

PIL AND JUDICIAL ACTIVISM IN INDIA: AN ANALYSIS

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ABSTRACT

Judicial activism can be defined as the proactive role played by the judiciary by simultaneously exercising their power of judicial review and PIL. This research paper deals with the interlinking of PIL and judicial activism. It goes on explaining how public interest litigation plays an important role in securing speedy and fair trial to provide justice to the people and how it works simultaneously through judicial activism. It also talks about how the concept of PIL was evolved in India governing the different principles. Along with this, the paper discusses the merits and demerits of both PIL and judicial activism and further it deals with the recent case laws which has shaped India wonderfully in a positive manner. The main objective of this research paper is to make people aware about different aspects of judicial activism and let them know how PIL acts as a legal horizon where the power has been given to the court of law to initiate and enforce action to serve and secure justice to the significant interest of people of the country. The ultimate goal is to minimize litigation and thus reduce the pendency of cases. It is needless to say that the way justice is secured to people of the country today through different remedies and methods available by the Courts of law; it's highly appreciable and commendable. Therefore, the need of the hour is to understand and appreciate the concept of PIL and judicial activism and further make efforts to provide justice to the people and get their problems adjudicated in the court of law.

I. INTRODUCTION

The third and the most important pillar of Democracy consist of Indian Judiciary. In India, the autonomous and unbiased judiciary is considered to be as the principle stone of our political order. One of the reasons behind considering Judiciary as the principle stone is that: it helps in shaping the legal order of our country by giving interpretation to the legal and constitutional provisions and at the same time it strengthens the democracy by protecting the rights and liberties of the people. Apart from these conventional functions of judiciary, Judiciary in India also provides protection to the constitution by exercising its power of judicial review. Today, Judiciary is considered as one of

the major instrument for bringing out the social changes in our society by giving progressive interpretations to the laws and provisions. Recently, Indian judiciary has passed its major decisions such as decisions on Triple Talaq and also on Article-377 of IPC i.e. by decriminalizing homosexuality which clearly shows the progressive outlook of Indian judiciary in bringing out the social changes.

The new concept of judicial activism comes into picture when courts exercise their power of judicial review and PIL (public interest litigation). In simple words, judicial activism can be defined as the proactive role played by the judiciary by simultaneously exercising their power of judicial review and PIL. When the laws declared by the legislature and also the orders of the executive goes against the constitutional structure, in that case the court has the power to declare these laws and order to be invalid. The constitution of India is the fundamental law of the land and in no case the executive and the legislature has the power to infringe its basic structure.¹ Moreover, the PIL is the new concept undertaken by Indian judiciary in order to perform the public interest assigned to it under the eye of law for the larger interest of the public.

In the modern era of liberal democracies with a record of Constitutionalism, in most countries, the duty of ensuring that the Executive and the Legislature are within their Constitutional bounds is upon the Judiciary, which through their Constitutional power of judicial review, the importance of judicial independence is more important since not only is it a safeguard against the Executive and the Legislative tyranny and bulwark of limited constitution, but is also a parameter of maturity and responsibility of the country's polity and the strength of its Constitutional structure.

II. WHAT IS PIL?

Public Interest Litigation (PIL) is a legal horizon where the power has been given to the court of law to initiate and enforce action to serve and secure justice to the significant interest of people of the country. Here, the petition is filed directly in Supreme Court or High Court or Court of law by

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¹ Keshavananda Bharti v. State of Kerala AIR 1973

such a person who is filing that petition in interest of larger public instead of possessing any personal interest. This method of securing justice gives vulnerable people a voice by highlighting an important issue and by providing them a platform where they can stand up for their rights. It is working as an important instrument of social change. The innovation of this legitimate instrument proved beneficial for developing a country like India. Moreover, it is the best way considered to combat the problems and atrocities currently prevailing in the society.

