the 86th constitutional amendment in 2002.<sup>[21]</sup>

Citizens are morally obligated by the constitution to perform these duties. However, these are non-justiciable, incorporated only with the purpose of promoting patriotism among citizens. These obligations extend not only to the citizens, but also to the State.<sup>[44][45]</sup> There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and [International Covenant on Civil and Political Rights](#). The Fundamental Duties obligate all citizens to respect the national symbols of India (including the constitution), to cherish its [heritage](#) and assist in its defence. It aims to promote the equality of all individuals, protect the environment and public property, to develop "scientific temper", to abjure violence, to strive towards excellence and to provide free and compulsory education.<sup>[46]</sup>

## [\[edit\]](#) Criticism and analysis

Any act of disrespect towards the [Indian National Flag](#) is illegal.

The Fundamental Rights have been criticised as inadequate in providing freedom and opportunity for all Indians. Many political groups have demanded that the [right to work](#), the right to economic assistance in case of unemployment and similar socio-economic rights be enshrined as constitutional guarantees,<sup>[27]</sup> that are presently listed in the [directive principles of state policy](#).<sup>[47]</sup> The right to freedom contains a number of limiting clauses and has been criticised for failing to check government powers<sup>[27]</sup> such as provisions of preventive detention and suspension of fundamental rights in times of [emergency](#). The phrases "security of State", "public order" and "morality" are unclear, having wide implication. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the constitution, leading to frequent litigations.<sup>[27]</sup> The [Maintenance of Internal Security Act](#) (1975) was strongly criticised for giving then-Prime Minister [Indira Gandhi](#) the authority to arrest opposition leaders following the declaration of [emergency in 1975](#). The [Prevention of Terrorism Act](#) (2002), now repealed,<sup>[48]</sup> has been criticised as unfairly targeting the [Muslim](#) community.<sup>[27]</sup> Initially, the Supreme Court provided extensive power to the State in its verdict to the *A. K. Gopalan vs. state of Madras* case in 1950. The Court held that howsoever unreasonable, a law was valid if made by a legislature competent to enact it.<sup>[11]</sup> If Parliament validly enacted a law permitting the State to kill without any judicial process, this would amount to "procedure established by law" and such killings would not violate the guarantee contained in Article 21.2. This interpretation was abandoned in a series of decisions starting from the 1970s and culminating in the judgement in 1978 *Maneka Gandhi v. Union of India*, which issued the *basic structure* doctrine.<sup>[11]</sup> In *D. K. Basu vs. state of West Bengal* the Supreme Court ruled that the limiting clauses of the constitution as well as international human rights instruments do not come in the way of the Court's awarding of compensation in the cases of illegal arrest or detention, protecting the rights of citizens in spite of prevailing circumstances.<sup>[49]</sup> The freedom to assemble peaceably and without arms is allowed, but in many cases, these meetings are broken up by the police if they become disruptive.<sup>[50][51]</sup>

[Freedom of press](#), meant to guarantee [freedom of expression](#), has not been included in the constitution.<sup>[27]</sup> Employment of child labour in hazardous environments has been reduced, but their employment in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit of the constitution in the eyes of many critics and human rights advocates, as more than 16.5 million children are being used as labour.<sup>[52]</sup> India was ranked 88 out of 159 countries in 2005, according to the degree to which [corruption](#) is perceived to exist among public officials and politicians.<sup>[53]</sup>

Efforts to implement the Directive Principles include the [Programme for the Universalisation of Elementary Education](#) and the [Five-Year Plans](#) have accorded the highest priority in order to provide free education to all children up to the age of 14. The 86th constitutional amendment of 2002 created Article 21-A, that seeks to provide free and compulsory education to all children aged 6 to 14 years.<sup>[21]</sup> The State runs welfare programmes such as boys' and girls' hostels for scheduled castes and scheduled tribes' students.<sup>[54]</sup> The year 1990–1991 was declared as the "Year of Social Justice" in the memory of B.R. Ambedkar.<sup>[55]</sup> The government provides free textbooks to students belonging to scheduled castes and tribes pursuing medicine and engineering courses. During 2002–2003, a sum of [Rs. 4.77 crore](#) (47.7 million) was released for this purpose.<sup>[56]</sup> In order to protect scheduled castes and tribes from discrimination, the government enacted the *Prevention of Atrocities Act* in 1995, prescribing severe punishments for such actions.<sup>[57]</sup>

