

## Public Interest Litigation: A Catalyst for Ensuring Good Governance

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### Abstract

India is a Democratic and Parliamentary form of government with a legislative, executive, and judiciary as its organs. The Legislature makes the laws, the Executive implements the laws and the Judiciary interprets the laws. As per, the theory of “Separation of Power” all three organs must work within their specified area, and no one is authorized to usurp the jurisdiction of another. However, in order to restrict supremacy or absoluteness the theory of “Check and Balance” was developed. Primarily, the Judiciary works as an interpreter of the law, they are not authorized to create or make laws. In the saying of Benjamin Cardozo, ‘*Judges cannot work in a watertight compartment or as a mere declarator.*’ Society is progressing time and again and to meet the needs of society, the law must act as a social engineer. Judges must be involved in a judicial process and do creativity to fill the lacuna developed by the Legislature or the Executive. The Judges must not only declare the law but also create or make the law to protect our constitutional principles.

Judiciary has always functioned to fulfil the needs of society by preserving rights, protecting interests, and regulating conduct that is derogatory and arbitrary to the fundamental and legal rights of individuals. Thus, while doing social engineering Judiciary adopted the ‘Activist’ character and while doing so evolved the concept of ‘Public Interest Litigation’(PIL) by liberalizing the general rule of ‘Locus Standi’ i.e., the right to bring cases before the court. To put it simply, Public Interest Litigation means that any public - spirited citizen can move and approach the court for the public cause (or public interest or public welfare) by filing a petition in the Supreme Court under Article 32 of the Constitution of India or in the High Courts under Article 226 of the Constitution or before the Court of Magistrate under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

The Indian PIL was born because of the judiciary’s efforts to clean its image of the emergency era. During an emergency, domination and governmental lawlessness were massively widespread. There was an absolute deprivation of civil and political rights. In such a circumstance the courts remained ‘lions under the throne.’ Playing a positivist role, the Court validated state actions. It was only during the post - emergency period that it tried to revamp its negative image of the emergency period. In this regard, it would be appropriate to quote Cunningham, “Indian PIL might rather be a phoenix, a whole new creative arising out of the ashes of the old order.”

Therefore, with the advent of the Judicial activist approach and the rule of PIL judges have increased their vigilance in defending each person's rights and dignity while also fostering the true spirit of Good Governance.

Good Governance connotes an administration that creates and makes available the necessities of life, gives its citizens protection, and gives them the chance to live better lives. Along with a system of checks and balances provided by the Separation of Power, it also comprises effective participation in public policymaking, the dominance of the rule of law, and an independent judiciary. However, the Judiciary with its instrument of PIL upholds the spirit of the Constitutional mandate and Good Governance, surpasses the arena of the other governmental organs and thus involves in Judicial Adventurism. On one hand Indian PIL did receive a universal and unanimous acceptance and on the other hand it also received its share of criticisms. It was criticised for flooding the courtroom with litigations resulting in a delay in deciding various other important cases. The Court was also accused of transgressing into the domain of the executive and the legislature. Judicial activism through PIL was likely to cause friction between the three organs of the government. The Court was held to be guilty of populism as well as adventurism. That there was a judicial usurpation of executive and legislative functions in violation of the doctrine of separation of powers.

This paper will make an attempt to analyse the concept and development of PIL and Good Governance. It will also an attempt to critically examine the role of the Judiciary in upholding Good Governance through PIL in India and to evaluate whether the Judiciary is overreaching its power while exercising its judicial activist approach. Further, it raises concerns about PIL by highlighting its dark side.

***Keywords: Judiciary, Good Governance, Public Interest Litigation, Judicial Activism, Judicial Overreach.***

## **Introduction:**

As the guardian and keeper of the Constitution, the Judiciary in India holds a very important position. It protects everyone, including Indians and foreigners, against discrimination, the abuse of the State's power, arbitrary decisions, and other wrongful actions of authorities by acting as a watchdog against violations of the Fundamental Rights provided by the Constitution. According to James Medison, "Judiciary in India is truly the only defensive armour of the country and its Constitution and Laws. If this armour were to be stripped of its onerous functions it would mean, the door must be wide open for nullification, anarchy and convulsion"<sup>1</sup>.

Liberty and Equality have flourished and endured in India due to the proactive role played by the Indian Judiciary. The Rule of Law, one of the most important aspects of Good Governance, is upheld in India because, among other things, an "Independent Judiciary" a significant factor coined by the Constitution's makers, has been sustained and maintained. An independent Judiciary that has been fearless in championing the cause of the disadvantaged and

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<sup>1</sup> James Medison, The founding fathers of the American Constitution.

marginalised sections of society who are ignorant of or unable to secure their rights due to their poverty, illiteracy, and lack of awareness regarding their rights has been kept alive.

The Indian Judiciary, acting proactively, introduced the American concept of 'Public Interest Litigation' (hereinafter referred to as 'PIL') in India on a very solid footing, after liberalising the conventional doctrine of "LOCUS STANDI" which states that the right to petition in the Supreme Court is only available to those whose Fundamental Rights are violated. The Supreme Court has significantly relaxed the Locus Standi rule in a novel manner. The Court now allows PIL or Social Interest Litigation at the request of "public-spirited citizen" for the enforcement of Constitutional and other Legal Rights of any individual or group of individuals who, due to poverty or other disadvantages, are unable to approach the Court for relief.<sup>2</sup>

The outstanding efforts of Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were crucial to the legal revolution of the 1980s, which transformed the Indian Supreme Court into a Supreme

Court for all Indians.<sup>3</sup> As a result, thereof, in a situation involving public interest at large, any Indian citizen, or a group thereof, can now approach the country's Apex Court to seek legal remedy. Additionally, public interest cases could also be brought before the said Court without having to pay the cost of litigation at High Courts.

