

Public Interest Litigation in India- Judicial Activism or Judicial Overreach

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MEANING, ORIGIN AND NATURE OF PUBLIC INTEREST LITIGATION (PIL)

The words 'Public Interest' mean "*the larger interests of the public, general welfare and interest of the masses*" (Oxford English Dictionary, 2nd Edn., Vol.XII) and in the *Black's Law Dictionary* it is defined as "*something in which the public or the common community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected*". Simultaneously, the word 'Litigation' means "*a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy*". Thus, the expression 'Public Interest Litigation' means "*any litigation conducted for the benefit of the public or for the removal of some public grievance.*"

However, this form of litigation has certain basic differences with the traditional private litigation that comes to the courts.

Distinction between Private Litigation and PIL

The main point of difference between these forms of litigation is *firstly* the number of

people involved, with private litigation being normally between two private individuals while PIL being the kind that involves a group of people whose rights may have been collectively infringed. For instance, exploited labourers, urban or rural poor, minority groups etc. *Secondly*, private litigation can involve any kind of issue under civil, criminal, constitutional or arbitration laws whereas PIL in common parlance involves the restitution of a fundamental human right enumerated expressly or through implication in the Constitution of a country. *Thirdly*, in a PIL normally one of the parties is a state authority which may have neglected its duty thereby harming the interests of the masses and infringing on their rights.

In spite of its differences with traditional litigation PIL has gained global prominence as the chief means of redressing general public grievances through the courts especially of those classes of people who are considered as backward and underprivileged in the society. Courts all over the world are now dealing with such suits that focus on restitution of collective group rights.

PIL as a global concept

Public Interest Law gained prominence in the US in the 1960s as significant institutional reforms were made to the country's legal system

in order to provide an opportunity to the poor and disadvantaged sections of the society to gain access to the judiciary. One of the ways in which this was made possible was through the introduction of *Class Action Suits* or *Social Action Litigation (SAL)*¹. It was believed that this kind of litigation will help to uphold the principle of Natural Justice by giving an opportunity to the downtrodden masses to make effective legal representations against policy decisions taken by the executive that may have affected them adversely.

In pursuance of this thought, the *Council for Public Interest Law* in USA stated that: “*Public Interest Law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that an ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interest groups. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others*” (Upadhyay, V., 2007)².

This form of litigation has also been introduced in countries like Australia, Canada and UK to serve the interests of the backward classes who may have been victimized in various ways. In India due to the efforts of its activist judiciary and a few pro-poor judges, PIL has now become a major instrument for redressal of grievances for the backward classes.

¹ As has been discussed by Prof. Upendra Baxi in many of his scholarly works

² Report of the Council for the Public Interest Law, USA, 1976 in Upadhyay, V. (2007). *Public Interest Litigation in India: Concepts, Cases, Concerns*, New Delhi: LexisNexis Butterworths Publications

PUBLIC INTEREST LITIGATION IN INDIA

Origin and Development

It should be noted at outset that PIL, at least as it had developed in India, is different from class action or group litigation. Whereas the latter is driven primarily by efficiency considerations, the PIL is concerned at providing access to justice to all societal constituents. PIL in India has been a part of the constitutional litigation and not civil litigation. Therefore, in order to appreciate the evolution of PIL in India, it is desirable to have a basic understanding of the constitutional framework and the Indian judiciary (Shah, S., B., 1999)³. After gaining independence from the British rule on August 15, 1947, the People of India adopted a Constitution on 26th November 1949 with the hope of establishing a “*Sovereign Socialist Secular Democratic Republic*”.⁴ The Constitution *inter alia*, aims to secure to all its citizens “*Justice (Social, Economic and Political), Liberty (of Thought, Expression, Belief, Faith and Worship) and Equality (of Status and Opportunity)*”⁵. These aims were not

³ Shah, S., B. (1999) *Illuminating the Possible in the Developing World: Guaranteeing the Human Right to Health in India* *Vanderbilt Journal of Transnational Law*, 32, 435-463.

⁴ Although the terms “socialist” and “secular” were inserted by the 42nd amendment in 1976, there were no doubts that the Constitution was both socialist and secular from the very beginning.

⁵ As laid down in the Preamble to the Constitution of India.

merely aspirations but the founding fathers actually wanted to achieve a social revolution through the Constitution (Austin, G., 1998)⁶. The main tools employed to achieve such social change were the provisions on *Fundamental Rights (FRs)* and the *Directive Principles of State Policy (DPs)*, which Austin described as the “*Conscience of the Constitution*”.⁷

In order to ensure that FRs did not remain empty declarations, the founding fathers made them enforceable in a Court of law in case of their violation through Art. 32 and 226 which empower the Supreme Court and State High Courts to issue writs against State authorities in case they failed to respect and protect the FRs.. Part III of the Constitution lays down various FRs and also specifies grounds for limiting these rights. Some of the FRs are available only to citizens⁸ while others are available to citizens

as well as non-citizens,⁹ including juristic persons. Notably, some of the FRs are expressly conferred on groups of people or community.¹⁰ Not all FRs are guaranteed specifically against the state and some of them are expressly guaranteed against non-state bodies (Sripati, V., 1998).¹¹ Even the “state” is liberally defined in art.12 of the Constitution to include, “*the*

six freedoms); art.29 (protection of interests of minorities).

⁹ See, for example, Constitution art.14 (right to equality); art.15 (1) (right of non-discrimination on grounds only of religion, race, caste, sex, place of birth or any one of them); art.20 (protection in respect of conviction of offences); art.21 (protection of life and personal liberty); art.22 (protection against arrest and detention); art.25 (freedom of conscience and right to profess, practice and propagate religion).

¹⁰ See, e.g. Constitution arts 26, 29 and 30 which primarily talk about the freedom to profess, practice and propagate any religion in India and also to run religious and charitable institutions. These rights are available to all communities and religious sects in India like the Hindus, Muslims, Christians, Sikhs, Parsis, Jains, Buddhists etc.

