

## **“PIL- The Plight of Downtrodden in the Global Era”**

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### **ABSTRACT**

In Indian law, the term "litigation for the preservation of the public interest" implies "litigation for the protection of the public interest." It is a type of lawsuit filed in a court of law by the court or any other private person, rather than the injured party. The individual who is the victim of a breach of his or her right does not need to personally approach the court in order for the court to exercise its jurisdiction. In the Public Interest Litigation is the authority that courts have granted to the people as a result of judicial activism. Such scenarios can arise when the victim lacks the financial means to file a lawsuit, or when his right to go to court has been curtailed or encroached upon. Cases can be started on the petition of any public-spirited citizen, or the court can take cognizance of the subject and proceed suo motu. This article discusses the plight of the downtrodden in the global era. It also throws light on the scope, features, origin and the role of judiciary. Further, the article critically analyse the issue of frivolous PILs and gave certain recommendation on the matter.

### **INTRODUCTION**

#### **A. Prelude-**

As the great saying of **Dr B.R Ambedkar** goes,

**“For a successful revolution, it is not enough that there is discontent. What is required is a profound and thorough conviction of the justice, necessity and importance of political and social rights.”**

Even though it is the year 2021, the legal system in India is not equally accessible to all, and the various obstacles faced in approaching the courts of law, such as the complex procedure of courts, high-priced lawyers, stamp fee, the traditional locus standi rule, inordinate delays in hearing cases even where life and personal liberty are at stake, and so on, such barriers in getting access to justice naturally frighten away the downtrodden and poor sections of the population.

While those impacted have no say in the decision-making process, the lack of legal counsel frequently prohibits them from having practical access to the courts, denying them the only arena in which they can exercise their fundamental rights against the institutions that dominate them. With these issues in mind, the Supreme Court of India (and the Indian judiciary in general) introduced the concept of Public Interest Litigation (PIL) in the course of its judicial activism,

with the goal of providing complete justice to the poor and downtrodden and assisting them and the general public in gaining access to justice and courts of law.

**Hussainara Khatoon v. State of Bihar**<sup>1</sup> was the first Public Interest Litigation case, filed in 1979, and focused on the inhumane circumstances in jails and among convicts awaiting trial. An advocate filed the Public Interest Litigation after reading an article in the Indian Express newspaper on the plight of thousands of under-trial detainees in Bihar's jails.

Over 40,000 convicts on trial were released as a result of these proceedings. The right to prompt justice arose as a fundamental right that these detainees had been denied. In the following examples, the identical set pattern was used. In India, the Public Interest Litigation (PIL) is seen as a result of the Supreme Court's judicial activism. It was first used in the early 1980s, and Justices V.R. Krishna Iyer and P.N. Bhagwati were among the first to use it.

## **B. Literature Review**

Throughout this research, the researcher has read several books, articles, journals, newspapers, commission reports, and Supreme Court and High Court rulings.

## **C. Research Objective**

The following are the research's objectives:

- To examine India's legal system
- To examine Indian judicial interpretations of the concept of PIL
- To understand the historic evolution of the concept of Public Interest Litigation.
- To assess the impact of the judgments delivered on PILs on the poor and downtrodden sections of the society, and society at large.
- To understand the problem of frivolous PILs and ways to avoid them.

## **D. Research Questions**

- Whether the introduction of PIL has really helped in protecting the rights of the downtrodden?
- Whether Public Interest Litigations are increasingly being exploited to promote private interests in the name of public interests?
- Whether the concept of PIL needs any specific changes to enhance for its timely and effective enforcement?

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<sup>1</sup> (1980) 1 SCC 81.

## **E. Scope of Study**

The study's goal will be to discuss about the introduction of concept called Public Interest Litigation (PIL) by the Supreme Court of India and its subsequent evolution over the years, and the ways in which it has helped the downtrodden in getting access to justice in recent times, usually even without having to appear in the courts of law. The research will in understanding how the relaxation of rules such as locus standi has facilitated the access to justice for the poor and downtrodden. The research will also aid in identifying the gaps in the effective enforcement of the concept of PIL and the dilemma that the judiciary and Supreme Court of India have in dealing with it. The research will include recommendations and proposals for improving the efficiency of the concept of PIL and preventing its misuse to promote “individual interests” at large, as well as recommendations and pro active steps for the judiciary and the legislature on ways to make it more efficient, through the legislation or through judicial practice.

## **F. Research Methodology**

This study's research methodology will be largely doctrinal in character. The majority of the research will be conducted using primary and secondary materials from various libraries and institutes. The researcher has collected literature for this study by reading a variety of books, journals, publications, and articles.

## **MEANING**

A lawsuit that serves the public interest is known as public interest litigation (PIL), also known as Social Action Legislation (SAL) or Class Action Legislation (CAL). It is a lawsuit that upholds the rights of a huge number of individuals, possibly millions, or corrects a wrong that has been done to them. There is no specific or detailed definition for the word Public Interest Litigation in any of the laws passed by the Indian Parliament to date, or even in any of the laws passed by other countries. PIL refers to a case brought in court by a public spirited individual with the goal of obtaining assistance for a poor and underprivileged person or group of people.