This initiative of judicial activism has developed a new legal horizon that helps the poor and destitute person. PIL is also a powerful tool for socially conscious citizen who try to fix the system through the court of law. Such case occurs when victim does not necessary have means to approach the court or his freedom to approach court has been curtailed. Any citizen can file a public case by filing a petition:

- Under Article 32 of the Indian Constitution, in the Supreme Court.
- Under Article 226 of the Indian Constitution, in the High Court.
- Under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023.<sup>4</sup>

## EVOLUTION OF PIL IN INDIA

The idea of PIL can be credited to the United States of America which experienced a period of social turmoil in the 1960s to 1970's during which numerous institutions underwent transformation and important reforms were adopted and put into reality. The innovation of dictum "Public Interest law" which aims to ensure that citizens whose right may be affected by governmental decisions have a right to say in the formulation of those rules and regulations. During that period, various movements in USA had contributed to public interest law.

Though the origin of PIL was USA, but over the time, this concept has been evolved and developed in various other countries.

The roots of Public Interest Litigation in India emanated from realization of constitutional obligation by the Judiciary towards the impoverished or marginalised section of the society.<sup>5</sup>

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<sup>2</sup> Available at <http://hdl.handle.net/10603/546066> (last visited on Jan 2, 2025)

<sup>3</sup> *Ibid* pg no. 20.

<sup>4</sup> Municipal Corporation, Ratlam v. Vardhichand, AIR 1980 SC 1622.

<sup>5</sup> Constitution of India, art 39A.

By creating the Constitution, the founding fathers hoped to bring about a social revolution. The sections dealing with Fundamental Rights (Part III of the Indian Constitution) and the Directive Principles of State Policy (Part IV of the Indian Constitution) are the principal instruments used to bring about such social change. Likewise, an impartial Judiciary that can examine the legality of Constitutional Amendments as well as Laws and Executive actions. It has the ultimate word over how the Constitution should be interpreted, and everyone within the boundaries of the Nation can receive its directives thanks to the ability to punish those who disobey them. Together, these laws on Fundamental Rights, guiding principles of public policy, and independent Judiciary give India's development of "PIL" a solid Constitutional foundation. The two Judges of the Indian Supreme Court of India, Justice Krishna Iyer and Justice P.N. Bhagwati, made outstanding efforts in the 1970s and 1980s to improve access to Justice through Legal Aid, and their work was a major factor in the development of PIL. The seeds of the concept of PIL were sown in India in the case of **Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai**<sup>6</sup> by Justice Krishna Iyer while disposing of an industrial dispute in regard to payment of bonus. He observed that without using the term PIL that "*Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the poor, the urban lay and the weaker societal segments for whom Law will be an added torture if technical misdescriptions and deficiencies in drafting pleadings and setting out the cause title create secret weapon to non-suit a part. Public interest is promoted by a spacious construction of Locus Standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher Courts where the remedy is shared by a considerable number, particularly when they are weaker*"<sup>7</sup>. With the help of this translation, the Court was able to establish an epistolary scope that recognised Letters and Wires as valid Writ Petitions.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and undertrial prisoners. The case of **Hussainara Khatoon v. State of Bihar**<sup>8</sup> dealt with a number of articles that showed the suffering of inmates awaiting trial in the State of Bihar and were published in the Indian Express, a prestigious newspaper. A counsel brought to the Court's attention the terrible situation these prisoners were in by filing a Writ Petition. Many of them had served jail terms that were longer than the maximum punishments allowed for the crimes they had been accused of. The Advocate's Locus Standi to continue the Writ Petition was accepted by the Supreme Court. The "*right to speedy trial*" was thus Judged to be an integral and crucial component of the protection of life and personal liberty under Article 21 through a series of cases that the Court decided. It was further initiated in **Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India**,<sup>9</sup> when, in accordance with Article 32 of the Constitution, an unregistered workers' association was allowed to file a Writ Petition for the redressal of common grievances. However, in the case of **Fertilizer Corporation Kamgar Union v. Union of India**<sup>10</sup> the terminology "PIL" was used by Justice Iyer. In this judgment, he used the expression "*Epistolary jurisdiction*". The Hon'ble Supreme Court held that "the procedure had to be relaxed to meet the ends of Justice and observed that "*PIL is part of the*

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<sup>6</sup> AIR 1976 SC 1455

<sup>7</sup> *Ibid*

<sup>8</sup> AIR 1979 SC 1360

<sup>9</sup> AIR 1981 SC 298

<sup>10</sup> AIR 1981 SC 344

*process of participatory Justice and 'standing' in civil litigation of that pattern must have liberal reception at the Judicial doorsteps.*" PIL thus emerged as a means for the Judiciary to hold the Government accountable and to catalyse action against rights violations.

