

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 3 | Issue 5

---

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Public Interest Litigation: An Abused Jurisprudence

---

VASUNDHARA SHARAN<sup>1</sup> AND KUSHAGRA JAIN<sup>2</sup>

## ABSTRACT

*Adhering to the socialist model, and subsequently, aiming to accelerate and improve the socio-economic revolution persisting in the late 80's, the Supreme Court of India fashioned an activist role since the commencement of PIL, simplified the complex procedure and completely changed the landscape of the Indian legal system. Public Interest Litigation, arising out of dire necessity to preserve and protect the rights of the backward constituents of the society, has observed a steady transgression from a tool of use to a weapon of abuse. Delving into its genesis, the authors study its birth in the Hussainara Khatoon case, the agenda and the ideology behind it, only to observe its systematic dismantling and limitless expansion, and the consequent, abuse deliberated by the Court in Balwant Singh Chauhan case. The research paper, therefore, through a thorough understanding of the jurisprudence of Public Interest Litigation in India, coupled with its practice and expansion, seeks to exhibit and analyse its stance and standing in today's system, in context of the latter's inception and its propounded features and rationale. The authors conclude with optimism, hope and trust towards the subject, its flag bearers- the judiciary and the masses, while devising methods and suggestions to protect and further the jurisprudence of Public Interest Litigation.*

**Keywords:** *Public Interest Litigation, Indian Legal System, Abuse, Socio- Economic Revolution*

## I. INTRODUCTION

*“Social Action Litigation is a socio-economic movement generated by the judiciary to reach justice especially to the weaker sections of the society for whom even after two and a half decades of independence justice is merely a testing illusion.”*

- Professor I.P. Massey<sup>3</sup>

India is a nation of countless differences, segregations and paradoxes.<sup>4</sup> The protection of rights and the subsequent legal process involved in the same, has been observed to be intimidating

---

<sup>1</sup> Author is a student at Symbiosis Law School, Noida, India.

<sup>2</sup> Author is a student at Symbiosis Law School, Noida, India.

<sup>3</sup> IP MASSEY, ADMINISTRATIVE LAW 121 (7th ed., EBC Publication) (2012).

<sup>4</sup> Zachary Holladay, *Public Interest Litigation in India as a Paradigm for Developing Nations*, 19(2) Indiana J. Of Global Legal Studies 555, 555 (2012).

for the aggrieved. The whole process, consisting of innumerable complexities, and nuances is overwhelming and can be traumatic for people coming from weak or marginalised sectors of the society.<sup>5</sup>

Therefore, to eradicate these issues persisting with the legal system, along with the situation prevailing at the inception of the subject in question, two prominent and historical judges of the Apex Court, namely, Justice Bhagwati and Iyer, formulated the groundwork for the birth of Public Interest Litigation in India.<sup>6</sup> The report, noting the fallacies and inadequacies of the neglect and difficulties of the existing legal mechanism in providing aid to the the issues and problems faced by the poor of the country,<sup>7</sup> acknowledged the dire requirement of a refined legal system assisting ‘the socio- economic conditions prevailing in the country.’<sup>8</sup>

Public Interest Litigation (*hereinafter* PIL), a concept which revolutionised the constitutional jurisprudence, as observed on the outset by the Supreme Court and after nearly forty years of practice, has been designed to provide representation and protection to the weak, marginalised, unprivileged, and exploited sections of the society, by appealing directly to one of the High Courts or to the Supreme Court.<sup>9</sup> Furthering the democratic set up, it championed the civil society’s role and responsibility towards propagation of human rights, and uplifting marginalised sections of society,<sup>10</sup> through active participation and scrutiny in governmental decision making and actions.<sup>11</sup>

J. Bhagwati argued that insisting on a rigid legal procedure “*in a country like India beset by problems of poverty, illiteracy, deprivation and exploitation would be to place fundamental rights beyond the reach of the common man.*”<sup>12</sup> Public Interest Litigation, came forth as a mechanism which simplified the long, technical and anachronistic procedures associated with the judicial system, while modifying the traditional practice of *locus standi*, overcoming

---

<sup>5</sup> ASHOK H. DESAI & S. MURALIDHAR, *SUPREME BUT NOT INFALLIBLE – ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA* 159 (Oxford University Press, 2000) (2000).