¹¹ Austin cites three provisions, i.e. Constitution arts 15(2), 17 and 23 which have been “designed to protect the individual against the action of other private citizen”: Austin, *Cornerstone of a Nation*, p.51. However, it is reasonable to suggest that the protection of even arts 24 and 29(1) could be invoked against private individuals. See Sripati, V. (1998) *Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950–2000)*. *American University International Law Review*, 14, 413, 447–48.

⁶ Austin, G. (1998) *The Indian Constitution: Cornerstone of a Nation*, New Delhi: Oxford University Press, “The social revolution meant, ‘to get (India) out of the medievalism based on birth, religion, custom, and community and reconstruct her social structure on modern foundations of law, individual merit, and social education’.” (Austin quoting K. Santhanam, a member of the Constituent Assembly.)

⁷ Ibid

⁸ See, for example, Constitution art.15(2) (right of non-discrimination on grounds only of religion, race, caste, sex, place of birth or any one of them to access and use of public places, etc.); art.15(4) (special provision for advancement of socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes); art.16 (equality of opportunity in matters of public employment); art.19 (rights regarding

Government and Parliament of India and the Government and the legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India". The expression "Other Authorities" has been expansively interpreted, and any agency or instrumentality of the state will fall within its ambit.¹²

An independent judiciary armed with the power of judicial review was the constitutional device chosen to achieve this objective. The power to enforce the FRs was conferred on both the Supreme Court and the High Courts¹³, the courts that have entertained all the PIL cases. The judiciary can test not only the validity of laws and executive actions but also of constitutional amendments. It has the final say on the interpretation of the Constitution and its orders, supported with the power to punish for contempt, can reach everyone throughout the territory of the country. Since its inception, the Supreme Court has delivered judgments of far-reaching importance involving not only adjudication of disputes but also determination of public policies and establishment of rule of

law and constitutionalism (Kirpal, B., N., 2000).¹⁴

Two celebrated judges of the Supreme Court of India, namely *Justices P.N. Bhagwati and V.R. Krishna Iyer* took it upon themselves to take up the cause of the poor and underprivileged sections of the Indian society. Similar to the American Judiciary, they started entertaining Class Action Suits for the violation of fundamental rights under Arts. 32 and 226 of the Constitution¹⁵ which were popularly termed in India as "Public Interest Litigation" for the simple reason that all such cases involved violation of the basic rights of a particular class or group of people, e.g., labourers, employees, residents of a locality etc. In the first ever PIL in *Mumbai Kamgar Sabha v Abdul Bhai Faizulla Bhai*¹⁶, Krishna Iyer J. famously remarked that "Test litigation, Representative actions, pro bono publico and like forms of legal

¹² See *Ajay Hasia v Khalid Mujib* AIR 1981 SC 487; *Pradeep Kumar v Indian Institute of Chemical Biology* (2002) 5 S.C.C. 111. In the application of the instrumentality test to a corporation, it is immaterial whether the corporation is created by or under a statute. *Som Prakash Rekhi v Union of India* AIR 1981SC 212.

¹³ Constitution of India 1950 arts 32 and 226

¹⁴ See, for an analysis of some of the landmark judgments delivered by the Apex Court during these years, Das, G. The Supreme Court: An Overview in Kirpal, B., N. (ed.). (2000) *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* New Delhi: Oxford University Press, 16–47.

¹⁵ Art. 32 is a part of Chapter III of the Indian Constitution which lays down certain fundamental rights for the people of India including foreigners who enjoy the Right to Life and Personal Liberty under Art. 21. These rights are basic, inherent human rights, for example Right to Life, Freedom of Speech, Freedom of movement, Freedom of religion etc. which if violated can be redressed through writ petitions in the Supreme Court under Art. 32 and in the Federal State High Courts under Art. 226.

¹⁶ (1976) 3 SCC 832

proceedings are in keeping with the current accent on justice to the common man.....". This view was again reiterated in *Ratlam Municipal Corporation v Vardhichand*¹⁷ and *Akhil Bharatiya Shoshit Karmachari Sangh (Railway Employees' Union) v Union of India*.¹⁸. In the Indian context therefore, Public Interest Litigation indicates a judicial process through which the judiciary can be approached for a public cause (or in the interest of the welfare of the common masses) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution.

In order to approach the court to seek a remedy for the violation of a Fundamental Rights one needed to have a judicial standing and basis to approach the Court. This judicial standing or authority was provided by a special concept called *Locus Standi* which needs attention at length.

Concept of Locus Standi

The term *Locus Standi* literally means "*focal point of standing*" and is an extremely essential concept of judicial process. In common parlance, it is understood as the basis or reason to approach the judiciary to avail of a particular remedy in case one's interests are adversely affected. Thus locus standi denotes the legal justification behind seeking a legal remedy and the power of a court to entertain a particular suit or matter. Locus Standi to approach a court is normally found in statutory provisions which lay down the cause of action and describe the procedure to be adopted while seeking a judicial remedy. Traditionally locus standi to approach

any judicial fora always lay with the aggrieved persons whose rights may have been violated or threatened to have been violated.

However, in India the locus standi rule was liberalized to allow even third parties not having a direct interest in the litigation to come before the courts seeking restitution of a right or to make good the damage that may have been caused by State authorities.

Liberalization of Locus Standi in India

Ever since the judgment of the Supreme Court in *S.P. Gupta v Union of India*¹⁹ popularly known as the *Judges' Transfer* case the locus standi rule was liberalized and persons other than those who were directly aggrieved by the inactions of public authorities were allowed to come before the courts and represent their case on behalf of the group or class of citizens whose rights may have been violated. Such persons are commonly known as "*Public Spirited Citizens*" and it is not essential that they need to be directly involved in the issue at hand. At the same time they should qualify as people who want to work for public welfare and may have dedicated themselves to the cause of amelioration of the condition of the underprivileged and backward classes who do not have the social status and financial means to take recourse to judicial proceedings. Liberalization of the locus standi rule included modifying the traditional requirements of locus standi, liberalizing the procedure to file writ petitions, creating or expanding FRs, overcoming evidentiary problems, and evolving innovative remedies (Cooper, D., 1993).²⁰

¹⁷ AIR 1980 SC 1622

¹⁸ AIR 1981 SC 298

¹⁹ AIR 1982 SC 149

Modification of the traditional requirement of standing was sine qua non for the evolution of PIL and any public participation in justice administration. The need was more pressing in a country like India where a great majority of people were either ignorant of their rights or were too poor to approach the court. Realizing this need, the Court held that any member of public acting bona fide and having sufficient interest has a right to approach the court for redressal of a legal wrong, especially when the actual plaintiff suffers from some disability or the violation of collective diffused rights is at stake.