Any citizen can launch a public case by filing a petition before the Supreme Court under Article 32 of the Indian Constitution.

- In the High Court of India, under Article 226 of the Indian Constitution.
- In a magistrate's court, pursuant to section 133 of the Criminal Procedure Code.<sup>2</sup>

PIL has evolved swiftly over the years and has been a source of access to justice and redress, particularly for the poor and disadvantaged sectors of the general public. It demonstrated that, in

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<sup>2</sup> *Discussing the path of Nyaya Panchayats to PILs to Lok Adalats*, IPLEADER (Dec 19, 2021), <https://blog.ipleaders.in/discussing-path-nyaya-panchayats-pils-lok-adalats/?amp=1&nonamp=1>.

some cases, something can be done, and that citizens can often make their voices heard with the help of skilled legal representation.

### **Relaxation of Locus Standi-**

The adoption of PIL in India was aided by the easing of the customary "Locus Standi" norm. According to this norm, only the person whose rights have been infringed can seek redress in court, although PIL is an exception to this rule. Under the PIL, any public-spirited citizen or social organisation can petition the court to enforce the rights of any person or group of people who are unable to seek relief from the court due to poverty, ignorance, or a socially or economically disadvantaged position.<sup>3</sup>

As a result, any member of the public with "sufficient interest" can file a PIL in order to enforce the rights of others and seek redress for a shared grievance.

The true objectives behind PIL are:

1. Justification of law and order
2. Working with viable admittance to equity for the socially and economically more vulnerable sectors of the general public, and
3. Significant acknowledgement of important freedoms.

In an open interest case, the court decides whether the candidate has a "sufficient interest" in the circumstance, for public good and no personal interest in the scenario.

### **PIL ORIGIN IN USA, UK AND INDIA**

In the 1960s, the United States pioneered and developed the concept of Public Interest Litigation (PIL). It was created in the United States to provide legal representation to previously unrepresented groups and interests, such as the poor, environmentalists, consumers, racial and ethnic minorities, and others.<sup>4</sup>

#### **A. Origin in The United States of America**

From the 1800s to the 1900s, there were significant advances in America, including moderate Era reformers like Lovis Brandeis, the watershed social equality case, the American common

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<sup>3</sup> Indian Polity 5th edition M. Lakshminath.

<sup>4</sup> *Concept and definition of Public Interest* , LEGAL SERVICE INDIA (Dec 18, 2021), <https://www.legalserviceindia.com/legal/article-838-concept-and-definition-of-public-interest-litigation.html>.

freedoms, and so on. The importance of public interest legislation in providing legitimate representation to unrepresented individuals cannot be overstated.

During the 1960s, the word was used to describe socially, politically, and economically disadvantaged and needy people, but there was a lot of development and projects that helped create and build the public interest law theory. In 1876, a legal aid organisation for the poor was established, and foreigners from the German Society in New York also assisted them legally.

In 1876, the German Immigrants' Organisation, the first known legal aid society, founded the first legal aid office in New York.<sup>5</sup>

Initially, underprivileged clients were given legal assistance on a humanitarian basis. Reginald Heber Smith, a lawyer for the Boston Legal Aid Society, released a book called "Justice for the Poor," which sparked several groundbreaking new ideas.

The concept of "collective responsibility" on the part of the bar to provide opportunities to the unrepresented masses was a significant advancement in public law.

As a result, by 1917, there were forty-one legal assistance organisations across the country, and by 1965, there were 157, servicing practically every major city.

In the case of **Betts v Brady**, the Supreme Court of the United States declared that courts should assign legal aid on a case-by-case basis, addressing the subject of Public Interest Law and legal aid.

However, in the case of **Gideon v Wainwright, 1965**, the Supreme Court of the United States overturned this ruling, noting that the typical person "lacks both the talent and information adequately to prepare his defence, even if he has a perfect one." At every stage of the proceedings against him, he requires the assistance of lawyers."

After a while, the court broadened the right to cover misdemeanours and capital offences. Although the case's result ensures the right to counsel in criminal cases, it leaves the subject of civil help unresolved. The campaign to expand legal help to civil issues gained traction, and many states, including New York and California, developed comprehensive legal aid programmes.

The legal aid services were a new type of institution that developed public interest law, moving away from the concept of individual service performed on a volunteer basis. The lawyers were aware that they would be paid, but they prioritised commercial practise at the time. As a result, legal assistance initially failed to achieve its purpose of providing free legal services to all the

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<sup>5</sup> Legal Aid in the United States, <https://en.wikipedia.org/wiki?curid=21969715> (Last Visited on Dec 19, 2021).

poor. Regional Heber Smith first proposed the idea of legalised guide administration to poor people in 1919.