<sup>6</sup> Jeremy Cooper, *Poverty and Constitutional Justice: The Indian Experience*, 44 *Mercer Law Review* 611, 614-615 (1993).

<sup>7</sup> P.N. Bhagwati & K. Iyer, *Report on National Judicature: Equal Justice-Social Justice*, 128 (1977).

<sup>8</sup> *People’s Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

<sup>9</sup> Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 8 *Wash. U. Global Stud. L. Rev.* 1, 2 (2009).

<sup>10</sup> Aharon Barak, *A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 *Harvard Law Review* 16, 107-108 (2002).

<sup>11</sup> Adil Hamid Lone, *Judicial Activism and Public Interest Litigation in India and Issues Involved*, 3(1) *JCIL* 1, 25 (2018).

<sup>12</sup> P.P. Craig and S.L. Deshpande, *Rights, Autonomy and Process: Public Interest Litigation in India*, 9(3) *Oxford Journal of Legal Studies* 356, 364 (1989).

evidentiary problems, widening the purview of Article 32 of the Constitution and the subsequent, remedies granted to the same.<sup>13</sup>

Time and again, with the motive of providing access to justice to all strata and constituents of the society,<sup>14</sup> the judiciary has emphasised that PIL, acting as a vehicle of social revolution, is not an adversarial but a collaborative and cooperative project, wherein the concerned parties should work together to realise, understand and eradicate the difficulties faced by the affected, disadvantaged sections of the society.<sup>15</sup>

## II. BACKGROUND AND RISE OF PILS

*“We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective.”*

- Justice P.N. Bhagwati<sup>16</sup>

India's legal system, like numerous other facets, was inspired by the Anglo Saxon system of jurisprudence, and posed a sense of unfamiliarity and complexity for its citizens.<sup>17</sup> The following decades owing to the cumbersome procedures along with a vast percentage being uneducated, observed various difficulties prevailing with the system, in the form of general unawareness about ones' legal rights, exorbitant legal fees, and inadequate intent and subsequently, representation of poor and marginalised people.<sup>18</sup> This led to a situation where the majority did not have proper access to justice.<sup>19</sup>

The founders of the Constitution, too, emphasised on the significance on the fundamental rights and the DPSPs. Article 14, setting forth equality before the law and equal protection of law, propagated the socialist and democratic agenda of the document. Article 21 too signifies the

---

<sup>13</sup> Vijaashri Sripati, *Human Rights in India Fifty Years after Independence*, Denver J. Int. L. & P. 93, 118-125 (1997).

<sup>14</sup> Lone, *supra* note 9, at 23.

<sup>15</sup> S.P. SATHE, *JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS: TRANSGRESSING BORDERS AND ENFORCING LIMITS* 207-208 (Oxford India Paperbacks) (2002).

<sup>16</sup> S. P. Gupta v. Union of India, AIR 1982 SC 149.

<sup>17</sup> Bandhu Mukti Morcha v. Union of India, (1984) 3 SCC 161.

<sup>18</sup> Susan D. Susman, *Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation*, 13 WIs. INT'L L.J. 57, 64-65 (1994).

<sup>19</sup> *Id.*

citizens' right to live free from exploitation.<sup>20</sup> The same was to be supported by the DPSPs which bestowed on the State the responsibility of promoting social welfare and justice, and securing an operational legal system promoting justice, equal opportunity and representation, and socio-economic equality in context of the same.<sup>21</sup> However, it was observed that the mentioned guarantees and actions will suffice to be meaningless if they were unenforceable by the weaker, downtrodden sections of the society.