Apart from the liberalization of the locus standi rule and the additional legal basis provided by the Constitutional provisions to file public interest petitions, some of the other Indian laws have also conferred the necessary legal standing and statutory authorization on individuals to approach the Courts from the lowest to the highest levels to get their grievances redressed. Provisions enabling the filing of PIL have also found mention in the procedural laws of this country.

Public Interest Litigation within the purview of Indian procedural laws

(1) *The Code of Civil Procedure, 1908*- allows for class action litigation under *Order 1, Rule 8(1)*²¹ and the explanation to that

²⁰ See Cooper, D. (1993) Poverty and Constitutional Justice. Mercer Law Review, 44, 611, 616–632; See Supra n. 4, pp.467–473; Supra n.12, 118–125.

²¹ The bare text of O.1, R.8(1) provides: “**One person may sue or defend on behalf of all in same interest----**
(1) Where there are numerous persons having the same interest in the suit,----

provision²². Furthermore, S. 91 of the Code provides that: “*In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted . . . with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.*”

The above provisions in the Code demonstrate clearly the intention of the legislature to liberalize the locus standi rule and allow persons other than those who are aggrieved to approach the court on behalf of those whose rights may have been violated. This has therefore allowed many Public Welfare Organizations and Non-Governmental Organizations (NGOs) to approach the Courts for relief.

(2) *The Code of Criminal Procedure, 1973*- S. 133 of the Cr. P. C. is a much more specific

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- (a) *one or more of such persons may, with the permission of the Court, sue or be sued or may defend such suit, on behalf of, or for the benefit of, all persons so interested;*
 - (b) *the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.*

²² Explanation to O.1, R. 8(1) provides that: “*For the purpose of determining who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.*”

provision as compared to the one found in the Civil Procedure Code. It specifically targets any activity that tends to cause damage to the environment in general and creates a nuisance or obstruction for the public in the process of carrying out their daily activities. It empowers “a district judge equivalent to the rank of District Magistrate, Sub-divisional Magistrate and Executive Magistrate²³, on receipt of evidence or information from a police officer if he considers-

- (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
- (b) that the conduct of any trade or occupation or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
- (c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
- (d) that any building, tent or structure, or any tree in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair

or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

- (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or*
- (f) that any dangerous animal should be destroyed, confined or otherwise disposed of*

may pass a conditional order in the nature of an injunction or stay order for the removal, disposal, confinement, destruction, repair, alteration, prevention or stoppage of any of the abovementioned activities”.

The very fact that this kind of provision was included in the Code that regulates procedures in Criminal Courts makes it evident that public nuisance and causing damage to the environment has been viewed as an unlawful activity of a criminal nature thereby empowering aggrieved persons to approach the Courts collectively or through a third person seeking removal of any obstruction or stoppage of any activity causing nuisance.

It is also noteworthy that such legal provisions in existing laws have allowed the judiciary to adopt an activist approach by entertaining writ petitions and class action suits involving violation of the fundamental and other statutory rights of the common masses. This ultimately proves that PIL in India is therefore a product of judicial activism of a few judges and their strong desire to let the people of this country know that the judiciary is an independent organ of the state which is above all external influences, capable of taking independent decisions and evolving new concepts on its own.

²³ These are different kinds of subordinate judges functioning at the district level in any particular federal state in India.

PUBLIC INTEREST LITIGATION AS AN INSTRUMENT OF JUDICIAL ACTIVISM IN INDIA

Meaning, Origin and Nature of Judicial Activism- a global concept

The expression “*Judicial Activism*” signifies the initiative of the judiciary to devise newer forms of judicial remedies for the aggrieved by formulating new rules and principles to settle conflicting and ambiguous questions of law. Judicial Activism came to the forefront through the jurisprudential theory of *American Realism*²⁴ which urges the judges to go beyond the letter of the law and try to gauge the actual spirit behind all laws. American Realism inspired judges to invent new legal concepts and also encouraged the phenomena of “*Judicial Law-making*” wherein judges laid down guidelines in a number of cases which were later incorporated into existing laws or were recorded in statute books as newly enacted laws.

In *England* there were two kinds of courts namely *Equity Courts (Court of Chancery)* and *Common Law Courts*. Equity Courts used to decide cases applying the principles of equity i.e. *Justice, Equity and Good Conscience*. On the other hand the Common Law Courts used to decide cases based on the English Common Law i.e. *the principles evolved by the Judges during judicial pronouncements along with the ordinary customs and usages which became law through common practice and tradition*. Hence Common Law is also known as the “*Judge-made-law*”

²⁴ The propounders of this theory were eminent jurists and judges like Justice Benjamin Cardozo of the US Supreme Court and jurists like Karl Llewellyn and Oliver Wendell Holmes Junior.

The courts of Equity/Chancery played a significant role in formulating the new rules of tort law. Thus judge-made law in England came about as a result of the realist attitude of the judges and their activist approach. The equity court and common law courts were merged with the passing of the *Judicature Act, 1875*.

Thus in almost all common law countries, judicial activism acts as a weapon in the hands of the judiciary that enables it to assert its supremacy over other organs of the state. Assuming an activist role also helps it to keep a check on the arbitrary actions of the executive and legislature thereby upholding the principles of rule of law and natural justice.

Judicial Activism in India

The doctrine of separation of powers was propounded by the French Jurist *Montesquieu*. It has been adopted in India as well since the executive powers are vested in the President, the Prime Minister and the Council of Ministers at the Central level²⁵, Legislative powers in the Parliament and State Legislative Assemblies and the judicial powers in the Supreme Court, State High Courts and other subordinate courts at the district level in states.