The inception of PIL in India starts from 1982. Under the concept of PIL the locus standi has been liberalized. The earlier concept of locus standi gives right only to the aggrieved and affected party to approach the court for proper remedy but in case of PIL even the third party can approach the court for the issues involving greater public interest. Generally, the parties do not approach the court because of cost and hurdles involved in the matters related to public interest also the party affected may not have the proper opportunity to approach the court for the remedy. For example- in cases related to bond and child labours the affected parties cannot approach the court because of their weakness in terms of financial conditions etc thus, by way of PIL such type of matters can be brought before the court and to provide social justice. There are many instances where the practice of PIL has been followed by the courts in our country i.e. mostly issues relating to disadvantageous sections of our society. Justice P.N.Bhagwati stated: - where a legal injury is caused to a person belonging to disadvantageous sections of our society who there by a reason of their poverty or socially and economically weak background cannot approach the court for redressal of their dispute, any member from public have the right to maintain an application before the court on their behalf². Another major change that has been brought to the concept of PIL is the direct filing of application to court without filing a writ through a lawyer.

In the landmark case, *Justice P.N.Bhagwati stated: - "PIL is a cooperative or collaborative effort on the part of the petitioner, the state or public authority and the courts to secure observance of the constitutional or legal rights, benefits conferred upon the vulnerable section of the community and to reach social justice to them"*.³

² S.P. Gupta vs. Union of India, SC 1982

³ Peoples Union of Democratic Rights vs. UOI

III. HISTORY BEHIND PIL

The first petition was filed in the Supreme Court of India in December 1979. It was filed by Kapila Hingorani who represented various prisoners of the Bihar jail. It was related to the conditions of the prisoners detained in the Bihar jail whose suits were pending in the court. This matter was heard by Justice P.N. Bhagwati and the petition was filed by the name of the prisoner Hussainara Khatoon through which the petition came to be known as Hussainara Khatoon v. State of Bihar. This was the case where the Supreme Court upheld that the prisoners should get benefit of free legal aid and fast hearing.

Public interest litigation has historically been an innovative judicial procedure for enhancing the social and economic rights of disadvantaged and marginalized groups in India. In recent years, however, a number of criticisms of public interest litigation have emerged, including concerns related to separation of powers, judicial capacity, and inequality. These criticisms have tended to abstraction, and the sheer number of cases has complicated empirical assessments. This paper finds that public interest litigation cases constitute less than 1 percent of the overall case load. On the issue of inequality, the analysis finds that win rates for fundamental rights claims are significantly higher when the claimant is from an advantaged social group than when he or she is from a marginalized group, which constitutes a social reversal, both from the original objective of public interest litigation and from the relative win rates in the 1980s.⁴

Filing a PIL is not a difficult process as filing a civil case, there have been situations where letters and telegrams addressed to the court have been take up as PILs and are then heard. Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were among the first judges to admit PILs in the court. The Constitution of India lays down a provision “*The State shall secure that the operation of legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*”⁵ The concept of Public interest litigation (PIL) is in connection with this provision of the Indian Constitution to protect and deliver prompt justice with the help of law.

⁴ Two Paths to Judicial Power: The Basis Structure Doctrine and Public Interest Litigation in Comparative Perspective, also refer <https://heinonline.org/HOI/LandingPage?handle=hein:journals/sdintl12&div=9&id=&page=>

⁵ Article 39A of the Indian Constitution

IV. PRINCIPLES GOVERNING PIL

There are few guiding principles which are required to be followed while exercising the right of PIL. It includes:-

- 1) The first necessary requirement for filing PIL is the bonafide intention to protect the public interest at large.
- 2) The dispute involved must be of public nature. One cannot raise the PIL in matters of personal interest of an individual.
- 3) The court can take suo moto cognizance under the PIL to resolve the dispute.
- 4) There is no requirement of filing a writ through a lawyer instead the case can be filed by the way of letter itself.
- 5) The wrong involved must be of governmental liability i.e. it arises from the responsibility of the government affecting the rights of the people.

V. HOW TO FILE A PIL

The court permits public interest litigation just because of public spirited citizens for the enforcement of constitutional legal rights. Now, any public spirited citizen can move/approach the court for the public cause by filing a petition:

1. In Supreme Court under Art.32 of the Constitution
2. In High Court under Art.226 of the Constitution
3. In the Court of Magistrate under Sec.133, Cr.P.C.