The protection and fulfilment of the Fundamental Rights and DPSP's, respectively, remained at major crossroads leading unto the Emergency proclaimed by Mrs. Gandhi in 1975. The Court was labelled as an impediment to the socialism which Mrs. Gandhi claimed to propagate and protect, as it restricted Executive's actions in furtherance of DPSP's which were against the fundamental rights of the citizens.<sup>22</sup> The Fundamental rights, guaranteed and protected by the Supreme Court, were seen as an obstacle to the social revolution enumerated under the provisions of the DPSPs, which were the duty of the State primarily.<sup>23</sup> This resulted in major political discourse between the judiciary and the Executive, which was sown back by the birth of PIL.

The aftermath of the Emergency saw a partnership between the judiciary and the government wherein the Court helped in constitutionally backing the DPSPs and its fulfilment, subsequently, checking the actions of the State in pursuit of the same.<sup>24</sup> Committed to fulfil the objectives under the DPSPs, the Supreme Court became active in adopting the said path, and formulated the tool that was titled Public Interest Litigation. PIL was observed as a conscious effort to transform the adversarial system which acted as a hindrance towards providing justice, guaranteeing fundamental rights and assuring the directive principles, into a system which would fulfil these promises made towards a majority of the illiterate, marginalised and indignant citizens.<sup>25</sup>

Prior to the birth of PIL, the system only permitted the aggrieved party to access the courts to remedy the violation/ grievance. This drastically changed when the Supreme Court in 1981, in the *Judges Transfer* case that year, eased the rule of *locus standi*, extended the access to seek justice to "public-spirited citizens" comprising of both- ones who were representing the

---

<sup>20</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

<sup>21</sup> *Bacchan Singh v. State of Punjab*, AIR 1981 SC 1325.

<sup>22</sup> Anuj Bhuwania, *Courting the People: the Rise of Public Interest Litigation in Post- Emergency India*, 34(2) *Comparative Studies of South Asia Africa and the Middle East* 314, 320 (2014).

<sup>23</sup> *Id.*, at 322.

<sup>24</sup> Lawrence W. Beer, *Constitutional Systems in Late Twentieth Century Asia* 416 (University of Washington Press) (1992).

<sup>25</sup> GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: THE CORNERSTONE OF A NATION* 50 (Oxford University Press, New Delhi, 1999) (1999).

marginalised, poor and oppressed sections, and those approaching the courts for public interest.<sup>26</sup>

Scholar Granville Austin believed that Supreme Court had to be functionally and actively involved in fulfilling the objective of socio-economic justice espoused by PILs. It must aim to bring social justice, equal access and representation, within the reach of every constituent sect of the society.<sup>27</sup>

This belief was whole-heartedly observed in the first phase of the subject, wherein the PIL propelled the goal and objective set of achieving the social transformation/revolution that the Constitution and its founders had expected to achieve.<sup>28</sup> Numerous cases ranging from *Hussainara Khatoon v. State of Bihar*,<sup>29</sup> *S.P. Gupta v. Union of India*, *Indian Banks' Association*,<sup>30</sup> *M.C Mehta v. Union of India*<sup>31</sup> and many more saw the dream becoming a reality where PIL was serving as a vehicle for the creation and enforcement of rights, essential and pertinent to sustain the democracy prevailing.<sup>32</sup>

### III. DECLINE

*“Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged.”*

- Justice Dalveer Bhandari<sup>33</sup>

The downfall of Public Interest Litigations can be back to 1990's which experienced humongous changes in both, its practice and its chemistry in application. Since its commencement, it was riddled with technical formalities and confusions, observed as a tool, convenient and malleable, increasingly deployed by both, the judges and the citizens, many a

---

<sup>26</sup> *S. P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>27</sup> *S. P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>28</sup> Adil Hamid Lone, *Judicial Activism and Public Interest Litigation in India and Issues Involved*, 3(1) JCIL 1, 12 (2018).