However, the adoption of this principle in India is partial and not total. This is because

²⁵ At the federal state level executive powers are exercised by the Governor who is equivalent to the President at the Centre, Chief Minister whose powers are similar to the Prime Minister at the Centre. Simultaneously there exists a Council of Ministers both at the Central and State levels who aid and advice the President and the Prime Minister at then Centre and the Governor and Chief Minister in the States. This scheme of decentralization can be found in the Indian Constitution itself.

of the following unique features of exercise of powers by the three organs of the state which have been adopted as a matter of common practice in the scheme of implementation of the principle of separation of powers in India:

(1) Even though Legislature and the Judiciary in India are independent bodies yet Judiciary is entrusted with implementation of the laws made by the legislature which often gives rise to overlapping of functions and allegations of conflict and insubordination against the two bodies.

(2) On the other hand, in case of absence of laws on a particular issue, judiciary issues guidelines and directions for the legislature to follow. On the instructions of judges, the legislature is obliged to transform such guidelines into new laws or new provisions in existing laws.

(3) The executive also encroaches upon judicial power as the President at the centre and Governors of States who are a part of the Central and State executives have to be consulted while appointing the Chief justices and other judges of the Supreme Court and State High Courts.

(4) Further the Judiciary by its review power examines the laws passed by the legislature and checks to see whether all laws abide by the Constitution or are Ultra Vires the law of the land.

(5) The legislature in turn intervenes in respect of impeachment of the President of India, who is a part of the Union Executive.

As discussed above, ever since India achieved independence from the colonial British rule the judiciary on many occasions has had to take up the mantle of judicial law-making as the legislature's efforts on that front has left a lot to be desired. This has meant that the judiciary has had to assume an "activist" role ensuring the legislative loopholes are plugged properly.

Relationship between Judicial Activism, Judicial Review and PIL in India

In an appropriate manifestation of this activist role judges have taken up the cause of the downtrodden by granting them relief and restoring their rights through PILs brought by individuals acting on their behalf, namely, M.C. Mehta. This was also made possible as a result of liberalization of locus standi. Such a step was taken by the Supreme Court based on the following considerations:

- (1) To enable the Court to reach the poor and disadvantaged sections of the society who are denied their rights and entitlements
- (2) To enable individuals or groups of people to raise matters of common concern arising from dishonest or inefficient governance, and
- (3) To increase public participation in the process of constitutional adjudication.

The judiciary in India through its powers of judicial review of executive and administrative action under Arts. 32 and 226 of the Constitution and its power to issue writs under these provisions was empowered fully to check misuse and abuse of powers by administrative and executive agencies of the government and on many occasions such writs were issued in response to PILs filed before the courts. Most of those PILs centered around the violation of basic fundamental rights of citizens guaranteed by part III of the Constitution.

Judicial Review or the power of a court to check the legality and constitutional validity of decisions taken and actions performed by departments and functionaries of the government is an extremely vital component of a written Constitution and makes the judiciary assume the role of the final interpreter of the Constitution of a country²⁶

Expansion of the scope of Article 21 of the Indian Constitution:

An activist judiciary has ensured that the widening of the ambit of Art.21 to include a number of allied fundamental rights which have been dubbed as “*extremely important for the all-round development of all individuals and to allow them to live a life of dignity and not mere animal existence*”²⁷. Art. 21 now includes, *inter alia*, the right to health, livelihood, free and compulsory education up to the age of 14 years, unpolluted environment, shelter, clean drinking water, privacy, legal aid, speedy trial, and various rights of under-trials, convicts and prisoners. Such rights were evolved by the apex court in response to PILs filed before it at various points of time.

It is also important to note that the judiciary has also invoked Art.21 to give directions to the Central and State governments, through PILs, on matters affecting lives of general public, or to invalidate state actions, or to grant compensation for violation of FRs. The final challenge before the Indian judiciary was to overcome evidentiary problems and find suitable remedies for the PIL plaintiffs. The Supreme Court responded by appointing fact-

finding commissioners and amicus curiae (Desai, A., H. & Murlidhar, S., 2000).²⁸ As in most of the PIL cases there were no immediate or quick solutions, the Court developed “creeping” jurisdiction thereby issuing appropriate interim orders and directions (Baxi, U., 1985).²⁹ The judiciary also emphasized that PIL is not an adversarial but a collaborative and cooperative project in which all concerned parties should work together to realize the human rights of disadvantaged sections of society (Sathe, S., P., 1998).³⁰

It needs to be mentioned at this point that in the process of expansion of Art. 21, even letters sent directly to the judges of the Supreme Court and High Courts have been treated as public interest petitions in recognition of the fact that it is mostly very difficult for the common man to approach the judiciary directly to get their grievances redressed effectively. In *Bandhua Mukti Morcha v Union of India*³¹, an organization of labourers addressed a letter to a Supreme Court judge alleging that several

²⁶ India has a written Constitution.

²⁷ Parmanand Katara v Union of India (AIR 1989 SC 2039)

²⁸ Desai, A., H. & Muralidhar, S. Public Interest Litigation: Potentials and Problems in Kirpal, B., N. (ed.). (2000)., Supreme but not Infallible: Essays in honour of the Supreme Court of India. New Delhi: Oxford University Press, 159, 165–167. The Court also held that the power to appoint Commissioners is not constrained by the Code of Civil Procedure or the Supreme Court Rules.

²⁹ Baxi, U. (1985) Taking Suffering Seriously. Journal of Third World Legal Studies, 107, 122

³⁰ Sathe, S., P. (1998) Judicial Activism in India: Transgressing the Borders and Enforcing the Limits, New Delhi: Oxford University Press, 207–208, 235–237.

³¹ AIR 1984 SC 802

persons were kept as bonded labourers in various stone quarries. The letter was registered as a writ petition and necessary directions were issued.

The progress of PIL in India over the years has seen many phases characterized by ups and downs and an alleged transformation from being a product of judicial activism to becoming an ill-effect of judicial over-reach. The characteristics of such a transformation therefore needs to be traced through detailed discussion.

