

# Public Interest Litigation: A Tool of Justice

## Abstract

Public Interest Litigation (PIL) means a legal action initiated in a court of law for the enforcement of public interest in which the public or a class of community have pecuniary interest or some interest by which their legal rights or liabilities are affected. The concept of Public Interest Litigation is a noble concept which makes justice quickly and readily available to the masses in case their life, liberty or security is being threatened.

**Keywords:** Public Interest Litigation, Human rights, Judicial process, Supreme Court, High Court.

## Introduction

The definition of PIL cannot be found in any statute but various dictionary and Courts defined it as: Public Interest Litigation has been defined in the Black's Law Dictionary (6th Edition) as under:

"Public Interest- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government...."

Advanced Law Lexicon has defined 'Public Interest Litigation' as under:

"The expression 'PIL' means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected."

The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows: "Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."<sup>1</sup>

## Objectives of the Study

1. To find out how Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country.
2. To find out how Courts' directions have immensely benefited marginalized sections of the society in a number of cases.
3. To find out how it helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc.

## Origin of Public Interest Litigation

The public interest litigation is the product of realization of the constitutional obligation of the court. According to Jurist opinion, the public interest litigation is an extremely important jurisdiction exercised by the Supreme Court and the High Courts. The Courts in a number of cases have given important directions and passed orders which have brought positive changes in the country. The Courts' directions have immensely benefited marginalized sections of the society in a number of cases. It has also helped in protection and preservation of ecology, environment, forests, marine life, wildlife etc. etc. The court's directions to some extent have helped in maintaining probity and transparency in the public life.<sup>2</sup>This court while exercising its jurisdiction of judicial review realized that a very large section of the society because of extreme poverty, ignorance, discrimination and illiteracy had been denied justice for time immemorial



**Agrini Rawal**

Research Scholar,  
Faculty of Law,  
University of Delhi,  
Delhi

and in fact they have no access to justice. Pre-dominantly, to provide access to justice to the poor, deprived, vulnerable, discriminated and marginalized sections of the society, this court has initiated, encouraged and propelled the public interest litigation. The litigation is upshot and product of this court's deep and intense urge to fulfill its bounded duty and constitutional obligation.

The High Courts followed this Court and exercised similar jurisdiction under article 226 of the Constitution. The courts expanded the meaning of Right to life and liberty guaranteed under article 21 of the Constitution.

Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure their social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements.

#### **Evolution of the Public Interest Litigation in India**

The origin and evolution of Public Interest Litigation in India emanated from realization of constitutional obligation by the Judiciary towards the vast sections of the society - the poor and the marginalized sections of the society. This jurisdiction has been created and carved out by the judicial creativity and craftsmanship. In *M. C. Mehta & Another v. Union of India & Others* AIR 1987 SC 1086, this Court observed that Article 32 does not merely confer power on this Court to issue direction, order or writ for the enforcement of fundamental rights. Instead, it also lays a constitutional obligation on this Court to protect the fundamental rights of the people. The court asserted that, in realization of this constitutional obligation, "it has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights". The Court realized that because of extreme poverty, a large number of sections of society cannot approach the court. The fundamental rights have no meaning for them and in order to preserve and protect the fundamental rights of the marginalized section of society by judicial innovation, the courts by judicial innovation and creativity started giving necessary directions and passing orders in the public interest.

The development of public interest litigation has been extremely significant development in the history of the

Indian jurisprudence. The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and/or bodies. The higher Courts exercised wide powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the courts in the public interest litigation goes beyond award of remedies to the affected individuals and groups. In suitable cases, the courts have also given guidelines and directions. The courts have monitored implementation of legislation and even formulated guidelines in absence of legislation. If the cases of the decades of 70s and 80s are analyzed, most of the public interest litigation cases which were entertained by the courts are pertaining to enforcement of fundamental rights of marginalized and deprived sections of the society. This can be termed as the first phase of the public interest litigation in India.

For the purpose of study this topic, I deem it appropriate to broadly divide the public interest litigation in three phases.

#### **Phase-I**

It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this court or the High Courts.

#### **Phase-II**

It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc.

#### **Phase-III**

It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.

Thereafter, we also propose to deal with the aspects of abuse of the Public Interest Litigation and remedial measures by which its misuse can be prevented or curbed.