As observed by the Supreme Court in *S. P. Gupta v. Union of India*<sup>11</sup>, the seed of PIL that was sowed by Justice Krishna Iyer "*took its root firmly in the Indian Judiciary and blossomed fully with fragrant smell*". The Supreme Court delivering its judgment through Justice P. N. Bhagwati, developed a new regulation that allows any member of the public to maintain a petition for the redress of a public wrong or public hurt. Any person, citizen or non-citizen, group, or non-political, non-profit, or voluntary organisation may bring such a claim. However, the Court should not allow any PILs if it is discovered that the petitioner received personal benefit from the said petition. The Locus Standi has not, however, been loosened by the Court in criminal matters. Due to poverty, ignorance, discrimination, and illiteracy since the dawn of time, a huge segment of society has been denied access to Justice relating to technical problems in drafting legal pleadings. The impoverished, disadvantaged, vulnerable, discriminated, and marginalised groups in society urgently needed access to Justice. As a result, the Judiciary in India started, fostered, and promoted PIL while exercising its authority of Judicial Review.

### **THREE PHASES OF PUBLIC INTEREST LITIGATION:<sup>12</sup>**

There are three major phases to the PIL debate in India, with the risk of oversimplification and overlap. One will notice that these three phases are distinct from one another in at least the following four ways: first, who brought the PIL cases; second, what was the case about; third, who was the target of the relief sought; and fourth, how the Judiciary handled the PIL cases.

#### **FIRST PHASE**

The PIL cases in the initial phase, which started in the late 1970s and lasted into the 1980s, were typically brought by individuals with a commitment to the public good (Lawyers, journalists, social activists, or academics). Most of these cases involved the rights of people from disadvantaged groups in society, including women, convicts, mentally challenged people, and those who work as child labourers or are bound to work for another person. Relief was requested in response to executive agencies actions or inaction that led to the infringement of Fundamental Rights. In response, the Judiciary acknowledged these individuals' rights during this phase and instructed the Government to make amends for any alleged abuses. In summary, it can be argued that during the initial stage, the PIL developed into a tool for the kind of social revolution/transformation that the Constitution's forefathers had hoped to bring about.

#### **SECOND PHASE**

In the 1990s, the PIL entered its second phase, which saw numerous significant modifications. In contrast to the initial phase, several specialised NGOs and Attorneys began bringing cases involving concerns of public interest to the Courts on a far more regular basis, institutionalising the filing of PIL petitions. The scope of the problems highlighted in the PIL also greatly increased, ranging from environmental protection to administration free from corruption, the right to education, sexual harassment at work, the relocation of industries, the Rule of Law,

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<sup>11</sup> AIR 1982 SC 149

<sup>12</sup> Supra note 3 at 32-34.

Good Governance, and general Government responsibility. It may be observed that during this stage, the petitioners asked for relief not only from the executive's action or inaction but also from private parties, over issues of policy, and about anything that would obviously fall under the purview of the Legislature. Compared to the first phase, the Judiciary's response during the second was often much bolder and unusual. For instance, where there were legislative gaps, the Courts did not think twice about developing specific standards. Without considering whether or not the State was the abuser of the Fundamental Rights, the Court upheld Fundamental Rights against private parties and gave remedies to the petitioner. The Courts also took disobeying their instructions more seriously, and in some instances, they even went so far as to watch over Government investigating agencies and/or penalise public officials for disobeying them. The misuse of PIL increased significantly during the second phase, reaching a worrying level that periodically required the Courts to penalise plaintiffs for utilising PIL for their personal gain. It is clear from this that the second phase of the PIL debate went well beyond the stated goal for which PIL was intended, breaking new ground, and charting uncharted territory. The Courts, for instance, resorted to Judicial Legislation, when necessary, did not hesitate to approach Government power centres, attempted to extend the protection of Fundamental Rights against Non-State Actors, and moved to protect the interests of the middle class rather than the interests of the poor population, and looked for ways to limit the abuse of PIL for nefarious purposes.

### THIRD PHASE

Contrarily, the third phase, the current phase, which started in the 21st century, is a time when anyone could bring a PIL for just about anything. There seems to be a growing list of situations that could be the subject of a PIL, such as prohibiting a supposed marriage between an actress and a tree for astrological reasons and withdrawing the Indian Cricket Team from their tour of Australia. One could argue that from the perspective of the Judiciary, it is time for Judicial reflection and a review of what Courts attempted to accomplish through PIL. The Judiciary seems to have exercised greater discretion in giving the instructions to Government compared to the second phase. Although it is unlikely that the Judiciary will curtail the PIL's broad reach, future interventions could be more circumspect. A particular instance in the third phase requires special attention. The Judiciary has continued to back the Government's disinvestment and development initiatives in line with its endorsement of these policies at the *Delhi Science Forum*<sup>13</sup>. The fact that this Judicial attitude might be at the expense of the sympathetic response that the rights and interests of underprivileged and vulnerable sections of society (such as slum dwellers<sup>14</sup> and people displaced by the construction of dams<sup>15</sup>) received in the first phase is

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<sup>13</sup> It is suggested that in recent years the Supreme Court has been influenced by liberalisation and corporate business interests at the cost of human rights. See Jamie Cassels, "Multinational Corporations and Catastrophic Law" (2000) 31 *Cumberland Law Review* 311, 330; Parmanand Singh, "State, Market and Economic Reforms" in Parmanand Singh et al. (eds), *Legal Dimensions of Market Economy*, 30–31, (New Delhi: Universal Book Traders, 23rd edn. 1997); Prashant Bhushan, "Has the Philosophy of the Supreme Court on PIL Changed in the Era of Liberalisation?", available at: <http://www.Judicialreforms.org/files/2%20Philosophy%20of%20SC%20on%20PIL%20-%20Prashant%20Bhushan.pdf> (last visited on Jan 2, 2025)