It is a unique and important legal ambit in which court of law can initiate and enforce action to serve and secure significant public interest. This initiative of judicial activism has opened new horizons for the poor and the destitute. This is definitely an inexpensive medium of judicial consolation for the ones in need.

However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body. In cases the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed on its own, or cases can commence on the petition of any public-spirited individual.

VI. MERITS OF PIL

- 1) PIL is basically a wider description and analysis of right to equality, life and personality which is guaranteed by Part 3 of the Constitution of India.
- 2) It is an effective instrument for change in society since the atrocities prevailing in society can be removed through roots by filing a petition in interest of larger public and by getting the matter adjudicated in court of law.
- 3) It is an inexpensive remedy as the nominal court fee is to be paid while filing a PIL.
- 4) It is the way fast remedy to achieve results pertaining to human rights, consumer welfare and environment.
- 5) PIL has an important role to play in the civil justice system in that it affords a ladder to justice to disadvantaged sections of society, some of which might not even be well-informed about their rights.

- 6) It provides an avenue to enforce diffused rights for which either it is difficult to identify an aggrieved person or where aggrieved persons have no incentives to knock at the doors of the courts.
- 7) PIL enables civil society to play an active role in spreading social awareness about human rights, in providing voice to the marginalized sections of society, and in allowing their participation in government decision making.

VII. DEMERITS OF PIL

- 1) Frivolous petitions are filed in the court.
- 2) It leads to abuse of law because petitions are being filed by the people agitating for personal and private grievance in the grab of public interest and seeking publicity rather than espousing public cause which in turn leads to increase in number of cases and further giving rise to the problem of 'Backlog of cases'.

So, to stop this abuse of law, the need of the hour is that the court should frame certain specific guidelines for filing of a PIL and the court should see that petitioner is acting bona fide in public interest or not. The person filing PIL should prove to satisfaction of court that the petition is being filed for the public interest and not as frivolous litigation for pecuniary gain.

The way forward, therefore, for India as well as for other jurisdictions is to strike a balance in allowing legitimate PIL cases and discouraging frivolous ones. One way to achieve this objective could be to confine PIL primarily to those cases where access to justice is undermined by some kind of disability. The other useful device could be to offer economic disincentives to those who are found to employ PIL for ulterior purposes. At the same time, it is worth considering if some kind of economic incentives—e.g. protected cost order, legal aid, pro bono litigation, funding for PIL civil society, and amicus curie briefs—should be offered for not discouraging legitimate PIL cases. This is important because given the original underlying rationale for PIL, it is likely that potential plaintiffs would not always be resourceful.⁶

⁶ C.J.Q., VOL 28, ISSUE 1 2009 Thomson Reuters legal limited

VIII. 10 CASES THAT SHAPED INDIA IN 2018⁷

1. Constitutionality of Aadhaar Act (*K.S. Puttaswamy v. Union of India*)
2. Sabarimala Temple Entry (*Indian Young Lawyers Association v. State of Kerala*)
3. Constitutionality of Section 377 (*Naveen Jha v. Union of India*)
4. Arrested Activists (*Romila Thapar v. Union of India*)
5. Decriminalisation of Adultery (*Joseph Shine v. Union of India*)
6. Reservation in Promotion (*Jarnail Singh v. Lachmi Narain Gupta*)
7. Electoral Disqualification (*Public Interest Foundation v. Union of India*)
8. Hadiya Marriage (*Shafin Jahan v. KM Ashokan*)
9. Cow Vigilantism (*Tehseen Poonawalla v. Union of India*)
10. Special Status of Delhi (*Government of NCT of Delhi v. Union of India*)

IX. JUDICIAL ACTIVISM IN INDIA

The phrase “judicial activism” was first introduced by an American historian Arthur M. Schlesinger, Jr., in 1947, in an article in the *Fortune Magazine*. It is frequently used to describe a judicial decision that alters the current position or which may have philosophical, traditional or political implications. It has been considered as the opposite of judicial restraint, in some instances, by far, such judicial rulings have only compelled both the Legislative and the Executive to change the policies to secure justice to disadvantaged and aggrieved citizens. Judicial Activism had started in some of the western countries as early as in the 1950s, while in India; it had started only after the Emergency, in the late 1970s.