THE DIFFERENT PHASES OF PIL IN INDIA

At the risk of over-simplification and overlap, the PIL discourse in India could be divided into three broad phases (Dam, S., 2000).³² One will notice that these three phases differ from each other in terms of at least the following four variables: who initiated PIL cases; what was the subject matter/focus of PIL; against whom the relief was sought; and how judiciary responded to PIL cases.

The first phase

³²Dam, S. (2000). Lawmaking beyond Lawmakers: Understanding the Little Right and the Great Wrong (Analyzing The Legitimacy of the Nature of Judicial Lawmaking in India's Constitutional Dynamic). Tulane Journal of International and Comparative Law, 13, 109, 115–116. Dam divides Social Action Litigation (SAL) into three functional phases: creative, lawmaking and super-executive. This division, however, does not fully explain the complexity of PIL, because it focuses only on one aspect of it.

During the first phase which began in the late 1970s and continued through the 1980s the PIL cases were generally filed by public-spirited persons (lawyers, journalists, social activists or academics). Most of the cases related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women. The relief was sought against the action or non-action on the part of executive agencies resulting in violations of FRs under the Constitution. During this phase, the judiciary responded by recognizing the rights of these people and giving directions to the government to redress the alleged violations. In short, it is arguable that in the first phase, the PIL truly became an instrument of the type of social transformation/revolution that the founding fathers had expected to achieve through the Constitution.

The second phase

The second phase of the PIL was in the 1990s during which several significant changes in the chemistry of PIL took place. In comparison to the first phase, the filing of PIL cases became more institutionalized in that several specialized NGOs and lawyers started bringing matters of public interest to the courts on a much regular basis. The breadth of issues raised in PIL also expanded tremendously—from the protection of environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government. It is to be noted that in this phase, the petitioners sought relief not only against the action/non-action of the executive but also against private individuals, in relation to policy matters and regarding something that

would clearly fall within the domain of the legislature.

The response of the judiciary during the second phase was by and large much bolder and unconventional than the first phase. For instance, the courts did not hesitate to come up with detailed guidelines where there were legislative gaps. The courts enforced FRs against private individuals and granted relief to the petitioner without going into the question of whether the violator of the FR was the state. The courts also took non-compliance with its orders more seriously and in some cases, went to the extent of monitoring government investigative agencies and/or punishing civil servants for contempt for failing to abide by their directions³³. The second phase was also the period when the misuse of PIL not only began but also reached to a disturbing level, which occasionally compelled the courts to impose fine on plaintiffs for misusing PIL for private purposes.

It is thus apparent that in the second phase the PIL discourse broke new grounds and

chartered on previously unknown paths in that it moved much beyond the declared objective for which PIL was meant. The courts, for instance, took resort to judicial legislation when needed, did not hesitate to reach centres of government power, tried to extend the protection of FRs against private organizations and individuals, moved to protect the interests of the middle class rather than poor populace, and sought means to control the misuse of PIL for ulterior purposes.

The third phase

The third or the current phase, which began with the 21st century is a period in which anyone could file a PIL for almost anything. During the course of this phase, PIL has been dubbed by scholars as “*Publicity Interest Litigation*” or “*Private Interest Litigation*”³⁴. It seems that there has been a further expansion of issues that could be raised as PIL, e.g. calling back the Indian cricket team from the Australia tour in 2003-04 and preventing an alleged marriage of an actress with trees for astrological reasons that cropped up in 2006. From the judiciary’s point of view, one could argue that it is time for judicial introspection and for reviewing what courts tried to achieve through PIL. As compared to the second phase, the judiciary has seemingly shown more restraint in issuing directions to the government. Although the judiciary is unlikely to roll back the expansive

³³ Government agencies including the investigative bodies at the central level like the Central Bureau of Investigation (CBI) and the Criminal Investigation Department (CID) operating at the state level were hauled up for unnecessary delays in investigations of criminal cases. Also law enforcement agencies like the police departments of various states were frequently served with show cause notices for detaining individuals without trial for long periods and subjecting them to unnecessary harassment and torture in custody. Such incidents were reported in cases like *D.K. Basu v State of West Bengal* (1998) 6 SCC 380, *Prem Shankar Shukla v Delhi Administration* (1980) 3 SCR 855, *Sunil Batra v Delhi Administration* (1980) 2 SCR 557 etc.

³⁴ Scholars like Prof. Upendra Baxi in his writings on the Indian Constitution has heavily criticized the role of the judiciary in taking up all kinds of matters in the guise of entertaining public interest petitions. He has opined that such an adventurist attitude will do nothing except increase the backlog of cases and impose a even heavier burden on the judiciary as a whole.

scope of PIL, it is possible that it might make more measured interventions in the future.

One aspect that stands out in the third phase deserves a special mention. In continuation of its approval of the government's policies of liberalization in *Delhi Science Forum*, the judiciary has shown a general support to disinvestment and development policies of the Government (Cassels, J., 2000).³⁵ What is more troublesome for students of the PIL project in India is, however, the fact that this judicial attitude might be at the cost of the sympathetic response that the rights and interests of impoverished and vulnerable sections of society (such as slum dwellers and people displaced by the construction of dams) received in the first phase. 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 liberalization 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."*

It seems that the judicial attitude towards PIL in these three phases is a response, at least

in part, to how it was perceived to be the *"issue(s) in vogue"* (Singh, P., 1997)³⁶. If rights of prisoners, pavement dwellers, child/bonded labourers and women were in focus in the first phase, issues such as environment, AIDS, corruption and good governance were at the forefront in second phase, and development and free market considerations might dominate the third phase. So, the way courts have reacted to PIL in India is merely a reflection of what people expected from the judiciary at any given point of time.

Important questions arose in the course of the third phase regarding the law and procedures of PIL and answers to most of them lie in the manner in which PIL ought to be entertained and disposed of by the courts. Some of these questions are (1) Did the judiciary transgress its limits by becoming over activist? (2) Did the delay in disposal of petitions cost the judiciary dearly? (3) Was there gross misuse and abuse of PIL through frivolous petitions? All these questions need attention and also effective solutions.