<sup>14</sup> J. Venkatesan, "Supreme Court Dismisses PIL against Demolition of Jhuggis", *The Hindu*, May 13, 2006. See also Usha Ramanathan, "Demolition Drive" 40 *Economics & Politics Weekly* 2908, (2005); Usha Ramanathan, *Illegality and Exclusion: Law in the Lives of Slum Dwellers*, I.E.L.R.C. Working Paper 2004, available at: <http://www.ielrc.org/content/w0402.pdf> (last visited on Jan 2, 2025)

<sup>15</sup> *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

what troubles students of the PIL project in India the most. The Supreme Court's observations such as the following also fuel these concerns: "Socialism might have been a catchword from our history. It may be present in the Preamble of our Constitution. However, due to the liberalisation policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away."<sup>16</sup>

In these three periods, it appears that the Judiciary's stance toward PIL is a response at least in part to what it perceives as the "issues in vogue." If the Rights of Prisoners, street people, child labourers, and women were the primary concerns in the first phase, then the second phase would be dominated by concerns about the environment, AIDS, corruption, and Good Governance, and the third phase might be dominated by questions of development and free market principles. Therefore, the manner Indian Courts have responded to PILs simply reflects what the public anticipated of the Judiciary at any moment. If the Judiciary deviates too much from the social norms, it might not be able to secure the public support needed for the sustenance of PIL.<sup>17</sup>

#### **CONCEPT OF GOOD GOVERNANCE:**

The term "Good Governance" has recently become more prevalent in development literature globally. Although the concept of Good Governance is relatively recent and has gained prominence since the 1990s, its fundamental principles are not novel to Indian society. The Wheel of Dharma, which in ancient India constrained the monarch or ruler, was a system wherein the Rule of Law was considered superior to the king's will. The primary concepts of Kautilya's "Arthashastra" address in detail statecraft and welfare administration policies that remain relevant in contemporary times. To date, there has not been a universally accepted definition of "Good Governance" that is both comprehensive and all-encompassing. Nevertheless, it primarily refers to the process of decision-making and implementation.

In his speech called 'Role of the Judiciary in Good Governance' Chief Justice Sabharwal identified the following elements as being part of the concept,<sup>18</sup> improving the standard of living; providing security to the people; instilling hope in their hearts for a promising future; providing access to opportunities for personal growth; affording participation in the decision-making in public affairs; sustaining a responsive and fair judicial system; maintaining accountability and honesty in each branch of government.

As per the United Nations Commission on Human Rights, "the key attributes of "Good Governance" include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. Good Governance is thus linked to an enabling environment conducive to the enjoyment of Human Rights and promoting growth and sustainable human development. The expectation of every civil society of its government is that it would fulfil its commitments and provide an equitable atmosphere contributing to individual's growth. A Government is expected to be fully accountable to its people and transparent in the use of public resources. It enforces Human Rights including economic, social, and cultural rights and has no place for corruption of any kind since dishonesty is

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<sup>16</sup> State of Punjab v. Devans Modern Brewaries Ltd, (2004) 11 SCC 26

<sup>17</sup> Role of Judiciary in Good Governance Justice Y.K. Sabharwal, Chief Justice of India, available at [https://highcourtchd.gov.in/sub\\_pages/left\\_menu/publish/articles/articles\\_pdf/goodgovernance.pdf](https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf) (last visited on Jan 3, 2025).

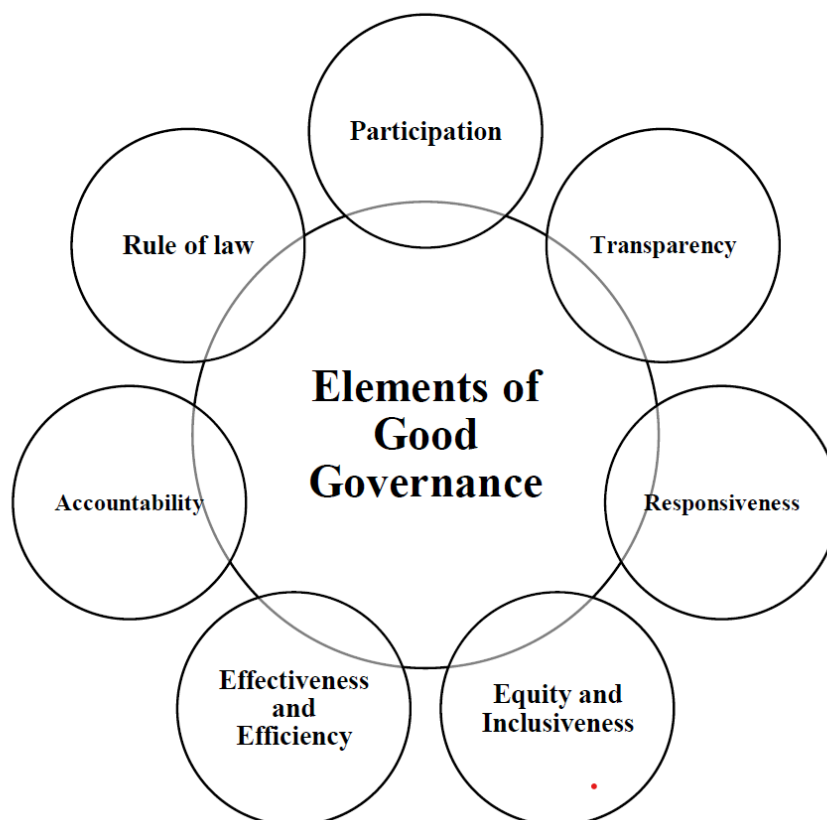
<sup>18</sup> *Ibid.*

*anathema to economic well-being as it transmits public money allocated for development unjustly into private coffers depriving the citizenry of its use for their welfare.”<sup>19</sup>*