Rapid industrialisation and social and political upheavals happened during the twentieth century. Moderate pioneers gained widespread acceptance of the principle that government should consider welfare assistance to society. When deciding on a decision and framing technique, Louis Brandeis suggested that courts and regulatory bodies examine the public interest. He began the fight as a "Public Spirited Person," claiming that legal counsellors have a social responsibility. This viewpoint on Brandies becomes an important topic in public interest law later on. Assemblies are also subjected to legislative processes that clearly violate "equal protection" and "due process of law."

The first decade of the twentieth century was a time when governments were trying to figure out how to negotiate social and financial transformation. The United States was transitioning from a monetary, rural, and social foundation to a metropolitan and modern framework. Minorities, crippled individuals, females, and disturbed groups, on the other hand, couldn't afford the cost of a private lawyer for public interest law advice. In recent years, there has been an attempt to shift responsibility for poor people and communities from the government to state legislators.<sup>6</sup>

Public centres are collaborating with local communities to mobilise individuals to assess the need for state-level government arrangements to assure critical human assistance.

The **Citizens Commission on Civil Rights** was established in 1982 as one of the most innovative new efforts to monitor and report on the growth of national civil rights policies during the Reagan administration. Its goal was to supplement the work of the US Commission on Civil Rights in terms of oversight. The government and the organised bar have increasingly come to favour public interest law.

In the United States today, there are various legal aid provisions for criminal and civil law. Defendants under criminal prosecution (with respect to the charges) who cannot afford to engage an attorney are provided legal aid as well as legal representation in criminal matters. Civil legal assistance is not mandated by federal law, but many public interest law firms and community legal clinics give it at a reduced fee or for free. Federally sponsored legal services, pro bono lawyers, and private volunteers are some of the numerous types of legal aid available.

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<sup>6</sup> Evolution and Development of Public Interest Litigation and the Role of the Supreme Court, [http://shodhganga.inflibnet.ac.in/bitstream/10603/208765/14/14\\_conclusions.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/208765/14/14_conclusions.pdf) (last visited on Dec 20, 2021).

## **B. Origin in the United Kingdom**

Judges in the early 17th century in the United Kingdom used to interpret rather than enact legislation. Jeremy Bentham, who despised judge-made law, started the tradition. As a result, the courts adopted the rule of literal interpretation of the 'clear and unambiguous.' This resulted in a slew of ludicrous and inequitable outcomes. Lord Reid, Lord Denning, and Lord Wilberforce established the idea of 'purposive interpretation' in the early 1960s, transforming the duty of the judge from mere interpretation to purposive interpretation of law.<sup>7</sup>

They breathed new life into English administrative law, applying ancient principles of natural justice and fairness to public authorities and private groups exercising public power, while rejecting claims of administrative discretion.<sup>8</sup>

The judiciary's expanded role was criticised for being overly broad. The judiciary, on the other hand, had shown restraint. Judges should consider common sense, legal principle, and public policy in that order while making laws, according to Lord Reid. The scope of judicial review in English courts remained limited due to the lack of a codified constitution and a bill of rights.

Currently, the Attorney General is the single protector of the public interest in British society in the British court system. As a result, PILs, also known as '**Relator Action**', can only be filed in the name of the Attorney General.

The attorney general of England is a minister in the government of the day the office is vacated with a change of government, and has a seat in parliament.

If there is a private interest in a petition, the person cannot file it without the authorization of the Attorney General. If the permission is denied, the party has no other option except to file the petition. In the context of PIL, the law of Locus Standi has been significantly eased, allowing any member of the public who has a sufficient interest and is operating in a bona fide manner for any public injury may file a PIL. The Attorney General, acting on his own initiative or issuing a proclamation to restrain a governmental entity from exceeding its powers. In cases of public interest litigation, the duty of decision-making amongst political leaders, public officials, and courts is critical.

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<sup>7</sup> M. P Jain- The Supreme Court and Fundamental Rights, in Verma and Kusum (eds), Fifty Years of the Supreme Court of India, Oxford University Press, New Delhi, 2002.

<sup>8</sup> Payel Rai Chowdhury, *Judicial activism and human rights in India: a critical appraisal*, TANDFONLINE (Dec 18, 2021), <http://www.tandfonline.com/doi/abs/10.1080/13642987.2010.482912>.

**R. vs. Metropolitan Police Commissioner (Ex-Parte Blackburn) <sup>9</sup>**

In the city of London, a gaming club was operating in flagrant contravention of the gambling prohibition law. As a result, Blackburn launched a public interest lawsuit against the police commissioner, accusing him of negligence and failure of duty. He petitioned for a mandamus order directing the police commissioner to take the necessary action.

It was contended on behalf of the police commissioner that Blackburn had no direct or indirect stake in the matter, and hence had no Locus Standi to bring the petition. The court, however, disregarded the police commissioner's argument and granted the writ since Blackburn's petition was motivated by public interest and asked for the prohibition of illegal and anti-social behaviours that were against public conscience.