Land reform legislations have been enacted several times to provide ownership rights to poor farmers.<sup>[58]</sup> Up to September 2001, more than 20 million acres (81,000 km<sup>2</sup>) of land had been distributed to scheduled castes, scheduled tribes and the landless poor. A core objective of the banking policy is to improve banking facilities in the rural areas.<sup>[59]</sup> The *Minimum Wages Act* of 1948 empowers government to fix minimum wages for people working across the economic spectrum.<sup>[60]</sup> The *Consumer Protection Act* of 1986 provides for the better protection of consumers. The act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, award relief and compensation wherever appropriate to the consumer.<sup>[61]</sup> The *Equal Remuneration Act* of 1976 provides for equal pay for equal work for both men and women.<sup>[62]</sup> The *Sampoorna Grameen Rozgar Yojana* (Universal Rural Employment Programme) was launched in 2001 to attain the objective of providing gainful employment for the rural poor. The programme was implemented through the [Panchayati Raj institutions](#).<sup>[63]</sup>

A system of elected village councils, known as [Panchayati Raj](#) covers almost all [states and territories of India](#).<sup>[64]</sup> One-third of the total number of seats have been reserved for women in Panchayats at every level; and in the case of [Bihar](#), half the seats have been reserved for women.<sup>[65]</sup> <sup>[66]</sup> Legal aid at the expense of the State has been made compulsory in all cases pertaining to criminal law, if the accused does not have the means to engage a lawyer.<sup>[33]</sup> The judiciary has been separated from the executive "in all the states and territories except [Jammu and Kashmir](#) and [Nagaland](#)."<sup>[41][56]</sup> India's foreign policy has been influenced by the Directive Principles. India supported the [United Nations](#) in peace-keeping activities, with the [Indian Army](#) having participated in 37 UN peace-keeping operations.<sup>[67]</sup>

The implementation of a [uniform civil code](#) for all citizens has not been achieved owing to widespread opposition from various religious groups and [political parties](#). The [Shah Bano case](#) (1985–86) provoked a political firestorm in India when the Supreme Court ruled that [Shah Bano](#), a Muslim woman who had been divorced by her husband in 1978 was entitled to receive [alimony](#) from her former husband under Indian law applicable for all Indian women. This decision evoked outrage in the Muslim community, which sought the application of the [Muslim personal law](#) and in response the Parliament passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 overturning the Supreme Court's verdict.<sup>[68]</sup> This act provoked further outrage, as jurists, critics and politicians alleged that the fundamental right of equality for all citizens irrespective of religion or gender was being jettisoned to preserve the interests of distinct religious communities. The verdict and the legislation remain a source of heated debate, with many citing the issue as a prime example of the poor implementation of Fundamental Rights.<sup>[68]</sup>

The Fundamental Duties have been criticised for being ambiguously worded, with the real meaning of phrases like "scientific temper" and "spirit of enquiry and reform" being debated. As the duties cannot be enforced through courts, their relevance to practical affairs is questioned. However, actions damaging public property and showing disrespect to the [National Flag](#) are offences punishable by law. Similarly, people may be called upon to defend the country by compulsorily recruitment to the armed forces of the country through [conscription](#).<sup>[46]</sup>

## [\[edit\]](#) See also

- [Fundamental Rights in India](#)

- [Directive Principles in India](#)
- [Constitution of India](#)
- [Writs in Indian law](#)
- [Human rights in India](#)

## **[edit]** Notes

[Wikisource](#) has original text related to this article:

[Fundamental Rights](#)  
[Directive Principles](#) and  
[Fundamental Duties](#)

*Note*<sup>o</sup>: The term "**State**" includes all authorities within the territory of India. It includes the [Government of India](#), the [Parliament of India](#), the Government and legislature of the [states of India](#). It also includes all local or other authorities such as Municipal Corporations, Municipal Boards, District Boards, [Panchayats](#) etc. To avoid confusion with the term [states](#), the administrative divisions, **State** (encompassing all the authorities in India) has been capitalized and the term [state](#) is in lowercase.