<sup>29</sup> (1980) 1 SCC 98.

<sup>30</sup> AIR 1982 SC 149.

<sup>31</sup> 1987 SCR (1) 819.

<sup>32</sup> Zachary Holladay, *Public Interest Litigation in India as a Paradigm for Developing Nations*, 19(2) Indiana J. Of Global Legal Studies 555, 558 (2012).

<sup>33</sup> *State of Uttaranchal v. Balwant Singh Chauhal*, (2010) 3 SCC 402.

times under the farce of being for “the people”.<sup>34</sup> Further, the purview of issues which could be dealt by the Court via the PIL forum expanded tremendously, with spheres of environment, education, sexual harassment, governance and administration, accountability and rule of law, being brought under the umbrella of protection. The Supreme Court, to control this upsurge, even issued notifications curtailing the matters to be brought in via PILs, but later lapsed into a dichotomy by allowing subjects outside the issued limit.<sup>35</sup> This led to an unconventional and unsystematic approach taken by the highest court in the Country and led to a haphazard application of the PIL forum.

This phase saw a monstrous misuse of the forum, reaching a disturbing level, wherein the Court, after a point had to resort to imposition of fines and penalties to act as a deterrence for unscrupulous PILs for selfish and private purposes.<sup>36</sup> The following were observed as the reasons for this transgression into a project, dangerous and increasingly misused.

1. PIL, a forum open to susceptibility, where due to its wide array of matters, frivolous cases can be filed without complex processes or any exorbitant court fees. It, therefore, has been found as a convenient tool of harassment, which has increased burden on the court, the aggrieved and the legal system. It negates the harsh reality of the low per capita judge rate, which adds to the taxing systematic burden on the judiciary.
2. In recent years, the Court, through PIL, has adjudicated over matters concerning general public policy, with an omnibus of issues and without no special emphasis on any sect or constituent of the society.<sup>37</sup> Genuine causes, towards varied sects, took a backseat, due to the suspicion generated due to an array of scrupulous cases filed by privately motivated interests in the disguise of the so-called public interests, which further worsened the situation.
3. This phase also saw petitioners approaching the court to seek relief against private parties, for policy matters, extrapolating the purview set by the judiciary. Thereby, PILs degenerated into political and private interest litigations, which when used maliciously, were popularly known as publicity interest litigations.

---

<sup>34</sup> Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 Third World Legal Studies 107 (1985).

<sup>35</sup> 2 SANGEETA AHUJA, *PEOPLE, LAW AND JUSTICE: CASES AND MATERIALS ON PIL 860* (Orient Longman, Delhi, 1996) (1996).

<sup>36</sup> Adil Hamid Lone, *Judicial Activism and Public Interest Litigation in India and Issues Involved*, 3(1) JCIL 1, 18 (2018).

<sup>37</sup> Clark D. Cunningham, *Public Interest Litigation in the Supreme Court of India: A Study in Light of the American Experience*, 29 J. Ind. L. Inst. 494-523 (1987).

4. Further, as mentioned before, there was no uniformity, consistency or systematic approach adopted by the Court. Like, as observed in the *Vishaka judgement*<sup>38</sup> where the Court laid down detailed guidelines for the related industry, as well as the legislature, whereas in some cases, it was reluctant and subsequently, refused to act as the policy maker.