In other words, Good Governance refers to a participative way of managing functions associated with a State in a responsible, accountable, and transparent manner based on the principles of efficiency, legitimacy, and consensus for the purpose of advancing individual citizens' rights and the public interest. Good Governance must also indicate, the existence of political will to ensure the material welfare of society and Sustainable Development and thereby secure Social Justice.<sup>20</sup>

### **ELEMENTS OF GOOD GOVERNANCE:**

There are eight key traits of Good Governance. It adheres to the Rule of Law and must be participative, consensus-oriented, responsible, transparent, responsive, effective, and efficient. It ensures that corruption is kept to a minimum, minorities' opinions are considered, and the voices of the most vulnerable sections of society are heard during the decision-making process. In addition, it must respond to the requirements of society, both present and also to the needs of future generations.<sup>21</sup>



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<sup>19</sup> Informatics, January 2015 ([informatics.nic.in](http://informatics.nic.in)) Uttar Pradesh: Focusing on Rural e-Governance

<sup>20</sup> Surendra, Munshi, Good Governance, Democratic Societies and Globalization 15 (Sage Publications, New Delhi, 2000)

<sup>21</sup> Available at: <https://www.gktoday.in/topic/good-governance-meaning-and-concept/> (last visited on Jan 3, 2025).



## Figure 1: Elements of Good Governance<sup>22</sup>

### IS PIL ACT AS A CATALYST FOR GOOD GOVERNANCE:

The paradigm of the Indian judicial system is testimony to how the judiciary can contribute to good governance. The role of the Judiciary in preserving, protecting and promulgating the principles of Good Governance is commendable and has gone through numerous ups and down while doing so they somehow board the train of adventurism but on the other side, they are not expected to sit in an ivory tower like an Olympian closing their eyes and uncaring for the problems faced by society. They are there to discharge their constitutional commitments and while doing so they indulge in courageous creativity and paradigm wisdom that can be seen through various judgement which is as follows:

a. In *Prem Shankar Shukla's Case*<sup>23</sup>, the Supreme Court held that “the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the Constitutional culture in India and thus not standing the test of Equality before Law (Article 14), Fundamental Freedoms (Article 19) and the Right to Life and Personal Liberty (Article 21). The rule thus laid down was also reiterated in the case of Citizens for Democracy<sup>24</sup>.”

b. In *Ichhu Devi Choraria case*<sup>25</sup>, “the Court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the Court condemned detention of suspects without trial observing that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.

c. In *Nilabati Behera case*<sup>26</sup>, the Supreme Court asserted that “the jurisdiction of the Judiciary as “protector of civil liberties” under the obligation “to repair damage caused by officers of the State to Fundamental Rights of the citizens”, holding the State responsible to pay compensation to the near dear ones of a person who has been deprived of life by their wrongful action, by referring into Article 21 the “duty of care” which could not be denied to anyone. For this purpose, the Court referred to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation....”

d. In *Joginder Kumar case*<sup>27</sup>, the Court ruled that “the Law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....”.

e. In *Delhi Domestic Working Women's Forum case*<sup>28</sup>, the Court emphasized that “speedy trial is one of the essential requisites of Law” and that expeditious investigations and trial only could give meaning to the guarantee of “equal protection of Law” under Article 21 of the Constitution.”

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<sup>22</sup> Available at: <https://www.gktoday.in/topic/good-governance-meaning-and-concept/> (last visited on Jan 3, 2024)

<sup>23</sup> Prem Shankar Shukla v. Delhi Administration, 1980 SCC 526

<sup>24</sup> Citizens for Democracy v. State of Assam, 1995 SCC 743

<sup>25</sup> Ichhu Devi Choraria v. Union of India, 1980 SCC 531

<sup>26</sup> Nilabati Behera v. State of Orissa, 1993 SCC 746

<sup>27</sup> Joginder Kumar v. State of UP and Others, 1994 SCC 260

<sup>28</sup> Delhi Domestic Working Women's Forum v. Union of India & Others, 1995 SCC 14

f. In *PUCL case*<sup>29</sup>, Article 17 of the International Covenant on Civil and Political Rights, that forbids “arbitrary interference with privacy, family, home, or correspondence” and states that everyone has a right to legal protection from such intrusions, was treated as part of domestic Law.”

g. In *D.K. Basu case*<sup>30</sup>, the Court ruled that “the use of third-degree methods or torture on an accused person is prohibited by Law because “actions of the State must be right, just, and fair, and torture for extracting any kind of confession would neither be right, just, nor fair,” calling custodial torture “a naked violation of human dignity.”

h. *M.C. Mehta v. Union of India*,<sup>31</sup> A PIL was filed that addressed the issue of pollution in the river Ganges. The Supreme Court, in this case, directed the government to take measures to control pollution, promote waste management, and protect the river's ecosystem. Thus, highlighted the role of PIL in environmental governance and the need for sustainable development.

i. *Randhir Singh v. Union of India*,<sup>32</sup> the Supreme Court has held that although the principle of “equal pay for equal work” is not expressly declared by our constitution as a part of a fundamental right, it is certainly a constitutional goal under Article 14, 16, and 39(c) of the Constitution.