1. <sup>^</sup> <sup>^</sup> <sup>^</sup> Tayal, B.B. & Jacob, A. (2005), *Indian History, World Developments and Civics*, pg. A-23
2. <sup>^</sup> Gandhi, Rajmohen. *Patel: A Life*, 206.
3. <sup>^</sup> Dev, Arjun. *Social Science Part I: Textbook in History for Class X*, 79.
4. <sup>^</sup> <sup>a</sup> <sup>b</sup> <sup>c</sup> [42nd Amendment Act, 1976](#).
5. <sup>^</sup> [Constitution of India-Part III Fundamental Rights](#).
6. <sup>^</sup> ["Bodhisattwa Gautam vs. Subhra Chakraborty; 1995 ICHRL 69"](#). [World Legal Information Institute](#). Retrieved on [2006-05-25](#). This was the case where [Public interest litigation](#) was introduced (date of ruling 15 December 1995).
7. <sup>^</sup> Tayal, B.B. & Jacob, A. (2005), *Indian History, World Developments and Civics*, pg. A-25
8. <sup>^</sup> <sup>a</sup> <sup>b</sup> ["Citizenship \(Amendment\) Bill, 2003"](#) (PDF) 5. [Rajya Sabha](#). Retrieved on [2006-05-25](#).
9. <sup>^</sup> ["Bodhisattwa Gautam vs. Subhra Chakraborty; 1995 ICHRL 69"](#). [World Legal Information Institute](#). Retrieved on [2006-05-25](#). This was the case where Fundamental Rights were enforced against private individuals (date of ruling 15 December 1995).
10. <sup>^</sup> [Kesavananda Bharati vs. state of Kerala; AIR 1973 S.C. 1461, \(1973\) 4 SCC 225](#) — In what became famously known as the "Fundamental Rights case", the [Supreme Court](#) decided that the basic structure of the constitution was unamendable.
11. <sup>^</sup> <sup>a</sup> <sup>b</sup> <sup>c</sup> <sup>d</sup> ["Maneka Gandhi case"](#). [Sabrang.com](#). Retrieved on [2006-09-11](#).