In India the judicial activism cannot be called as the extra-constitutional or extra-legal powers of the courts in fact it is the proactive exercise of its legal and constitutional powers. The constitution of India provides the fundamental goals of securing social, economic and political justice. The three organs of the government that is legislature, executive and judiciary works independently to achieve these goals. There are different laws, programmes, policies etc implemented by the executive to achieve these goals but at the same time executive fails in India has failed to achieve the results of

⁷ <https://blog-iacl-aicd.org/2019-posts/2019/3/8/10-cases-that-shaped-india-in-2018>

these programmes which resulted in infringement of rights and liberties of the weaker section of the society. Executive lacks in their willingness to implement the laws adopted by the government. For e.g. the conditions of hospitals and schools in rural areas shows the lack of proper implementation of these governmental policies. Thus, due to this irresponsible behavior of the executive and its administrative organs there has been a drastic growth in the emergence of PIL and judicial activism in India.

The judicial activism has its important component called as PIL. But in India judicial activism has much wider scope than PIL. PIL signifies the liberalized, relaxed procedure for the protection of public interest where as judicial activism signifies the domain of the court which touches upon the functioning of the governmental organs. Since 1980s, judiciary in India involved in issuing directions to the various governmental agencies such as cleaning of garbage from the streets, controlling environmental pollution as well as framing of common civil code. Thus, judicial activism in India can be defined as in prerogative sense.

In words of justice P.B.Sawant judicial activism can be defined as the encroachment of the judiciary into the actions performed by the legislature and the executive and he said that an enlightened executive should welcome judicial activism. However, judicial activism is different from judicial review where court exercises their power to declare any law as null and void in case if it violates the constitution. Also, the directions issued to government authorities in case of non-performance of their duties should not be confused with the judicial activism.

The Indian Evidence Act, 1872, has certain provisions⁸ where the court 'May Presume' or 'Shall Presume' the existence or non-existence of certain facts, implying it seeks only positive evidence and not negative evidence. It is in areas like this that judicial activism will be greatly appreciated, whereby a citizen should be able to persuade the court to 'presume' the corruption or incompetency of the concerned officer, both of which should establish liability on the part of the public officer, until such presumption is rebutted by the concerned officer with acceptable reasons for the delay.

⁸ Section 4 of the Indian Evidence Act, 1872

X. DIFFERENT ASPECTS OF JUDICIAL REVIEW

There are three major aspects of judicial review which include:

- 1) To provide protection to the fundamental rights of the people:- in order to achieve public interest the courts provides protection to the fundamental rights of its citizen. All the cases which are covered under PIL directly come under the concept of judicial activism. One of the best examples where the court has issued PIL are Sunil batra vs. Delhi Administration, Bandhua mukti morcha vs union of India, PUCL vs UOI etc.
- 2) The second major aspect is to give liberal interpretation to the fundamental rights:- there are different rights provided under the Constitution which includes right to equality, right to freedom as well as right to personal liberty etc in order to provide protection to these rights courts have used their discretion by the way of judicial activism.
- 3) The third major aspect include review of legislation and constitutional amendment:- the court has the power to review the existing provisions, laws etc passed by the legislature. Sometimes it brings in direct confrontation with the legislature for e.g. in case of Keshvanand Bharti vs. UOI the doctrine of basic structure was propounded which gave power to the legislature to amend certain features of the constitution. The protection was given from the acts which are placed under the 9th schedule of the constitution and the courts cannot interfere with it. Even after this landmark judgment of Keshvanand Bharti the courts continued to have judicial review power in their hands to review the acts placed under the 9th schedule.