j. In *Indian Young Lawyers Association v. State of Kerala and others*,<sup>33</sup> popularly known as the Sabarimala case, the case was filed by the Indian Young Lawyers Association in 2006 through PIL in the Supreme Court to highlight the issues of equality, freedom of religion, fundamental rights, gender discrimination, untouchability. In this case, there is a ban on the entry of women aged 10-50 years in the sanctum sanctorum of the Lord Ayappa temple as a deity is a naishtika brahmachari i.e., eternal celibate. The Supreme Court ruled out that the practice of temple is violative of Articles 14, 15, 17, 21 and 25 of the Constitution of India.

k. *Navtej Singh Johar v Union of India*<sup>34</sup> the Court held that Section 377 was irrational, arbitrary and violative of Article 14 as it made consensual relationships in private spaces a crime and subjected the LGBT community to discrimination and unequal treatment.

l. In *Lalita Kumari v. Government of Uttar Pradesh*,<sup>35</sup> case a PIL was filed that addressed the issue of corruption in the registration and investigation of criminal cases. The Supreme Court, in this case, emphasized the importance of prompt and impartial investigation into corruption cases, highlighting the need for good governance and effective anti-corruption measures.

m. *Dr Jaya Thakur v. Government of India*,<sup>36</sup> In a petition filed by a social worker by raising important issues of public interest bearing on the need for sanitation and menstrual hygiene for females who are studying in school, the court directed all the States and Union Territories to submit their menstrual hygiene management strategies and plans and to ensure that disposal mechanisms are available in school complexes for the safe disposal of sanitary pads.

n. *Janhit Abhiyan v. Union of India (EWS Reservation)*<sup>37</sup> Building a welfare state is the main objective of the Constitution. Economic disabilities or economic backwardness are held as a

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<sup>29</sup> Delhi Domestic Working Women’s Forum v. Union of India & Others, 1995 SCC 14

<sup>30</sup> Delhi Domestic Working Women’s Forum v. Union of India & Others, 1995 SCC 14

<sup>31</sup> 1988 SCR (2) 530

<sup>32</sup> AIR 1982 SC 879

<sup>33</sup> (2017) 10 SCC 689

<sup>34</sup> AIR 2018 SC 4321

<sup>35</sup> AIR 2014 SC 187

<sup>36</sup> 2023 SCC Online SC 433

<sup>37</sup> (2023) 5 SCC 1

valid criterion for reservation or compensatory discrimination. Reservation structured singularly on economic criteria does not damage the basic structure of the Constitution.

The decisions mentioned here are just a few among many rulings propounded on Human Rights violations by instrumentalities of the State. The Indian Judiciary has interpreted the Right to Life guaranteed by Article 21 to include the right to a clean environment as part of its proactive approach to environmental issues. The Court has repeatedly expressed concerns regarding the effects of pollution on ecology in the present and the future, as well as the State's obligation to foresee, prevent, and identify the causes of environmental degradation, as well as the State's duty to ensure public health, protect the environment, and improve the environment.<sup>38</sup> For instance, the cases involving *Ganga Pollution, Taj Trapezium, and Ratlam Municipality* etc. The criminalization of politics has been a simmering issue since it directly affects voter's choice in elections and strikes at the heart of the expectation of effective Government through elected officials. The Judiciary brought about significant electoral reform in the case of *Association for Democratic Reforms*<sup>39</sup> by holding that proper disclosure of the antecedents by candidates in elections in a democratic society might influence intelligently the decisions made by voters. This was done by treating the right to vote as equivalent to Freedom of Speech and Expression under Article 19(1)(a) of the Constitution and enforcing the "Right to get Information" as "a natural right" flowing from the concept of Democracy. The Court issued several orders requiring candidates at the election to provide information about their personal profiles, backgrounds, qualifications, and antecedents after observing that voting by an uninformed, misinformed, or voter with biased information is bound to have a serious impact on democracy. The Supreme Court issued several directives on the protection of the Police and other investigating authorities from any form of external pressure in *Vineet Narain*<sup>40</sup> and *Prakash Singh cases*<sup>41</sup>.

Presently, PIL has shown to be a powerful tool in the Court's arsenal, allowing it to uncover numerous corruption cases and frauds in public life and punish those who are responsible for such incidences.

PIL has revealed the *Hawala Scam, Urea Scam, Fodder Scam in Bihar, St. Kits Scam, Ayurvedic Medicine Scam, Unlawful Allotment of Government Houses and Petrol Pumps, and 2GScam*<sup>42</sup>. The Indian Judicial system's paradigm serves as evidence of how the Judiciary supported the cause of effective governance. Even for those who are suspected of involvement in serious crimes. The Judiciary in India has consistently taken the position that while it may be appropriate for the Courts to give the executive branch's opinion due deference and appreciation, any State action that infringes an individual's personal freedoms or fundamental human rights must invariably be subject to Judicial scrutiny. This scrutiny would be based on objective evidence, pertinent evidence in accordance with the Law, and through a procedure that passes the muster of fairness. Judiciary has thus been essential to society's growth and

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<sup>38</sup> See *M.C. Mehta v. Union of India*, (1986) 2 SCC 176; *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647; *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388; *S. Jagannath v. Union of India*, (1997) 2 SCC 87; *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, (1997) 2 SCC 353; *M.C. Mehta (Calcutta Tanneries' Matter) v. Union of India*, (1997) 2 SCC 411; *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715; *Bittu Sehgal v. Union of India*, (2001) 9 SCC 181 and *M.C. Mehta v. Union of India*, (2002) 4 SCC 356.