MAJOR ISSUES REGARDING PUBLIC INTEREST LAW AND PROCEDURES

It seems that the misuse of PIL in India, which started in the 1990s, has reached to such a stage where it has started undermining the very purpose for which PIL was introduced. In other words, the dark side is slowly moving to overshadow the bright side of the PIL project. This trend has gathered faster pace especially from the beginning of the 21st century. Statistics point out that already 2.5 crore cases are

³⁵ It is suggested that in recent years the Supreme Court has been influenced by liberalization and corporate business interests at the cost of human rights. See Cassels, J. (2000) Multinational Corporations and Catastrophic Law. *Cumberland Law Review*, 31, 311, 330; Singh, P. (1997). State, Market and Economic Reforms in Singh, P. (ed.). *Legal Dimensions of Market Economy*. New Delhi: Universal Publishing Company, 23, 30–31; Bhushan, P. Has the Philosophy of the Supreme Court on Public Interest Litigation Changed in the Era of Liberalisation?, <http://www.judicialreforms.org/files/2%20Philosophy%20of%20SC%20on%20PIL%20%20Prashant%20Bhushan.pdf> [last checked August 27, 2014].

³⁶ Ibid

pending collectively in all Indian courts and frivolous public interest petitions has only added to this number. The primary reason for this change seems to be the carelessness of the judiciary and its inability to understand that there is a very thin line of distinction between activism for social causes and over-enthusiasm for frivolous causes. Judicial restraint therefore needs to be exercised as much as possible otherwise the image of the judiciary in India will be tarnished even further.

Ulterior purpose- Public in PIL stands substituted by private or publicity

One major rationale why the courts supported PIL was its usefulness in serving the public interest. It is doubtful, however, if PIL is still wedded to that goal. As we have seen above, almost any issue is presented to the courts in the guise of public interest because of the allurements that the PIL jurisprudence offers (e.g. inexpensive, quick response, and high impact). Of course, it is not always easy to differentiate “public” interest from “private” interest, but it is arguable that courts have not rigorously enforced the requirement of PILs being aimed at espousing some public interest. Desai and Muralidhar confirm the perception that: “*PIL is being misused by people agitating for private grievances in the garb of public interest and seeking publicity rather than espousing public causes*”³⁷. It is critical that courts do not allow “public” in PIL to be substituted by “private” or “publicity” by doing more vigilant gate-keeping.

Inefficient use of limited judicial resources

If properly managed, the PIL has the potential to contribute to an efficient disposal of people’s grievances. But considering that the number of per capita judges in India is much lower than many other countries and given that the Indian Supreme Court as well as High Courts are facing a huge backlog of cases, it is puzzling why the courts have not done enough to stop non-genuine PIL cases. In fact, by allowing frivolous PIL plaintiffs to waste the time and energy of the courts, the judiciary might be violating the right to speedy trial of those who are waiting for the vindication of their private interests through conventional adversarial litigation. A related problem is that the courts are taking unduly long time in finally disposing of even PIL cases. This might render “many leading judgments merely of an academic value”. The fact that courts need years to settle cases might also suggest that probably courts were not the most appropriate forum to deal with the issues in hand as PIL.

Judicial populism

Judges are human beings, but it would be unfortunate if they admit PIL cases on account of raising an issue that is (or might become) popular in the society. Conversely, the desire to become people’s judges in a democracy should not hinder admitting PIL cases which involve an important public interest but are potentially unpopular. The fear of judicial populism is not merely academic is clear from the following observation of Dwivedi J. in *Kesavananda Bharati v State of Kerala*³⁸: “*The court is not chosen by the people and is not responsible to them in the sense in which the House of People is. However, it will win for itself a permanent*

³⁷ Supra n.29, p.159

³⁸ AIR 1973 SC 1461

place in the hearts of the people and augment its moral authority if it can shift the focus of judicial review from the numerical concept of minority protection to the humanitarian concept of the protection of the weaker section of the people.” It is submitted that courts should refrain from perceiving themselves as crusaders constitutionally obliged to redress all failures of democracy. Neither they have this authority nor could they achieve this goal.

Symbolic justice

Another major problem with the PIL project in India has been of PIL cases often doing only symbolic justice. Two facets of this problem could be noted here. First, judiciary is often unable to ensure that its guidelines or directions in PIL cases are complied with, for instance, regarding sexual harassment at workplace (*Vishaka case*)³⁹ or the procedure of arrest by police (*D.K. Basu case*)⁴⁰. No doubt, more empirical research is needed to investigate the extent of compliance and the difference made by the Supreme Court’s guidelines. But it seems that the judicial intervention in these cases have made little progress in combating sexual harassment of women and in limiting police atrocities in matters of arrest and detention.

The second instance of symbolic justice is provided by the futility of over conversion of DPSPs into FRs and thus making them *justiciable*. Not much is gained by recognizing rights which cannot be enforced or fulfilled. It is arguable that creating rights which cannot be enforced devalues the very notion of rights as trump. It would be appropriate to comment at this point that a judge may talk of right to life as including right to food, education, health,

shelter and a horde of social rights without exactly determining who has the duty and how such duty to provide positive social benefits could be enforced. So, the PIL project might dupe disadvantaged sections of society in believing that justice has been done to them, but without making a real difference to their situation.

Disturbing the Constitutional balance of power

Although the Indian Constitution does not follow any strict separation of powers, it still embodies the doctrine of checks and balances, which even the judiciary should respect. 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. Jain⁴¹ cautions against such tendency: “*PIL is a weapon which must be used with great care and circumspection; the courts need to keep in view that under the guise of redressing a public grievance PIL does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.*”

Moreover, there has been a lack of consistency as well in that in some cases, the Supreme Court did not hesitate to intrude on policy questions but in other cases it hid behind the shield of policy questions. Just to illustrate, the judiciary intervened to tackle sexual harassment as well as custodial torture and to regulate the adoption of children by foreigners, but it did not intervene to introduce a uniform civil code, to combat ragging in educational

³⁹ AIR 1997 SC 3011

⁴⁰ (1998) 6 SCC 380

⁴¹ Prof. M.P Jain is the author of renowned books on

Constitutional Law such as *Indian Constitutional Law* and *Outlines of Indian Legal and Constitutional History*

institutions, to adjust the height of the Narmada dam and to provide a humane face to liberalization-disinvestment policies. No clear or sound theoretical basis for such *selective intervention* is discernable from judicial decisions.