This transgression is a sorry affair, especially as to a concept such as the Public Interest Litigation which was intended to, and still can, serve a purpose, an agenda, an objective which the country at the time required ever so deeply. Even now, Solicitor General, Mr. Tushar Mehta, agonised with the recent transgression of the subject, especially amid the horrifying circumstances prevailing due to Covid- 19, labelled the concept as professional shops, where “*none of the petitioners have even bothered to serve the poor and needy or the persons suffering from the virus and, therefore, can never be treated as ‘public spirited citizens’.*”<sup>39</sup>

#### **IV. 1980 TO 2010: A TRANSGRESSION FROM USE TO ABUSE**

*"The directions and commands issued by the courts of law in a public interest litigation are for the betterment of the society at large and not or benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected it would be the bounden duty of the Court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated."*

- Justice G.B. Pattanaik<sup>40</sup>

Public interest litigation uses the law to advance human rights, and solve issues of broad public concern. In the nascent years of PIL in India, the focus was on the rights of prisoners, and providing access to justice to minority groups. This brought about a new way of approaching the court, and was considered an essential aspect of the judiciary. After that, the ambit of PIL grew to include environmental protection, probity and transparency of the government, and several other issues of public concern. Over the years, PIL has changed drastically. What started off as an initiative to uplift the lower parts of society soon became the cause of a plethora of petitions filed with oblique motives, and the reason for slower access to justice. This draconian change is explained further with two case studies: one to understand the inception of PIL, and one to understand the downfall and safeguards of PIL.

---

<sup>38</sup> *Vishaka and others v State of Rajasthan*, (1997) 6 SCC 241.

<sup>39</sup> Jagdeep S. Chhokar, *Why the Solicitor General Is Wrong to Call for PILs to Be Scrapped*, THEWIRE (May 05, 2020), <https://thewire.in/law/public-interest-litigation-solicitor-general>.

<sup>40</sup> *Malik Brothers v Narendra Dadhich* 1999 (5) SCALE 212.

**(A) *Hussainara Khatoon v. State of Bihar***<sup>41</sup>

The first reported PIL was *Hussainara Khatoon v. State of Bihar*, which led to the release of more than 40,000 prisoners under trial and became the landmark judgement in the fundamental right to speedy trial of cases. The Judiciary, for the nascent stages of the PIL, focused on the rights of prisoners, and the conditions they lived in.<sup>42</sup> This was facilitated by letters, articles, postcards, petitions from public spirited citizens comprising of lawyers, journalists amongst others, who wanted to bring to the Courts' notice the suffering of the millions of the millions of under trials living in inhuman conditions in the country's prisons. The Court would convert the facts collected from the citizens in the form of post-cards, letters, press reports, petitions, etc., into a petition under Article 32.<sup>43</sup>

Until the *Hussinara Khatoon* case in 1979, the Indian justice system was only accessible to those who had locus standi, i.e. people who were personally affected. For the first time, the courts allowed a lawyer to pursue a case in which she had no personal interest, and since then PILs have been an essential aspect of the Indian jurisprudence. PILs have become a channel to ensure justice to underprivileged people who have been wronged by the system.

In the case of *Hussainara Khatoon*, the Supreme Court focused on the under-trials in Bihar who had been incarcerated while pending trial for a period longer than the maximum sentence for their offences. The Court made the right to speedy trial the central focus of the case, and passed the order of the release of nearly 40,000 people who had undergone detention beyond the maximum period of their offences.

The right to speedy trial is now recognised as a fundamental right of every accused. It is a facet of administration of justice. It is the Constitutional obligation of the state to ensure protection of Article 21, and the right to speedy trial comes under its ambit. The Court held that the State cannot deny the right to speedy trial of the accused on the ground that the State lacks adequate financial resources, specifically Justice Bhagwati stated:

*“The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the*

---

<sup>41</sup> (1980) 1 SCC 98.

<sup>42</sup> ASHOK H. DESAI & S. MURALIDHAR, SUPREME BUT NOT INFALLIBLE – ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 121 (Oxford University Press, 2000) (2000).

<sup>43</sup> INDIA CONST., art. 32.

*accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.”*

The above paragraph showcases the significance and role of PIL in public and State action. Backed by Judiciary, it aimed to provide fundamental access to justice to the downtrodden, the oppressed and to the ones wronged by the system, as in the above case.