In public interest litigation, Lord Denning stated that whether or not the petitioner has a "**sufficient interest**" in the case is a matter for the court to judge at its discretion. When a regular citizen brings a complaint to the court against a local body, a labour union, or a government agency, alleging negligence or vindictiveness on the part of its officials. The court must hear the petition because it is usually initiated by a thoughtful and vigilant individual who is acting in the public interest despite having no personal stake in the outcome.

The current position in the United Kingdom, as evidenced by cases filed after 1982, is that a standard rule of standing is applied to all remedies, with the rule being whether the petitioner has a sufficient stake. The question of what constitutes a sufficient interest in the way to which the application relates appears to be a mixed fact/law issue.

It is a question of truth and degree, as well as the relationship between the applicant and the subject of the application, in light of all the circumstances. Today's Locus Standi requirement is that anybody can apply, such as a member of the public who has been persuaded or a particular party or individual who has a personal grievance. The remedy is totally optional if the application is brought by a stranger. Only a busybody is not eligible for relief.

**C. Origin in India**

Perhaps the most notable innovation in legal services in the past is public interest litigation. Justice Krishna Iyer, in 1976, in India, sowed the roots of public interest litigation. Following that, the Indian court system began to create the concept of public interest litigation. Following the seeds' effect, the Supreme Court established the rule of public litigation through a series of landmark cases. The judges' judicial activism, particularly that of Justice Bhagwati, Justice Krishna Iyer, and others, deserves credit for popularising public interest issues.

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<sup>9</sup> R. v Metropolitan Police Commissioner (Ex-Parte Blackburn) 1971. IWL.R. 1037.

One of the most notable features of Indian PIL is the loosening of Locus Standi norms. However, to observe how the idea of standing has been used in the United States, Locus Standi is referred to as "standing" in the United States. When it comes to the usage of Locus Standi, there are differences between the Supreme Courts of the United States and India.

The Supreme Court of the United States generally uses the doctrine of standing to dismiss public interest lawsuits; however, the Supreme Court of India has gone out of its way to soften the

doctrine. As a result of the Locus Standi guidelines, more matters involving public interest can be heard. The end of the Emergency provided the Supreme Court with a period of regeneration. Also, in India, unlike the United Kingdom, where the attorney general judges whether an application filed in the name of public interest is genuinely for public interest or for personal gain, the judiciary decides, giving it more validity because the decision is made directly by the courts of law.

Between 1980 and 1984, new fields of interest and judicial actions arose; in the name of socialism, constitutional conscience and the rule of law, it selected the poor, the weak, and the oppressed. Following the emergency, the Supreme Court was faced with a slew of public-interest lawsuit proceedings, with the court liberalising locus standi criteria. During this time period, public interest litigation arose. Five judges in particular are frequently cited as pioneering a more progressive and socialist judicial period:

**Justice Bhagwati, Justice Krishna Iyer, Justice Desai, Justice Thakar, and, Justice Chinnappa Reddy.**

Justice Krishna Iyer and Justice Bhagwati were the most vocal proponents and inventors of public interest litigation, out of the five justices. Justice Krishna Iyer is well-known for his work on the rights of prisoners. Justice Bhagwati is an advocate of judicial activism and is well-known for his work on social justice. In the spirit of several of its public interest litigation decisions, the Supreme Court has stated that socialism has become a reality. This was the start of public-interest litigation, which has grown in popularity since then.<sup>10</sup>

The courts are now carefully analysing opposing public interests before hearing writ petitions; nonetheless, the previous trend resulted in the liberalisation of the standards of standing, or **Locus Standi**. One of the most notable aspects of Indian public interest litigation is the relaxing of these rules. Justices who are or have been involved in matters involving public interest litigation are proud of it, because they, along with the court, are supporters of social justice for the impoverished and downtrodden.

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<sup>10</sup> Courting the People: Public Interest Litigation in Post-Emergency India (South Asia in the Social Sciences) by Anuj Bhuwania. .

The court must be satisfied that the writ petition meets some basic requirements for PIL, as the letter is addressed by the aggrieved person, a public spirited individual, or a social action group for the enforcement of legal or constitutional rights to anyone who is unable to approach the court for redress.<sup>11</sup>

In India, public interest litigation has developed several distinct traits that are not found anywhere else. For example, the courts have accepted as writ petitions under Article 32 or Article 226-

**Letters, postcards, and telegrams referring to any legal grievance of the poor masses written to the judge or the court by any public spirited person.**

Second, in India, the social litigation movement is essentially "judge generated," urging active

assertion of judicial power to alleviate the suffering of the masses. In India, the public interest litigation (PIL) movement is primarily focused with exposing state persecution, oppression, and exploitation of unorganised poor people, as well as governmental lawlessness, and assisting them in obtaining justice. For example, in cases of undertrials, bonded labour, pavement dwellers, inmates of protective homes, prisoners, widows, children, dowry victims, SC and ST caste members, and so on. It has prompted legislators to pass legislation in the area of legal aid.