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12. [^ Tayal, B.B. & Jacob, A. \(2005\), \*Indian History, World Developments and Civics\*, pg. A-24](#)
13. [^ Constitution of India-Part III Fundamental Rights.](#)
14. [^ Constitution of India-Part III Article 16 Fundamental Rights.](#)
15. [^ Basu, Durga Das \(1993\). \*Introduction to the Constitution of India\*. New Delhi: Prentice Hall of India.](#)
16. [^ Constitution of India-Part III Article 19 Fundamental Rights.](#)
17. [^ Constitution of India-Part III Article 22 Fundamental Rights.](#)
18. [^ <sup>a b</sup> Constitution of India-Part III Article 25 Fundamental Rights.](#)
19. [^ <sup>a b</sup> Constitution of India-Part III Article 24 Fundamental Rights.](#)
20. [^ <sup>a b</sup> Constitution of India-Part III Article 30 Fundamental Rights.](#)
21. [^ <sup>a b c d</sup> 86th Amendment Act, 2002.](#)
22. [^ <sup>a b</sup> Constitution of India-Part III Article 23 Fundamental Rights.](#)
23. [^ Constitution of India-Part III Article 24 Fundamental Rights.](#)
24. [^ Constitution of India-Part III Article 32 Fundamental Rights.](#)
25. [^ 44th Amendment Act, 1978.](#)
26. [^ Constitution of India-Part XII Chapter IV Finance, Property, Contracts and Suits](#)
27. [^ <sup>a b c d e f</sup> Tayal, B.B. & Jacob, A. \(2005\), \*Indian History, World Developments and Civics\*, pg. A-33](#)
28. [^ Constitution of India-Part IV Directive Principles of State Policy.](#)
29. [^ <sup>a b</sup> Constitution of India-Part III Article 31-C Fundamental Rights.](#)
30. [^ 25th Amendment Act, 1971.](#)
31. [^ Constitution of India-Part IV Article 38 Directive Principles of State Policy.](#)
32. [^ Constitution of India-Part IV Article 39 Directive Principles of State Policy.](#)
33. [^ <sup>a b</sup> Constitution of India-Part IV Article 39A Directive Principles of State Policy.](#)
34. [^ Constitution of India-Part IV Article 41 Directive Principles of State Policy.](#)
35. [^ Constitution of India-Part IV Article 42 Directive Principles of State Policy.](#)
36. [^ Constitution of India-Part IV Article 44 Directive Principles of State Policy.](#)
37. [^ <sup>a b</sup> Constitution of India-Part IV Article 45 Directive Principles of State Policy.](#)
38. [^ Constitution of India-Part IV Article 47 Directive Principles of State Policy.](#)
39. [^ Article 48](#)
40. [^ <sup>a b</sup> Constitution of India-Part IV Article 48A Directive Principles of State Policy.](#)
41. [^ <sup>a b</sup> Constitution of India-Part IV Article 50 Directive Principles of State Policy.](#)
42. [^ Constitution of India-Part IV Article 51 Directive Principles of State Policy.](#)
43. [^ Constitution of India-Part IVA Fundamental Duties.](#)
44. [^ Tayal, B.B. & Jacob, A. \(2005\), \*Indian History, World Developments and Civics\*, pg. A-35](#)
45. [^ Sinha, Savita, Das, Supta & Rashmi, Neeraja \(2005\), \*Social Science – Part II\*, pg. 30](#)
46. [^ <sup>a b</sup> Constitution of India-Part IVA Article 51A Fundamental Duties.](#)
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56. [^ <sup>a b</sup> Tayal, B.B. & Jacob, A. \(2005\), \*Indian History, World Developments and Civics\*, pg. A-45](#)
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67. <sup>^</sup> ["India and United Nations"](#). [Permanent Mission of India to the United Nations](#). Retrieved on [2006-06-29](#).
68. <sup>^</sup> <sup>^</sup> <sup>^</sup> ["Shah Bano legacy"](#), pp. 1. Retrieved on [2006-09-11](#).

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## Introduction

The development of Public Interest Litigation (PIL) in the country has very recently uncovered its own pitfalls and drawbacks. The genuine causes and cases of public interest have in fact receded to the background and irresponsible PIL activists all over the country have started to play a major but not a constructive role in the arena of litigation. They try to utilise this extraordinary remedy, available at a cheaper cost, as a substitute for ordinary ones. This mini article briefly narrates the ill effects of the emerging malady and possible remedies.

Justice without force is impotent;  
force without justice is tyranny  
-Pascal in Pensees.

There are times when even justice brings harm with it  
-Sophocles in Electra.

Injustice anywhere is a threat to justice everywhere  
-Martin Luther King,Jr.

Till 1960s and seventies, the concept of litigation in India was still in its rudimentary form and was seen as a private pursuit for the vindication of private vested interests. Litigation in those days consisted mainly of some action initiated and continued by certain individuals, usually, addressing their own grievances/problems. Thus, the initiation and continuance of litigation was the prerogative of the injured person or the aggrieved party. Even this was greatly limited by the resources available with those individuals. There was very little organised efforts or attempts to take up wider issues that affected classes of consumers or the general public at large.