It is also doubtful whether the judiciary has been (or would be) able to enhance the accountability of the other two wings of the government through PIL. In fact, the reverse might be true: the judicial usurpation of executive and legislative functions might make these institutions more unaccountable, for they know that judiciary is always there to step in should they fail to act.

Overuse-induced non-seriousness

PIL should not be the first step in redressing all kinds of grievances even if they involve public interest. In order to remain effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench, the Bar, and most importantly by the masses. The overuse of PIL for every conceivable public interest might dilute the original commitment to use this remedy only for enforcing human rights of the victimized and the disadvantaged groups. If civil society and disadvantaged groups lose faith in the efficacy of PIL, that would sound a death knell for it.

In the wake of the above issues raised, one needs to think about effective procedural and substantive reforms to change the way public interest petitions are handled by the judiciary. It is implied from the above discussions that it is high time that the judiciary comes out with ways and means to strike the right balance between activism and over-reach or adventurism. Only then will the purpose of class action be served.

SUGGESTIONS TO CORRECT AN “OVER-ACTIVIST” JUDICIARY AND THE NEED FOR PROCEDURAL REFORMS IN ENTERTAINING PUBLIC INTEREST PETITIONS

Major steps need to be taken in order to prevent an “*over-activist*” judiciary from transgressing its limits. Some of these can be explained as follows: Public interest litigation, or PIL as it is conveniently called, has become a major and prominent segment of the jurisdiction of the Supreme Court and all the State High Courts in India. Whilst its necessity and utility in upholding the rule of law is undoubted, its extravagant and unprincipled use at times by courts has brought PIL into controversy. Therefore substantial reform is the need of the hour to restore the faith of the masses in this *judicial instrument* which in the last two decades has become a weapon in the hands of a few who aim to abuse judicial process and waste the precious time of the court.

Relaxation must be procedural

Much of the misapplication of the PIL jurisdiction can be avoided, if it is remembered that PIL is basically the application of the well settled principles of judicial review by courts of actions of government and public authorities, with the modification of courts allowing the petitioner(s) applicant to approach the court on behalf of other persons, who themselves are unable to come to the court because of ignorance of their rights or the difficulty and cost of litigation. In such cases, the court relaxes the strict rule of locus standi of the applicant and also relaxes procedural formalities. It may

even entertain a letter addressed to the court by a complainant. PIL was devised as a means for redressing the basic rights of generally the poor and marginalized sections of the society, who were unable to get judicial help on their own. It must also be borne in mind that public interest litigation is not something unique to India. Other jurisdictions such as South Africa, Canada and USA also have public interest litigation, though it is not described as such. It is, therefore, important to note that except for procedural relaxations, the PIL jurisdiction should not exceed the permissible limits and parameters of judicial review by the court over the actions or omissions of government, legislatures or public bodies, or transcend the basic separation of powers underlying the Constitution.

Judicial review in a democratic constitution must also not supplant the normal processes of representative self-government, in which the representatives of the people make choices and policies which may not be ideal or correct, but which can be set right by the people themselves. What is not within the bounds of judicial review by courts cannot be within their reach because it comes under the description of public interest litigation before it. PIL jurisdiction is, therefore, not a unique jurisdiction by which courts can transcend their limitations to act as a body to set right actions of the government, which are believed to be wrong or could be improved. Once this basic foundation of PIL is kept in mind, the parameters of intervention in PIL are easily grasped and its misapplication can be seen and avoided.

PIL is not the only way of demonstrating judicial activism

Another misconception is equating PIL with judicial activism in India. The judiciary needs to be reminded that entertaining writ petitions for public interest is not the only manner in which judicial activism can be exercised. A court can be judicially active or inactive irrespective of PIL. Judicial activism is a word of many shades. No person today subscribes to Bacon's view that judges must only declare the law and do not make law. Such a view was rightly described as a fairy tale by a distinguished English judge Lord Reid. Judges do and must make law but not in the manner of legislatures. There is much scope for creative judicial activism in the interpretative functions of judges, on the choices inherent in their function and in the gaps in legal rules, as has been done by superior courts in several countries for many years.

The Indian Supreme Court's own creative jurisprudence of the inviolability of the basic structure of the Constitution in 1973 and the importation of non-arbitrariness in the fundamental Right of Equality, and of due process of law in the right to personal liberty in the *Maneka Gandhi case in 1978*⁴², are stellar examples of how judicial function can be creative. Regrettably, this kind of creative judicial activism in Indian courts seems to have become dormant and displaced by a poor substitute of routine judicial correction and monitoring of governmental functions by courts in PIL. Judicial activism is equated with PIL mainly because it is a most convenient vehicle for bringing public grievances before courts and because the courts' orders in PIL are far-reaching and some times sensational.

⁴² *Maneka Gandhi v Union of India* (AIR 1978 SC 597)

Once these fundamentals of judicial review are borne in mind by courts in exercising PIL jurisdiction, it can be a useful judicial process for the benefit of the public, particularly of the poor, the indigent and marginalized sections of society, whose fundamental rights are to be protected by court orders. It is the historic and constitutional duty of courts to safeguard and enforce the basic liberties and rights of individuals. A court is strongest and least vulnerable, when it grounds its interventions in enforcing the basic rights of individuals against authority. No question of the court breaching the separation of powers can arise, as it carries out its constitutional function of protecting the basic rights of individual in such cases.