The Court, thereafter, recommended to the State and the Central Government, a legal service program that ensures free legal services, banking on the State’s responsibility under Article 39A which emphasises on the pertinence of free legal service as an element of of ‘reasonable, fair and just ’procedure.

This was the birth of the concept of PIL, which has since played an essential role as a facilitator, as a tool and a forum to avail and access justice of numerous varied communities. In the words of Pushpa Kapila Hingorani, the lawyer who started the PIL revolution,

*“The success of the Khatoon case was so widespread that the Supreme Court in the 1980s opened a new section in the Registry devoted to PILs. Officers used to sift through the incessant bombardment of letters or petitions from citizens everyday and choose the ones which should be brought to the court's attention.”<sup>44</sup>*

The Courts have relaxed the formalities of judicial proceedings. PILs have become a part of the legal aid movement, and have aided in bringing justice to countless underprivileged and vulnerable citizens.<sup>45</sup>

### **(B) State of Uttaranchal v. Balwant Singh Chauhan<sup>46</sup>**

The case in discussion arose post the admission of a PIL as an appeal to the Supreme Court after the decision of the High Court of Uttarakhand. The High Court sought State’s discretion in deciding the validity of appointment of an Advocate General for the state of Uttaranchal beyond the prescribed age limit. The Supreme Court, adjudicating over the appeal, held that there is no upper limit on age of a person to be appointed the post of Advocate General. However, the importance of the judgment lies in the fact that it raised issues and concerns about

---

<sup>44</sup> Krishnadas Rajagopal, *Starting the PIL revolution*, INDIANEXPRESS ( Jan. 26, 2010), <http://archive.indianexpress.com/news/starting-the-pil-revolution/571616/1>.

<sup>45</sup> Monika S. Ahuja, *Public Interest Litigation In India: A socio- legal study*, University of London (1995).

<sup>46</sup> (2010) 3 SCC 402.

PILs, and discussed the need for regulation of PILs in India. It shed light on the filing of haphazard petitions which add burden to an already over-burdened system, subsequently, furthering delay in disposal of genuine and public interest cases.

The Court emphasised how PILs play an essential role in helping the underprivileged sections of society, protecting the ecology, and giving a new meaning to life and liberty. They further stated that this carefully welded tool, in the past decade, has been blatantly misused, abused and exploited- neglecting the effort, the nurturing and the transgression the judiciary had to go through for the development of the same.

While understanding the cause for this recent transgression, the Bench analysed the evolution of the concept, and divided the same into the following three phases:

1. **Phase I facilitated access to justice:** It dealt with cases where orders were passed to protect fundamental rights of the marginalised sections of society, who due to poverty, illiteracy, and inaccessibility could not approach the courts themselves. The *Hussainara Khatoon case*<sup>47</sup>, the first of its kind, was followed by many, in the years to follow, which harped on the cause initiated through this landmark judgement.<sup>48</sup>
2. **Phase II focused on environmental protection:** This phase observed emphasis on matters concerning the protection and preservation of the forests, wildlife, and environment. Mr. M.C. Mehta, a prominent figure throughout this phase, brought around this phase with *M. C. Mehta & Another v. Union of India & Others*,<sup>49</sup> which was succeeded by many following suite.<sup>50</sup>
3. **Phase III delved into probity and transparency in government:** *Vineet Narain & Others v. Union of India & Another*<sup>51</sup>, saw a journalist filing a PIL against the prime investigating agencies of India, including the Central Bureau of Investigation, the Revenue Authorities, etc- seeking accountability and transparency in their actions. PIL, thereafter, has developed as a tool to challenge arbitrary actions and steps of the government organisations and

---

<sup>47</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.

<sup>48</sup> *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535.; *see also Anil Yadav & Others v. State of Bihar and Bachcho Lal Das, Superintendent, Central Jail, Bhagalpur, Bihar*, (1982) 2 SCC 195.; *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.; *B. R. Kapoor & Another v. Union of India & Ors.*, AIR 1990 SC 752.; *Delhi Domestic Working Women's Forum v. Union of India & Ors.*, (1995) 1 SCC 14.