**FEATURES OF PIL**

The following are some of PIL's features:

1. Public Interest Litigation (PIL) is a strategic arm of the legal aid movement that aims to bring justice to the destitute masses that make up humanity's low-visibility area.
2. PIL is a completely different type of litigation than regular litigation, which is essentially adversarial in nature and involves two litigating parties, one of whom makes claims and seeks relief against the other, and the other of whom denies such claims and reliefs.
3. Public interest litigation is used to rectify public injury, enforce public responsibility, protect social/collective/diffuse rights and interests, or vindicate public interest.
4. The court's involvement in PIL is more assertive than it is in traditional actions, i.e., it is creative rather than passive, and it takes a more positive approach to determining acts.
5. Though the court in PIL has a degree of flexibility not seen in ordinary private law litigation trials, whatever procedure the court chooses, it must be one that is familiar with judicial tenets and characteristics.

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<sup>11</sup> *Public Interest Litigation*, DRISHTI IAS (Dec 17, 2021), <https://www.drishtiias.com/to-the-points/Paper2/public-interest-litigation>.

**SCOPE OF PIL**

In 1998, the Supreme Court of India established a set of guidelines for considering PILs (public interest litigation). In 2003, these guidelines were updated. According to them, only letters or petitions that fall within the following categories shall be considered as PILs:

1. Children who have been neglected
2. Collaborative Work
3. Petitions filed from prison alleging harassment, requesting pre-mature release and demanding release after serving 14 years in prison, death in prison, release on personal bond, transfer, and a prompt trial as a fundamental right.
4. Petitions against police officers who refuse to record a case, harass police officers, and die in police custody.
5. Workplace regulations (except in individual cases).
6. Petitions filed by members of scheduled castes and tribes, as well as economically disadvantaged people, alleging harassment or torture of villagers by co-villagers or police.
7. Petitions against women's atrocities, such as bride harassment, bride-burning, rape, murder, kidnapping, and so on.
8. Petition signatures from riot victims.
9. A pension for the family.
10. Environmental pollution, disruption of ecological balance, narcotics, food adulteration, heritage and culture preservation, antiques, forests and wildfires, and other concerns of public concern.

There are also other topics that will not be treated as PIL, such as-

1. Tenant-landlord issues.
2. Service-related issues, such as pensions and gratuities.
3. Complaints against federal, state, and municipal government departments and agencies, excluding those connected to item 1. up to ten (10)
4. Acceptance into medical schools and other educational institutes.
5. Petitions for expedited hearings in High Court and Subordinate Court proceedings.

## **ROLE OF INDIAN JUDICIARY IN THE PROMOTION OF PIL AND AID TO THE DOWNTRODDEN**

The Indian judiciary holds a unique and prestigious place in the world. It must continue to be placed on a high pedestal. The judiciary is a powerful and necessary tool for safeguarding citizens' rights. The country's courts have not only upheld the Constitution's rights, but have also created new and beneficial rights on occasion. The court rulings played an essential role in bringing forth the spirit of basic rights entrenched in the Constitution, as well as uncovering hidden facts regarding the conceptions and notions of fundamental rights, and they were successful to a large extent. Even those who are not directly impacted or aggrieved can support the cause of those who are. As a result, everyone can profit from the right to simple and quick justice.

Over the years, the Supreme Court has established special benches to hear Public Interest Litigations on a daily basis in order to provide prompt justice.

### **A.) Judicial Activism and Evolution of Public Interest Litigation (With Landmark Cases)**

The power of the judiciary to assess the validity of legislative enactments and executive directives of both the federal and state governments is known as judicial activism. If they are determined to be in violation of the constitution (*ultra vires*), the judiciary can declare them illegal, unconstitutional, and invalid, and the government will be unable to implement them. For the following reasons, judicial review is required:

- a) To safeguard the concept of the constitution's supremacy.
- b) To keep the federal government in balance (balance between the Centre and States).
- c) To safeguard citizens' fundamental rights.

Public Interest Litigation is a manifestation of judicial activism. The advent of Public Interest Litigation is one of the key components of the approach of Judicial Activism that is attributed to the higher judiciary in India.

The judgement of **Justice Bhagwati in M.C. Mehta v. Union of India**<sup>12</sup> opened the doors of India's Apex Court to the oppressed, exploited, and downtrodden in India's countryside and slums. The impoverished in India can petition the Supreme Court for the enforcement of their Fundamental Rights by submitting a letter to any judge of the court, even if they do not have an affidavit.<sup>13</sup>

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<sup>12</sup> AIR 1987 SC 1087.

<sup>13</sup> *Judicial Process in India*, LEGAL SERVICE INDIA (Dec 12, 2021), <http://www.legalservicesindia.com/article/464/Judicial-Process-in-India.html>.

Even while large sums of money are being spent on new legal aid programmes at the federal and state levels, the court has been able to bring legal help to the doorsteps of millions of Indian residents, something that neither the executive nor the legislative has been able to do.