Judiciary should not indulge in excessive adventurism

The origins of PIL were in such unexceptional interventions in 1970, as when the court ordered the release of bonded labourers and stopped inhuman working conditions in stone quarries and in mental asylums etc. Correctly, this jurisdiction should have been named *SAL* or *Social Action Litigation* to gather its true import. It is also the court's legitimate function to enforce the law, not of each and every infraction, but in those cases where its disregard has grave consequences to the public. No question of the court overreaching its powers can arise in such cases. In matters relating to environment, where irreversible damage may be done unless the actions of the authorities are immediately corrected, the court may take prompt corrective measures, but not take over the administration itself or supplant the law. However, over the years, the true objective of PIL as originally conceived has been lost sight

of, and it is mistaken as just a general jurisdiction of the courts for correcting government action or inaction, regardless of constraints of established principles of judicial review.

As the court cannot disregard the law in judicial review or disregard the fundamental separation of powers underlying the Constitution to appropriate executive or legislative powers, PIL orders cannot disregard law; take over the administration by government or by public authorities, in the name of improving governance or preventing misuse of power. It is this aspect of misplaced judicial activism, which a bench of two judges of the Supreme Court in *Aravalli Golf Club case [(2008) 1 SCC 683]* recently criticized in rather strong words of reprimand. The judgment was timely and has brought misplaced judicial activism into focus, but in the process it did not advert to the permissible scope of judicial intervention.

Non-interference in matters within the powers of the legislature and executive

It is true that there is a misconception not only in the public but also in courts about the function of judiciary under the Constitution, particularly when PIL is employed. It appears that the public has developed a syndrome of routine recourse to the courts for every perceived failure of government and the courts on their part have come to believe that it is their judicial duty to intervene in such failures by making orders for correcting the governmental actions or omissions. There is a vast catalogue of such micro-managing orders made by the Supreme Court itself, which cannot be justified by any principle of judicial review.

They include orders for making roads in hilly areas, wearing of helmets and seat belts to avoid accidents in cities, cleanliness in housing colonies, disposal of garbage, control of traffic, control of unmanned railway crossings, prevention of pollution of rivers, action plans to control and prevent menace of monkeys in cities, control of breeding of animals in zoos, measures to prevent ragging of students, collection and storage of blood in blood banks, control of noise and banning of fire crackers. At times, committees set up and empowered by courts have effectively displaced government's administration in those areas. Such PIL petitions are filed in the Supreme Court in its original jurisdiction under the Article 32 of the Constitution. which is meant for enforcing only the basic fundamental rights.

The above instances clearly indicate the judiciary has been encroaching upon the domain of the legislature and executive which goes against the principle of separation of powers and harms the independence of the other two organs of the government.

Striking the right balance between over-enthusiasm and restraint

Prof. S. P. Sathe in his book *"Judicial Activism in India: Transgressing Borders and Enforcing Limits"* remarks that *"PIL may not in all cases be undertaken for achieving final results. It may be undertaken.....to highlight the abuse of power by the authorities, or to obtain immediate relief for a person suffering from violation of human rights.....It does not seem to have been successful where overambitious aims such as reform of the prison system, reform of the criminal justice system, or relief from poverty, which depend upon radical changes in the economy, were aimed at"*.

It is evident from Prof. Sathe's comments that the judiciary has ventured into areas which were exclusively within the domain of the legislature and executive and seems to have trampled upon issues that would have been best left for other organs of the state to deal with. In this context, it is highly recommended that judicial restraint should be the order of the day in the course of exercise of judicial review. All an over-enthusiastic judiciary will do is to lose its independence and severely encroach into forbidden territory thereby leading to a sever disregard and complete destruction of the principle of separation of powers which also happens to be a part of the basic structure of the Indian Constitution⁴³.

CONCLUSION

In recent times it has been hard to find any genuine enforcement of fundamental rights in PIL petitions. The petitions make a formal invocation of Article 14 in its liberal interpretation of non-arbitrariness or of Article 21 in its vast expanse of a right to life. Article 32 seems to have lost its meaning for all

⁴³ The *Basic Structure Doctrine* was evolved by the Supreme Court in *Keshavanand Bharati v State of Kerala* (AIR 1973 SC 1461). Essential features of the Indian Democracy were labeled to constitute the basic structure of the Constitution. Such features included independence of the judiciary, separation of powers, judicial review, Preamble to the Constitution, Rule of Law, Fundamental Rights and Directive Principles, Right to seek Constitutional Remedies etc. It is noteworthy that the original judgment never mentions the term Basic Structure but only mentions that all items included in the Basic Structure cannot be amended, abrogated or taken away under any circumstances.

practical purposes. At times, matters beyond the judicial sphere and competence of the court have been entertained. In 1993, the Supreme Court even ordered that provision of food of 1200 calorific value should be supplied to hostages in an ongoing military operation in Kashmir. The court has professed to monitor a highly technical engineering scheme of interlinking of rivers in India and of genetic modified foods. In the field of higher education, the court's interventions have created a maze of complex regulations by successive cases, familiar only to lawyers, and baffling to educationists, parents and students.

The court's scheme for admissions in private medical colleges in the *Unnikrishnan case in 1993*⁴⁴, which was distinguishable from legislation, prevailed for nine years before it suffered an inglorious end, when the court itself struck it down as "*unconstitutional*" in *T.M.A. Pai's case in 2002*⁴⁵, causing considerable confusion in admissions in professional colleges.

Following upon the Aravalli Golf Club case, a larger Bench of the Supreme Court is yet to consider the parameters of PIL and this has been pending for the last six years now. This is not new though. Way back in 1983, a Bench of the court had made reference to a larger Bench, but nothing came of it. If the fundamental premise of public interest litigation (or more appropriately, social action litigation), coupled with the premise that PIL cannot go beyond the limitations of judicial review and must give due recognition to the separation of powers under

the Constitution, is borne in mind, a formulation of the instances where PIL may or may not be used, seems unnecessary. It may even be counterproductive, as it is never good to distill judicial power by enumeration. For such matters, Justice Oliver Wendell Holmes once said, "*We need to have education in the obvious*".

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⁴⁴ J.P. Unnikrishnan v State of Andhra Pradesh (AIR 1993 SC 2178)

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