<sup>49</sup> (1991) 2 SCC 353

<sup>50</sup> *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Ors.*, AIR 1990 SC 2060.; *see also Rural Litigation and Entitlement Kendra, Dehradun & Others v. State of U.P. & Ors*, AIR 1985 SC 652.; *Subhash Kumar v. State of Bihar & Others* AIR 1991 SC 420.; *Essar Oil Ltd. v. Halar Utkarsh Samiti & Ors.*, AIR 2004 SC 1834.; *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa & Ors*, AIR 2006 SC 2038.; *M.C. Mehta v. Kamal Nath & Ors.*, (2000) 6 SCC 213.

<sup>51</sup> AIR 1998 SC 889.

agencies, which has provided a due check on the same, as observed in numerous subsequent matters.<sup>52</sup>

The Court, even shed light on numerous other judgements, to emphasise on the judiciary's concern towards the abuse of Public Interest Litigations. The Bench concerned and suspicious of these developments, in *BALCO Employees' Union (Regd.) v. Union of India & Others*, instructed High Courts to be more selective in entertaining PILs. It, further, stated that it is the responsibility of the Courts to protect and preserve the larger interest of the people of India, and that steps need to be take steps to prevent the abuse of PILs to ensure effective access to justice. Further, in *Neetu v. State of Punjab & Others*, the Supreme Court stated that it was necessary to impose exemplary costs on frivolous petitions, which was opined by many succeeding judgments.

Optimistic and believing in its future prospects, and to protect and further the sanctity of the PILs, the Court laid down certain guidelines to be followed by all courts while indulging in these petitions:

1. The Court must encourage genuine & bona fide PILs, and discourage PILs filed for extraneous considerations;
2. It further suggested formulation of a uniform set of rules and procedures for the respective courts to adhere to while acting over numerous petitions;
3. The credentials of the petitioners need to verified before entertaining any PIL;
4. The court should be satisfied with the correctness of the contents of the petition before entertaining it;
5. The court should make sure that petitions that involve larger public interest are given priority over other petitions;
6. Before entertaining any PIL, the Courts need to ensure that it is aimed at the redressal of public injury, and they should ensure that there is no personal motive behind the filing;
7. The Courts should discourage PILs with ulterior motives by imposing exemplary costs, or adopting similar novel methods.

Justice Dalveer Bhandari, tracing back PILs steps, and Justice Bhagwati's words while commencing its practice, was benevolent to the concept and hopes for its transformation by an

---

<sup>52</sup> *Rajiv Ranjan Singh 'Lalan' & Another v. Union of India & Ors.*, (2006) 6 SCC 613.; *see also* *M. C. Mehta v. Union of India & Ors.*, (2007) 1 SCC 110.; *Public Interest Litigation v. Union of India & Anr.*, AIR 2003 SC 3277.; *L. Chandrakumar v. Union of India & Ors.*, (1997) 3 SCC 261.

active and holistic participation by the judiciary and the citizens to bring it back to its original glory and objective.

## V. CONCLUSION AND SUGGESTIONS

*“This question is of immense importance in a country like India where access to justice being restricted by social and economic constraints, it is necessary to democratise judicial remedies, remove technical barriers against easy accessibility to justice and promote public interest litigation so that the large masses of people belonging to the deprived and exploited sections of humanity may be able to realise and enjoy the socio-economic rights granted to them and these rights may become meaningful for them instead of remaining mere empty hopes.”*

- Justice P.N. Bhagwati <sup>53</sup>

Based on this hope and rationale, the judiciary treaded onto this path to serve and assist public interest, break open the procedural shackles and transform the dream of a truly socialist society into a reality. However, as opined through the research, with the concept being grossly misused, it is doubtful if it is still wedded to its goal.