XI. RECENT CASES

The SC in October, 2015 declared NJC (National Judicial Commission) as unconstitutional because it violates the basic structure of the constitution. NJC was enshrined under article 124 and was created by way of 99th constitutional amendment. The SC held that it violates the basic structure by infringing the independent working of judiciary. On August, 2017, SC gave its another landmark decision on Triple Talaq and declared it as unconstitutional as it violates the rights of the Muslim

women's. Moreover, SC in February 2018 declared that any candidate who contests election has to disclose his sources of income and his spouses and dependent children apart from their share. In September 2018, Homosexuality was decriminalized by SC and declared section-377 of IPC to be as unconstitutional and void. These cases show the direct confrontation of Indian judiciary with the legislature.

XII. MERITS AND DEMERITS OF JUDICIAL ACTIVISM IN INDIA

The judicial activism in India supported because of the following reasons:-

- 1) Judicial mechanism provides a mechanism in case of failure by the administrative and executive authorities in discharge of their functions and to control them in an effective manner.
- 2) The courts in India has made a recognizable progress in interpretation of rights of the citizens with the changing democratic and political scenario not only this it has also changed the outlook of fundamental rights in India.
- 3) The court with the help of judicial activism in India provided safeguard to the interests of the lower and weaker sections of the society such as bonded labours, child labours etc and this contributed towards the goal of social justice.
- 4) With the recent incident of Hawala case or corrupt and criminal practices by the legislature as well as candidates in the elections can be controlled by the way of judicial activism and hence it can be said that judiciary in India has become more bold to control these corrupt practices.
- 5) Supreme court imposed a fine of Rupees 50 lakhs in matter related to illegal allotment of gas agencies and petrol pumps by our Union petroleum minister Mr. Satish Sharma which clearly showed the check on the abusive powers exercised by the high functionaries by the way of judicial activism.

Thus from the above mentioned reasons it can be stated that the main aim of judicial activism is to provide access to justice to everyone and at the same time safety in their value.

DEMERITS

There are various demerits associated with the concept of judicial activism in India which can be identified as:-

- 1) There are various new principles identified by the judiciary such as Basic structure, prospective overruling etc. This would certainly leads to confusion in implementation of certain provisions of the constitution.
- 2) Judicial activism may lead to conflict between the legislature and the judiciary as both of them surpasses there powers by the way of judicial activism or amendment.
- 3) Also, the doctrine of judicial review leads to violation of principle of separation of powers as the judiciary cannot transgress its powers into the democratic set up. For e.g. SC bench consisting of justice Markanday katju and A.K. Mathur, in a judgement asked the courts to not to transgress into the functions of legislature and the executive, also example such as ban on interview of childrens in nursing schools in Delhi, 2007 is one of the glaring example of interference with the separation of powers.
- 4) The fact that judiciary exercise its power to check the misuse by the two organs of the government but at the same time there is lack of mechanism to control the abuse of power by the judicial authority this brings the question of judicial accountability and responsibility. Thus, there needs to be a mechanism where judiciary be held responsible for the authority they exercise.

XIII. CONCLUSION

The framers of the Indian Constitution would not have envisioned that within 5 decades the Indian Judiciary would emerge as the most dominant establishment of the state. It is needless to say that the way justice is secured to people of the country today through different remedies and methods available by the Courts of law; it's highly appreciable and commendable. At the pinnacle of whole

legal framework, there exists the Supreme Court of India and then beneath it is the High Courts established in every state or gathering of states and following that is the chain of different district courts known as subordinate courts. In all together, this properly functioning mechanism of courts is the sole reason for which the people of India are able to confide their trust into it and are satisfied that justice is secured to them.

It is a well settled principle that when a person approaches the court of equity while exercising the extra ordinary jurisdiction, he should approach the court not only with the clean hands but also with clean mind, heart and clean objectives as well. So, to be very precise and short, PIL is the best way through which a person can secure justice to the larger public by filing a petition in respect of their problem through which at least they could stand up for their rights and get their problem adjudicated through Court of Law. Likewise, in the context of the Indian Judiciary, we need judicial activism not just to bring about changes to existing laws but also to existing judicial procedures, that can put both the Legislative and executive on the path of transparency and accountability. The ultimate goal is to minimize litigation and thus reduce the pendency of cases. Such kinds of judicial activism will also require support from the Bar, for which we can hope for in the near future.