<sup>39</sup> *Union of India v. Association for Democratic Reforms and Anr.*, (2002) 5 SCC 294.

<sup>40</sup> *Vineet Narain & Ors. v. Union of India & Anr.*, (1998) 1 SCC 226

<sup>41</sup> *Prakash Singh & Ors. v. Union of India & Ors.*, JT 2006 (12) SC 225.

<sup>42</sup> *Supra* note 18 at 25.

progress in general and to guaranteeing excellent leadership by people holding authoritative positions.

### **JUDICIAL OVERREACH**

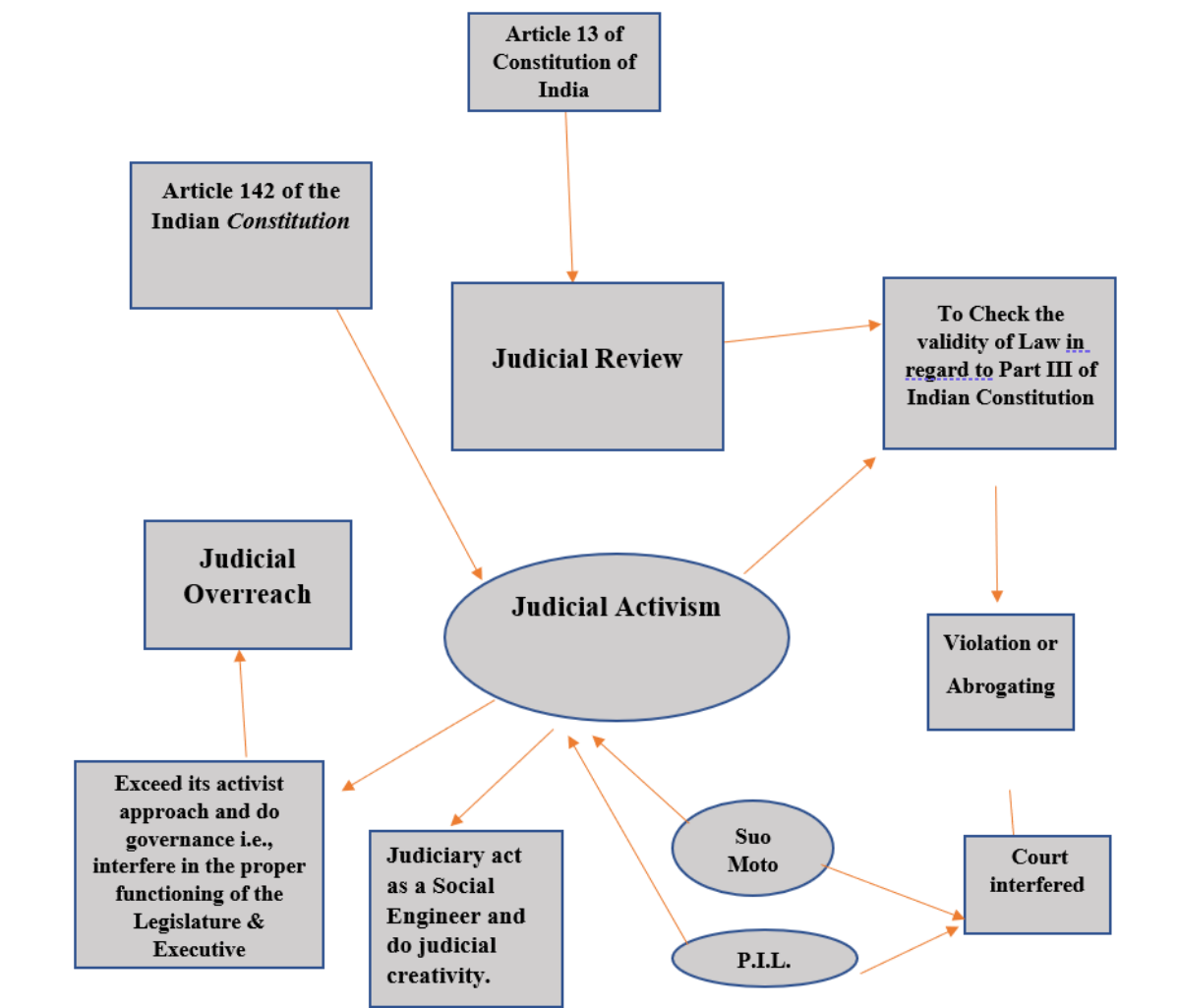
“The line between judicial activism and judicial overreach is a thin one...A takeover of the functions of another organ may become a case of over-reach” - *Dr. Manmohan Singh*<sup>43</sup>