#### **Dynamic Approach of PII**

##### **Rule Of Locus Standi –Diluted**

Public Interest Litigation, popularly known as PIL, can be broadly defined as litigation in the interest of that nebulous entry: the public in general. Prior to the 1980s, only the aggrieved party could knock the doors of justice personally and seek remedy for its grievance and any other person, who was not personally affected, could not approach the judiciary as a proxy for the victim or the aggrieved party. In other words, only the affected parties had the locus standi (standing required in law) to file a case and pursue the litigation and the non-affected persons had no locus standi to do so. And as a result, there was hardly any link between the rights guaranteed by the Constitution of the Indian Union and the laws made by legislature, on one hand and the vast majority of illiterate citizens, on the other.

The traditional rule of Locus Standi is that a petition under Article.32 or Article.226 can only be filed by a person whose fundamental right is infringed has now been considerably relaxed by the Supreme Court in its recent rulings and the present scenario is that the Court now permits Public Interest Litigations or Social Interest Litigations, PIL or SIL, at the instance of 'public spirited citizens' for the enforcement of Constitutional and Statutory rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

In *A.B.S.K. Sangh (Rly) Vs. Union of India*,<sup>2</sup> The Supreme Court held that the Akhil Bhartiya Soshil Karmachari Sangh (Rly), though an unregistered association could maintain a writ petition under Art.32 for the redressal of a common grievance. Access to justice through 'class actions', 'public interest litigation' and 'representative proceedings' is the present Constitutional jurisprudence and it further held that the individual acting pro bono publico can readily bring a PIL action before the Court of law by even writing a letter to the Court regarding the infringement of a group or any individual person.

#### **Pil In Different Areas**

The Supreme Court's pivotal role in making up for the lethargy of the Legislature and the inefficiency of the executive is commendable. Those who oppose to the growing judicial activism of higher courts do not know the value and boon of its importance and thus the Judicial Activism has set right a number of wrongs committed by the States in the following cases:

#### **Ban On Smoking In Public Places**

*Murali S.Deora Vs. Union of India*,<sup>3</sup> The Congress leader Murali S.Deora filed a PIL in the Supreme Court seeking orders for banning smoking in public places and the Supreme Court seeing the ill effects of smoking held that public smoking is banned and it directed all States and Union Territories to immediately issue orders banning the smoking in public and this ruling of the Court is to boost the public health. Thus the Center has introduced an Anti Smoking Bill in the parliament and it is being implemented in many parts of the Country but not effective at present.

#### **PROTECTION AGAINST INHUMAN TREATMENT**

*Sunil Batra Vs. Union of India*,<sup>4</sup> The Supreme Court on hearing the Petitioner about the inhuman and barbarous treatment made by the Jail authorities towards the prisoners of the Jail and they were not in a position to reach the Court and thus the issuance of writ of habeas corpus is prayed. The Court held that the rights of prisoner either under the constitution or under other laws are violated the writ power of the court can run and should run to rescue them and the dynamic role of judicial remedies imports the same vitality and utility of liberty even within the jails. Thus the writ is issued and guidelines are laid down by the

apex court to be followed in jails.

#### **CHILD WELFARE**

In *Sheela Barse Vs. Union of India*,<sup>5</sup> The Supreme Court in this case has directed to release all children below the age of 16 years from jails in pursuance of Art.39 (f) but instead it also exhorted the States to set up remand homes and juvenile courts and the court held that the Child is a national asset and the State shall ensure fullest development of its personality and it directed Rs.10,000/- to be paid to social worker for her cause to highlight the problem of child's tortures and the provisions of Children Act.

In *Vishal Jeet Vs. Union of India*,<sup>6</sup> A public interest litigation writ petition emphasizing the malady of child prostitution was filed before the Supreme Court and the Court expressed its anguish on the pitiable condition of child prostitutes and it also referred the constitutional provisions such as Art.23, 35(a)(ii), 39(a), (e) and (f) and issued several directions urging upon the various governments to take further remedial action in this matter and it also emphasized upon severe and speedy enforcement of juvenile laws such as Immoral Traffic (Prevention) Act, 1956 by the State.