Through the vigorous growth of PIL jurisprudence, the Supreme Court assumed the role of guardians of citizen's liberties and assisted in the development of legal principles such as-

- **The polluter pays principle,**
- **The Precautionary Principle, and,**
- **The Principle of awarding compensation for constitutional wrongs.**

### **Landmark Cases**

#### **i.) Indra Sawhney vs Union of India,<sup>14</sup> (or the **Mandal case**)**

It is one of the most significant cases in India, both in the field of PIL and social justice (in form of reservations). The petitioner, Indira Sawhney, filed a PIL against the and changes made by the government in reservation policies by its new Office Memorandum (O.M.) on 25<sup>th</sup> September 1991, like the inclusion of economic criteria by the government for reservation in schools and colleges. The matter got referred to a special nine-judge bench.<sup>15</sup>

By a 6: 3 majority, the Supreme Court's Constitution Bench ruled that:

- 1.) 27 % reservation in government posts for backward classes is legitimate, but only for initial appointments, and the total reservation cannot exceed 50 percent.
- 2.) As a result, the Court largely upheld the two challenged notifications (OM) dated August 13, 1990 and September 25, 1991 as legitimate and enforceable, subject to the criteria set forth in the ruling, which include the exclusion of socially advanced persons (Creamy layer) among BC's.
- 3.) The Supreme Court overturned the Congress government's policy of reserving government posts for economically disadvantaged people among the upper classes.
- 4.) The Court struck down the Congress Government's reserving Government jobs for economically backward classes among higher classes.
- 5.) The majority believed that, while 50% should be the rule, certain exceptional circumstances arising from the country's and people's tremendous diversity should not be overlooked. In this case, some leniency with the rule may be required.<sup>16</sup>

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<sup>14</sup> AIR 1993 SC 477.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

**ii.) People's Union for Democratic Rights (PUDR) v. Union of India<sup>17</sup>**

In this decision, the court allowed Public Interest Litigation at the request of "public spirited

individuals" for the enforcement of constitutional and legal rights of any person or group of people who are unable to approach the court for relief due to their social or economic disadvantage. Public interest litigation is an element of the participatory justice process, and standing in civil action of that nature requires a warm welcome at the judicial door.

**iii.) S.P. Gupta Vs. Union of India (Judges Transfer Case)<sup>18</sup> -**

The Supreme Court of India acknowledged bar associations' locus standi to file PILs in this case. They had a legitimate interest in contesting the judicial transfer procedure in this case.

**iv.) Vishaka and others vs State of Rajasthan, 1997<sup>19</sup> -**

This case involved the rape of a social worker. Here, the Supreme Court made a significant judgement on sexual harassment against women. Some of the guidelines (also called **Vishakha Guidelines**) are as follows: -

1. It is the employer's or other responsible people' responsibility to safeguard female employees from sexual harassment at work and in other organisations.
2. The court also developed a sexual harassment term. Physical contact and approaches; b) a demand or request for sexual favour; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical, verbal, or physical-like conduct are all examples of sexual harassment.
3. The court also advised all employers, whether public and private, on how to take preventative steps.
4. What type of criminal action is required for this offence, as suggested by the court?
5. Disciplinary action should be taken against the perpetrator.
6. A complaint system was suggested by the court.
7. A complaints committee must be established.
8. Workers must be self-motivated.
9. Female employees must be knowledgeable of their rights.
10. The court created a guideline in the case of third-party harassment.
11. The federal and state governments are urged to enact precise legislation in this area.
12. No rights granted by the Human Rights Act of 1993 will be violated by these rules.

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<sup>17</sup> AIR 1982 SC 1473.

<sup>18</sup> AIR 1982 SC 149.

<sup>19</sup> AIR 1997 SC 3011.

The court ordered that, in order to safeguard and enforce working women's rights to gender equality, the following principles and conventions be rigorously implemented in all workplaces. These directions would be legally binding and enforced until adequate legislation was enacted to fill the void.<sup>20</sup>

**v.) Bandhua Mukti Morcha v. Union of India and Others, 1984<sup>21</sup> -**

A PIL was filed in this matter, emphasising the horrific practise of bonded labor/child labour practised by quarries in Faridabad, Haryana, where the workers were forced to work in hazardous conditions. The Supreme Court found the petition to be true and issued the following orders to the government of Haryana, the Central Government, and other administrative authorities:

- Within six weeks after the judgment, the Haryana government must form a vigilance committee in each division of the district to verify compliance with Section 13 of the Bonded Labour Act, 1976, and appoint a district magistrate to identify bonded labour in accordance with the law.
- The Central and State Governments must work together to ensure the execution of the Minimum Wages Act, 1948, and the Central Government's concerned offices must make surprise visits at least once a week.
- The Central Board of Workers Education will hold camps on a regular basis to teach workers about their legal rights and benefits.