However, all these scenario changed during Eighties with the Supreme Court of India led the concept of public interest litigation (PIL). The Supreme Court of India gave all individuals in the country and the newly formed consumer groups or social action groups, an easier access to the law and introduced in their work a broad public interest perspective.

### **Public Interest Litigation (PIL)-The legal history:**

Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. 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. In other words, only the affected parties had the locus standi (standing required in law) to file a case and continue the litigation and the non affected persons had no locus standi to do so. 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, all these 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. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental of this juristic revolution of eighties to convert the apex court of India into a Supreme Court for all Indians. And as a result any citizen of India or any consumer groups or social action groups can approach the apex court of the country seeking legal remedies in all cases where the interests of general public or a section of public are at stake. Further, public interest cases could be filed without investment of heavy court fees as required in private civil litigation.

### **PIL- A BOON:**

1. In Public Interest Litigation (PIL) vigilant citizens of the country can find an inexpensive legal remedy because there is only a nominal fixed court fee involved in this.

2. Further, through the so-called PIL, the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare and environment.

#### **ABUSE OF PIL:**

However, the development of PIL has also uncovered its pitfalls and drawbacks. As a result, the apex court itself has been compelled to lay down certain guidelines to govern the management and disposal of PILs. And the abuse of PIL is also increasing along with its extended and multifaceted use.

Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous cases could be filed without investment of heavy court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs.

Just as a weapon meant for defence can be used equally effectively for offence, the lowering of the locus standi requirement has permitted privately motivated interests to pose as public interests. 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.

#### **STEPS NECESSARY:**

With the view to regulate the abuse of PIL the apex court itself has framed certain guidelines (to govern the management and disposal of PILs.) The court must be careful to see that the petitioner who approaches it is acting bona fide and not for personal gain, private profit or political or other oblique considerations. The court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain political objectives. Political pressure groups who could not achieve their aims through the administrative process or political process may try to use the courts (through the means of PILs) to further their closely vested aims and interests.

There may be cases where the PIL may affect the right of persons not before the court, and therefore in shaping the relief the court must invariably take into account its impact on those interests and the court must exercise greatest caution and adopt procedure ensuring sufficient notice to all interests likely to be affected.

At present, the court can treat a letter as a writ petition and take action upon it. But, it is not every letter which may be treated as a writ petition by the court. The court would be justified in treating the letter as a writ petition only in the following cases-

- (i) It is only where the letter is addressed by an aggrieved person or
- (ii) a public spirited individual or
- (iii) a social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights. Under these circumstances the Supreme Court Of India is required to step in by incorporating safe guards provided by the civil procedure code in matters of stay orders /injunctions in the arena of PIL.

In the landmark case of Raunaq International Limited v/s IVR Construction Ltd, Justice Sujata V Manohar rightly enunciated that - when a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further must provide for the reimbursement of costs to the public in case ultimately the litigation started by such an individual or body fails. In other words the public must be compensated both for the delay in the implementation of the project and the cost escalation resulting from such delay.

**Conclusion:**

Public Interest Litigants, all over the country, have not taken very kindly to such court decisions. They do fear that this will sound the death-knell of the people friendly concept of PIL. However, bona fide litigants of India have nothing to fear. Only those PIL activists who prefer to file frivolous complaints will have to pay compensation to then opposite parties. It is actually a welcome move because no one in the country can deny that even PIL activists should be responsible and accountable. It is also notable here that even the Consumers Protection Act, 1986 has been amended to provide compensation to opposite parties in cases of frivolous complaints made by consumers. In any way, PIL now does require a complete rethink and restructuring. Anyway, overuse and abuse of PIL can only make it stale and ineffective. Since it is an extraordinary remedy available at a cheaper cost to all citizens of the country, it ought not to be used by all litigants as a substitute for ordinary ones or as a means to file frivolous complaints

## **Public interest litigation**

"Public interest Litigation", in simple words, means, litigation filed in a court of law, for the protection of "Public Interest", such as pollution, Terrorism, Road safety, constructional hazards etc.

Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a Public Interest Litigation can be filed. For e.g.

- Violation of basic human rights of the poor
- Content or conduct of government policy
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights.

When can a public interest litigation be filed?

A public interest litigation can be filed only in a case where "Public Interest" at large is effected. Merely because, only one person is effected by state inaction is not a ground for Public interest litigation

These are some of the possible areas where a PUBLIC INTEREST LITIGATION can be filed.

- Where a factory / industrial unit is causing air pollution, and people nearby are getting effected.
- Where, in an area / street there are no street lights, causing inconvenience to commuters
- .Where some "Banquet Hall" plays a loud music, in night causing noise pollution.
- Where some construction company is cutting down trees, causing environmental pollution.
- Where poor people, are affected, because of state government's arbitrary decision to impose heavy "tax".
- For directing the police / Jail authorities to take appropriate decisions in regards to jail reforms, such as segregation of convicts, delay in trial, production of under trial before the court on remand dates.
- For abolishing child labor, and bonded labor.
- Where rights of working women are affected by sexual harassment.
- For keeping a check on corruption and crime involving holders of high political officer.
- For maintaining Roads, Sewer etc in good conditions.
- For removal of Big Hoarding and signboard from the busy road to avoid traffic problem.
- Recently a Public Interest Litigation has been filed, for directing the "Delhi Traffic Police" to stop the method of sending challans to address by post, as it is being misused.

## **Who Can File a Public Interest Litigation?**

- Earlier it was only a person whose interest was directly affected along with others, whereby his fundamental right is affected who used to file such litigation.
- Now, the trend has changed, and, any Public-spirited person can file a case (PUBLIC INTEREST LITIGATION) on behalf of a group of person, whose rights are effected.

- It is not necessary, that person filing a case should have a direct interest in this PUBLIC INTEREST LITIGATION

For e.g. a person in Bombay, can file a PUBLIC INTEREST LITIGATION for, some labor workers being exploited in Madhya Pradesh or as someone filed a PUBLIC INTEREST LITIGATION in supreme court for taking action against Cracker factory in Sivakasi Tamil Nadu, for employing child labor or the case where a standing practicing lawyer filed a PUBLIC INTEREST LITIGATION challenged a government policy to transfer High Court judges and similarly a lawyer filed a PUBLIC INTEREST LITIGATION for release of 80 under trials in a jail, who had spent more number of years in jail, than the period prescribed as punishment for offence, for which they were tried.

It is clear that, any person, can file a PUBLIC INTEREST LITIGATION on behalf of group of affected people. However it will depend on every facts of case, whether it should be allowed or not.

#### **Against Whom a Public Interest Litigation Can be Filed?**

- A PUBLIC INTEREST LITIGATION can be filed only against a State / Central Govt., Municipal Authorities, and not any private party.
- However "Private party" can be included in the PUBLIC INTEREST LITIGATION as "Respondent", after making concerned state authority, a party.

For example - If there is a Private factory in Delhi, which is causing pollution, then people living nearby, or any other person can file a PUBLIC INTEREST LITIGATION against:

- Government of Delhi
- State Pollution Control Board, and
- Also against the private factory
- However, a PUBLIC INTEREST LITIGATION can not be filed against the Private party alone concerned state Govt. /, and state authority has to be made a party.

#### **Procedure to File a Public Interest Litigation**

A "Public Interest Litigation", is filed in the same manner, as a writ petition is filed.

#### **In High Court**

If a Public Interest Litigation is filed in a High court, then two (2) copies of the petition have to be filed. Also, an advance copy of the petition has to be served on the each respondent, i.e. opposite party, and this proof of service has to be affixed on the petition.

#### **In Supreme Court**

If a Public Interest Litigation is filed in the Supreme court, then (4)+(1) (i.e. 5) sets of petition has to be filed opposite party is served, the copy only when notice is issued.

#### **Court Fees**

A Court fee of RS. 50, per respondent (i.e. for each number of opposite party, court fees of RS. 50) has to be affixed on the petition.