Indian Judiciary has faced considerable attack with regard to its role in legal system particularly from legislative branch that they have become extraconstitutional law-making body. It has been argued that courts have been exceeding their authority in exercising their power. In addition to that, PIL attacks the balance between legislature, executive and judiciary. Although India does not follow strict separation of powers, yet it embodies checks and balances which even judiciary is under obligation to respect it. However, the judiciary on several occasions did not exercise self-restraint and moved on to legislate, settle policy questions, take over governance, or monitor executive agencies. One case that received such criticism was *M.C. Mehta v. State of Tamil Nadu*<sup>44</sup>, in which the Supreme Court addressed the issue of child labour in matchstick manufacturing enterprises. While dealing with the matter, the Court articulated an elaborate set of guidelines and regulations, including enjoining the State to provide free and compulsory education for children below the age of fourteen and a scheme of fines for offending employers. Justice Balakrishnan has justified the actions of the Judiciary by admonishing the legislature for its failure to address rights abuses: “It is often argued that the Supreme Court should maintain restraint and should not violate the legitimate limits in the exercise of powers. However, this argument fails to recognize the constant failures of governance taking place at the hands of other organs of State, and that it is the function of the Court to check balance and correct any failure arising out of any other State organ.” Though it seems that court’s inclination to dispense justice abuse the principle of separation of power, however, the purpose of judiciary is to fill the void that legislature has created by not protecting the rights of marginalised section of society so that they can lend their voices to the political dialogue and participate in the democratic process in a more meaningful way. Nevertheless, Judiciary must be cautious while admitting the PIL. PIL had now become a façade for people hungry for publicity or those who wanted to settle personal, business or political scores. The true face of the litigant behind the façade was seldom unravelled.

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<sup>43</sup> Speaking at the Conference of Chief Ministers and Chief Justices held in New Delhi in Apr 08, 2007 available at: <http://www.zeenews.com/news524148.html> (last visited on Jan 3, 2025)

<sup>44</sup> *M.C. Mehta v. State of Tamil Nadu*, AIR 1997 SC 699



**Figure 2: Concept of Judicial Activism and Judicial Overreach<sup>45</sup>**

### CRITICISM OF PIL

The critics have argued the following which demonstrate that the dark side of PIL is slowly moving to overshadow the bright side of it.

- PIL is being misused by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes.
- Judicial Populism: It is submitted that Judiciary should make a distance from treating themselves as crusaders constitutionally who are obliged to redress all failures of democracy. Neither they have this authority nor could they achieve this goal.

According to some, it is a symbolic justice. This argument can be substantiated by the fact that judiciary is often unable to ensure that guidelines given by them are complied with or judicial intervention in some cases have made little progress in combating the issue.

- Courts may entertain letter petitions but there have to be some objective parameters as to when this could be done. Pathak, J in the case of *Bandhua Mukti Morcha v. Union of India*<sup>46</sup>

<sup>45</sup> Illustrate the condition when Judicial Review take the face of Judicial Activism and when it converted in Judicial Overreach.

<sup>46</sup> *Bandhua Mukti Morcha v. Union of India*, (1997) 10 SCC 549

emphasized the need to safeguard against dilution of procedural requirements that would result in the abuse of process of the court, more so as litigation involves expenditure of public time and public money.

- The PIL should not become routine affairs as overuse led to non-seriousness. This would render the objective of PIL ineffective and dilute the original commitment to protect the rights of the disadvantaged group. The dark side of PIL is quite visible yet our system failed to preserve the sanctity of PIL. Nevertheless, an attempt to curb the misuse of the PIL was made, though not strictly on the part of the Government, in 1996 when a private member Bill was introduced in the Indian Parliament. The Public Interest Litigation (Regulation) Bill had proposed that petitioners filing frivolous PIL cases should be “put behind bars and pay the damages”.<sup>47</sup> However, the Bill which raised concerns of interfering with judicial independence could not receive the support of all political parties. As the Bill lapsed, this attempt to control the misuse of PIL failed.

## **CONCLUSION:**

PIL proved to be an important role to play in order to provide justice to the large section of the society 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. PIL could also contribute to good governance by keeping the government accountable. Also, PIL enables a civil society to play an active role to spread social awareness regarding human right. However, PIL might fail to achieve all these objectives if an attempt is not made to stop the misuse of PIL. It must be used with great care and caution; the judiciary should not deviate too much from the original commitment offered by PIL as judicial remedy otherwise it would be abuse of process of law. Nonetheless, the pro-active role played by Judiciary must be taken in an affirmative sense and for securing the principles enshrined in the Constitution its criticism must be avoided at every nook and corner. Henceforth, it is desirable that the actions of the Judiciary be evaluated in terms of Positive Activism. This desire of accepting actions of courts in an affirmative manner and equipping our Judiciary with the shield of Positive Activism is because of the laxity reflected by the conduct of the other organs of the State, the absence of reasonableness in actions of the legislature and the executive and the abuse of enormous discretionary powers granted to the authorities. It is now well established and also imbedded in the legal history of our country that Judiciary has repeatedly emerged as the savior of the Constitutional and Legal Rights guaranteed to the people of India. The Constitution of India also expressly made the Supreme Court of India the guarantor of our rights. It is also noticeable in the principle legal system of the world that if one organ of the State failed to discharge its obligations, then the other organs are duty bound to step in the shoes of that defunct organ and protect the rights of the individuals. The researcher further concludes that Judiciary has relaxed one of the fundamental principles of the justice dispensation system ‘Locus Standi’ and allowed the filing of petitions by any public-spirited person on behalf of the person or group of persons those who are unable to seek judicial recourse against the violation of their constitutional and legal rights. This relaxation granted by the judiciary worked as a blessing in disguise for the people of India as it has not only granted an opportunity to establish checks and balances on public authorities but has also

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<sup>47</sup> Supra note 44 at 180.

resulted in as a unique instrument of social change. Through PIL, the judiciary has on numerous occasions protected the rights of individuals, declared various laws to nullify those which are inconsistent with the noble notions of our Constitution or are enacted in an unreasonable manner. Thus, the concept of PIL has also contributed to the implementation of various Directive Principles of State Policy which are otherwise not formulated and brought into action by the Legislative and the Executive organs of the State. Thereby, the PIL has contributed in upholding the principles of Good Governance in India.