**B) Recent important cases related to PIL-**

**a) Criminal Justice Society of India vs Union of India, 2019<sup>22</sup> -**

Although the case is still pending before the Supreme Court, it has the potential to become one of the recent landmark cases because the issue of manual scavenging has been a source of worry for the court.

The petitioners asked the court to give them instructions on how to proceed with their case.

- The Centre, the states, and the Union Territories, as well as Chief Divisional Personnel Officers of the Indian Railways, should keep track of the actual number of people engaged in manual scavenging, as well as the number of people who have died while doing so since 1993, so that FIRs can be filed under IPC Section 304 read with IPC Section 107/119 in all such cases.

<sup>20</sup> *Judicial Activism in the Area of Women Empowerment*, LEGAL SERVICES INDIA (Dec 16, 2021), <http://legalservicesindia.com/article/article/judicial-activism-in-the-area-of-women-empowerment-1154-1.html>.

<sup>21</sup> AIR 1984 SC 802.

<sup>22</sup> Writ Petition (Civil) No. 1262/2018.

The applicants have significantly that, despite a 1993 prohibition on the practise, it continues, and that Manual Scavengers are exposed to inhumane working circumstances, including being compelled to work in sewage/pits without protective equipment. This exposes them to chronic or acute diseases, as well as accidents for which no medical care is available, and may lead to the premature death of manual scavengers.

The Supreme Court described the situation as "serious," and ordered all states and UTs to

respond within four weeks. However, only about 13 of the 40 respondents have filed an affidavit, and the Court has stated that while it cannot compel anyone to file counter affidavits, it would proceed and draw adverse inferences against them.

b.) **TJ Bhanu vs State of Maharashtra, 2021<sup>23</sup>** -

At this case, an activist, Mr. TJ Bhanu, filed a Public Interest Litigation in the Bombay High Court, emphasising the state of Maharashtra's lack of proper policies.

The state administration had been chastised by the bench, who pointed out that the affidavit it produced was silent about homeless mentally ill people and whether they were included in the 1761 vaccinated people. It ordered the state to file a better affidavit within two weeks, with steps to contact such people.

The court also demanded an explanation from the central government as to why no proper decision was made on vaccination of the mentally ill, noting that-

"The federal government's (May 27) recommendation excludes mentally ill people." Why don't you come up with a policy to vaccinate mentally ill if we don't choose to vaccinate mentally ill and he is left to decide?", and also the fact that the issue was regarding homeless persons too as there was no mechanism to identify if they were infected with Covid.

c.) **Dipika Hagatram Sahani v. Union of India & Others, 2021<sup>24</sup>** -

Mrs. Deepika Jagatram Sahani, anguished by the closing of the anganwadi community system, which provided nutrition to children under the age of six, pregnant women, breastfeeding mothers, and adolescent girls, filed a Public Interest Litigation. The Supreme Court granted the following directions after the petitioner filed to allow for the reopening of anganwadis:

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<sup>23</sup> PIL No.11473-2021.

<sup>24</sup> Writ Petition (Civil) No. 1039 of 2020.

1. The Government of India, Ministry of Women and Child Development, and all States/Union Territories that have not yet opened Anganwadi Centers beyond the containment zone must decide to do so on or before 31.01.2021.
2. The decision to close Anganwadi Centres in any State/Union Territory shall be made only when the State Disaster Management Authority of the State directs that no Anganwadi Centres be opened in the State located outside the containment zone.
3. Anganwadi Centers in the containment zone are not to be opened until the containment is maintained.
4. All States/Union Territories should guarantee that nutritional standards as set forth in Schedule II of the National Food Security Act of 2013 are met by providing nutritional assistance to pregnant women, breastfeeding mothers, and malnourished children.
5. All States/Union Territories shall issue required orders for the monitoring and supervision of Anganwadi Centres to ensure that the benefit reaches the beneficiaries, and each district shall establish a Complaint Redressal Mechanism.

**d.) Anun Dhawan and others versus Union of India, 2019**<sup>25</sup>-

In this case, the petitioners sought directions to all States and Union Territories to formulate schemes for the establishment of community kitchens to assist in overcoming the problem of hunger deaths across India, citing various census and statistical reports to assert that malnutrition and hunger were soaring at an alarming rate in the country, and that many children under the age of five died every day due to hunger and malnutrition. It was also stressed that the petitioners were not seeking to replace any current programmes, but rather wanted community kitchens to serve as additional means for delivering healthy meals to the poor and those who die from hunger.

During the current COVID-19 lockdown periods, this petition gained a lot of traction, becoming a topic of particular interest and concern for the Supreme Court, which has taken a proactive role in ensuring that community kitchens are established as soon as possible, especially in light of an increase in hunger-related deaths during the lockdown period.

As a result, the plea was eventually modified to request that the Centre and states **set up pan-India temporary community kitchens at the Block level** in the wake of the covid-19 outbreak to guarantee that no one is forced to sleep on an empty stomach in such challenging times.