#### **Procedure**

- Proceedings, in the PUBLIC INTEREST LITIGATION commence and carry on in the same manner, as other cases.
- However, in between the proceedings if the judge feels he may appoint a commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems, etc.

- After filing of replies, by opposite party, and rejoinder by the petitioner, final hearing takes place, and the judge gives his final decision.

### **Can a Letter Explaining Certain Facts to Chief Justice be Treated as A Public Interest Litigation**

- In early 90's there have been instances, where judges have treated a post card containing facts, as a PUBLIC INTEREST LITIGATION some of them are :
- Letter alleging the illegal limestone quarrying which devastated the fragile environment in the Himalayan foothills around Mussoorie, was treated as a PUBLIC INTEREST LITIGATION
- A journalist complained to the Supreme Court in a letter, that the national coastline was being sullied by unplanned development which violated the central government directive was treated as a PUBLIC INTEREST LITIGATION

### **The Present Scenario:**

In the past, many people have tried to misuse the privilege of PUBLIC INTEREST LITIGATION and thus now the court generally require a detailed narration of facts and complaint, & then decide whether to issue notice and call the opposite party.

- However as there is no statute laying down rules and regulations for a PUBLIC INTEREST LITIGATION Still the court can treat a letter as a PUBLIC INTEREST LITIGATION
  - However the letter should bring the true & clear facts, and if the matter is really an urgent one, the court can treat it is a PUBLIC INTEREST LITIGATION
  - But still it depends upon facts and circumstances, and court has the entire discretion.

### **Reliefs available by Public Interest Litigation**

There are many kinds of remedies, which can be given in a PUBLIC INTEREST LITIGATION, to secure the public interest, at large. They are:

#### **Interim Measures**

The court can afford an early interim measure to protect the public interest till the final order for example:

- Release of under trial on personal bonds ordering release of all under trial who have been imprisoned for longer time, than the punishment period, free legal aid to the prisoners, imposing an affirmative duty on magistrates to inform under trial prisoners of their right to bail and legal aid. Or
- Closure of Industrial plant emitting poisonous gas, setting up victim compensation scheme, ordering the plaint reopening subject to extensive directions etc. Or
- Prohibiting cutting of trees or making provisions for discharge of sewage, till the disposal of final petition.

Relief in most of the PUBLIC INTEREST LITIGATION cases in the Supreme Court is obtained through interim orders.

#### **Appointing a Committee**

- The court may appoint a committee, or commissioner to look into the matter, and submit its report.
- Such committee or commissioner may also be given power to take cognizance of grievances and settle it right in the public intent.

#### **Final Orders**

The court may also give final orders by way of direction to comply within a stipulated time.

### **Can a Writ Petition be Treated as a Public Interest Litigation?**

Yes, a writ petition filed by the aggrieved person, whether on behalf of group or together with group can be treated as a PUBLIC INTEREST LITIGATION however,

- The writ petition should involve a question, which affects public at large or group of people, and not a single individual.
- Only the effected /Aggrieved person can file a writ petition.
- There should be a specific prayer, asking the court to direct the state Authorities to take note of the complaint /allegation.

**Public Interest Litigation in High Court or Supreme Court**

- Both the High court and supreme court have the power to entertain a PUBLIC INTEREST LITIGATION
- Since there are no statutes or rules, there cannot be a specific difference, as to which court will have jurisdiction on the PUBLIC INTEREST LITIGATION
- It will purely and solely depend on the "Nature of the case", if the question involves only a small group of people being effected by action of State authority, the PUBLIC INTEREST LITIGATION can be filed in high court. For e.g. if there is a sewage problem in a locality effecting 50 families, the PUBLIC INTEREST LITIGATION can be filed in High court.
- If a large section of people is effected whether by State Government or Central Government, PUBLIC INTEREST LITIGATION can be filed in Supreme Court For e.g. placing a ban on adult movies, prohibition industrial unit from causing pollution etc.