The misuse and concerns observed were tabled before the Legislature in the form of the Public Interest Litigation (Regulation) Bill, 1996. The debates which followed revealed the members’ concerns and criticism towards PILs, wherein the pulse of the group felt that the misuse of PILs was undermining the purpose it was introduced for.<sup>54</sup> Though the Bill lapsed subsequently, it did bring forth the suspicion and apprehension as to a concept which was flowingly freely, fiercely and rapidly.

However, while condemning the approach adopted by the judiciary while navigating the path of the PILs, it is worthwhile to observe the trajectory to gather the rationale for the same. It is observed that the judicial attitude towards the inclusion, exclusion of and the response to various subject matters, to an extent, was its perception towards the focal issues prevailing during the respective phases. While the first phase rallied on the rights of prisoners, labourers, pavement dwellers, and women, the second phase saw the judiciary champion cases pertaining to environmental issues,<sup>55</sup> corrupt practices, governance and administration, and the stigma and problems revolving around AIDS. Subsequently, the recent decade has been enveloped with riddled with cases propagating development, the economy and the right balance between this dichotomy. These issues, in their respective phases, were pertinent to be delved into, and took

---

<sup>53</sup> S. P. Gupta v. Union of India AIR 1982 SC 149.

<sup>54</sup> Adil Hamid Lone, *Judicial Activism and Public Interest Litigation in India and Issues Involved*, 3(1) JCIL 1, 25 (2018).

<sup>55</sup> M.C. Mehta v Union of India (1991) 2 SCC 353

recourse and shelter under Public Interest Litigation, which thereby, dominates its trajectory in the Indian phenomenon.

The judiciary has a crucial role to play in the future practice of PILs. The restoration and growth of the concept can be observed:

*Firstly*, proper management and facilitation of the same, such as setting guidelines, limiting the flexibility and discretion afforded, and adding a deterrence mechanism for scrupulous petitions, can lead to an efficient and systematic disposal of varied grievances. Striking a balance between allowing legitimate petitions, while discouraging scrupulous PILs is pertinent and must be resolved at the earliest.

*Secondly*, it must adhere to the principles of separation of powers. While it can advise and guide the other organs, it should not encroach upon their powers, and areas reserved constitutionally for the executive and the legislature.<sup>56</sup>

*Thirdly*, PIL, lately, due to the convenience pertaining to its filing and access, has become the first step to address any and every kind of grievances, including those which facilitate public interest. It is suggested that the same should be altered and that PILs mustn't be a routine affair, and should have strict invoking grounds for them to be taken seriously by the judiciary, the bar and the citizens, and subsequently, be redressed effectively.<sup>57</sup>

*Lastly*, numerous PIL matters, many concerning the exploited and weaker sections, are pending and these inordinate delays render these leading cases of utmost importance to mere academic and historical value. Limitation as to the finality of these cases, as observed in the Arbitration and Conciliation Act, 1996,<sup>58</sup> must be imposed for efficient disposal and a trustworthy system which the mass believes in.

PIL, revered by countless jurists, academicians and scholars, was a judicial masterclass, which has vast potential to shape the country's future, as has been observed time and again in the past. Producing astonishing results in its over three decade practice, Public Interest Litigation shaped the jurisprudence of accountability of the government and its organs towards its subjects. Still, being riddled with concerns, vested interests, neglect, and misuse, the authors devise and suggest caution in its practice moving forward, an alteration of perception, outlook and practice, for it to continue on the dream J. Bhagwati signed off on.

---

<sup>56</sup> 2 M.P. Jain, *Indian Constitutional Law* 82 (6th ed., Lexis Nexis Butterworths Wadhwa) (2010).

<sup>57</sup> S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 153 (Oxford University Press, 2003) (2003).

<sup>58</sup> § 29A, *The Arbitration and Conciliation Act, 1996*, No. 26, Acts of Parliament, 1996.