Despite many interventions by the Central and State Governments, hunger, malnutrition, and starvation issues still exist in the country.

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<sup>25</sup> Writ Petition (Civil) No. 1103/2019.

The Supreme Court imposed an additional cost of Rs five lakh each on six states (**Madhya Pradesh, Maharashtra, Manipur, Orissa, Goa, and Delhi**) in 2021 for failing to comply with its directions to file their affidavits in this PIL due to repeated failures of the states to file their replies on the establishment of community kitchens across the country. The court had previously assessed costs against these states for failing to comply with court directions.

It has also been suggested that these institutions be established as Public Private Partnerships (PPPs) to more effectively utilise funding under Section 135 of the Companies Act, 2013.

### **CRITICISM OF FRIVOLOUS PILs FILED IN THE NAME OF PUBLIC INTEREST**

As the notion of a PIL has grown in popularity, there has also been an increase in the number of frivolous PILs filed in the name of public interest but serving a person's personal interests at large. In 2010, the Supreme Court, outraged by this behaviour and in keeping with its constitutional role of judicial restraint, established the following principles to prevent the misuse of PIL:<sup>26</sup>

1. The Court shall promote genuine and bona fide PIL while effectively discouraging and restricting the use of PIL for non-legal reasons.
2. Before hearing the PIL, the court should verify the petitioner's credentials and be pleased with the petition's substance.
3. Before considering the petition, the court must be convinced that it is in the public interest.
4. The court shall ensure that petitions involving higher and greater public interest, seriousness, and urgency are prioritised above other petitions.
5. The court should make certain that the PIL is intended to address actual public harm or injury. It should also ensure that the filing of the PIL is not motivated by personal gain or a private or indirect motivation
6. The filing of frivolous petitions and petitions for ulterior objectives by busybodies must be discouraged by imposing exemplary fees or implementing other creative means to control frivolous petitions and petitions submitted for ulterior motives.

The following are some of the objections levelled towards PILs:

1. In countless situations, irresponsible citizens have been spotted impairing the substance of PIL and using it as a weapon for getting fame, sometimes even in the guise of assisting the poor and disadvantaged. One of the primary issues with this type of litigation is that,

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<sup>26</sup> State of Uttaranchal vs Balwant Singh Chaupal, 2010 3 SCC 402 .

rather of using the instrument constructively, the litigants utilise it as a means of being famous or gaining attention.

2. Another concern is the amount of time it takes to process PILs filed in the form of letter petitions, prompting many NGOs and lawyers to call for structural changes in the way PIL cells operate.

In the case of **Nilima Priyadarshini v. State of Bihar**<sup>27</sup>, a letter written by a person who had been wrongfully held was presented to the court two and a half months after the PIL request had been received. Another important institutional flaw is the ever-changing bench structure.

**4. Symbolic Justice** - In some cases, the PIL's directions are not followed, lowering the judiciary's reputation. The Supreme Court has made orders concerning sexual harassment, arrest procedures, and other issues, yet it is frequently unable to enforce them.

#### **BRIEF FINDINGS AND RECOMMENDATIONS**

Public Interest Litigation has yielded incredible results over the years that were unfathomable three decades ago. Bonded labourers, women convicts beaten during trials, humiliated inmates of protective women's homes, beggars, and many more have benefited from judicial intervention. PIL is still a relatively new process that is undergoing a lot of change (mainly for the better) as the Supreme Court of India's (and the Indian Judiciary in general) practise of judicial activism becomes more successful and innovative over time. PIL has made a significant contribution to increasing government responsibility for the poor and downtrodden's human rights. Over time, the concept of PIL has grown as a "Rambaan" for the destitute and disadvantaged.

The PIL also establishes a new jurisprudence of governmental accountability for constitutional and legal infractions that harm the interests of the community's weakest members. Over time, it has become clear that the concept of PIL, which began as a means of raising the voice and concerns of the oppressed and facilitating their access to justice, has evolved into a means of social, economic, and political change in society, all while keeping the public's welfare, particularly that of the downtrodden, in mind.

However, in keeping with its constitutional practise and judicial restraint, the judiciary should be cautious in its application of PILs to avoid Judicial Overreach, which is a violation of the principle of Separation of Power, and ensure that its practise of judicial activism is done while keeping in mind its limitations under judicial restraint, as many PILs are filed on matters

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<sup>27</sup> AIR 1987 SC 2021.

outside the court's perview, such as enforcement of economic policies, and ensure that its practise of judicial activism is done while keeping

It is also necessary to discourage frivolous PILs with vested interests. Another important change that would undoubtedly help the PIL filing process would be to improve the functioning of PIL cells, and both the judiciary and the legislature should play a proactive role in ensuring that the infrastructure of PIL cells is improved, so that PILs can reach the court on time and justice can be served to the aggrieved.

Another crucial factor that would undoubtedly assist would be for the Apex Court to keep a close eye on the implementation of its prior directives in all situations, particularly when it comes to defending the rights and welfare of society's underprivileged.

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