#### **Protection Of Ecology And Environment**

In *M.C.Metha Vs. Union of India*,<sup>7</sup> The Supreme Court in this case has ordered for closure of tanneries at Jajmau near Kanpur, polluting the River Ganga water to prevent water pollution unless they take steps to set up treatment plants and thereby the Courts developed two environmental principles namely "Precautionary Principle" and "Polluter Pays Principle"

Similarly in other case, the same petitioner prayed for closure of nearby industries in Agra and prayed for issuing directions in order to protect the Historical monument, Taj Mahal from deterioration on account of environmental pollution and emphasized Art.49 and also enabled Parliament to enact such law under Entry 67 and List I. The fundamental duty to preserve the rich heritage of our composite Indian culture enshrined in Art.51A of the Constitution is made enforceable by this writ petition.

In *Rural Litigation and Entitlement Kendra Vs. State of Uttar Pradesh*,<sup>8</sup> The Supreme Court on reading Arts.21, 47, 48A and 51A (g) together ordered for the closure of certain lime stone quarries on ground of safety and hazardous deficiency exists there and they has taken an active interest in the protection of the environment and many questions pertaining to environment and ecology problems have been brought before the Court of Law by way of Public Interest Litigations and the right to live in clean environment has been brought and given status as one of the fundamental right available to all the citizens and it is made enforceable under Art.32 and 226 by Courts. It is clear that under Art.51 (g), the Courts imposed a fundamental duty on every citizen to protect and preserve environment and to

check Air, Water and Noise pollutions and to inform the state and to stop such pollutions effectively.

In popular CNG litigation entitled *MC Mehta v Union of India*<sup>7</sup>, the Supreme Court was faced with the problem of vehicular pollution and regretted inaction of the Union of India and other governmental authorities to phase out non-CNG buses and setting up facilities to ensure adequate supply of CNG. The Supreme Court stated that one of the principles underlying environmental law is that of sustainable development. The principle requires such development to take place which is ecologically sustainable. The auto policy must, therefore: (a) focus upon measures to anticipate, prevent and attack the causes of environmental degradation in this field; (b) in the absence of adequate information, lean in favour of environmental protection by refusing rather than permitting activities likely to be detrimental; (c) adopt the precautionary principle and thereby, ensure that unless an activity is proved to be environmentally benign in real and practical terms, it is to be presumed to be environmentally harmful; (d) make informed recommendations which balance the needs of transportation with the need to protect the environment and reserve the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.

In *M.C. Mehta Vs U.O.I. & others*<sup>8</sup> held the satellite images indicate the devastation caused to the area by the extensive mining operations. Extraordinary situation demands extraordinary remedies. In the circumstances, the court was of the view that mining operations should be immediately suspended in the concerned area.

Further, S.C. held that the ban will not be confined only to 5 k.m. but it would cover the entire Aruvalli Hill range within the state of Haryana in which mining operations are being carried out. (i.e. area admeasuring approximately 448 sq. kms. faling the districts of Faridabad and Gurgaon including menvat).<sup>9</sup>

Court further held that in the past when mining leases were granted, requisite clearance for carrying out mining operations well not obtained which have resulted in land and environmental degradation.

Further, observed that environment and ecology are national assets. They are subject to inter-generational equity. Time has now come to suspend all mining in the above area on sustainable development principle which is part of Art. 21, 48-A and 51 (A) (g), of the Constitution of India. M. C. Mehta's case 2004 which keep the option of imposing a ban in future open. Mining within the

imposing a ban in future opens. Mining within the principle of sustainable development comes within the concept of "balancing" whereas mining beyond the principle of sustainable development comes within the concept of "banning". It is the matter of degree. The balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of the Precautionary Principle.

Further, observed that none of the above persons have been complied with in the circumstances, by the present order, suspend all mining operation in the Aravalli Hills in the state of Haryana within the area of approximately 448 sq. kms. in the District of Faridabad and Gurgaon including Mewat till Reclamation plan duly certified by State of Haryana, MOEF and CEC.

*In D.D.A. Vs. Rajendra Singh & others*<sup>10</sup> PIL filed against the construction of common wealth village in High Court of Delhi. Against the decision of the Delhi High Court an S.L.P. filed in S.C. the S.C. observed that the observation and conclusion of the High Court that the site in question is on a "riverbed" cannot be sustained. The High Court degraded and ignored material scientific literature and the opinion of experts and scientific bodies which have categorically ... that the CGV site is neither located on a "riverbed" nor on the "floodplain". Further, in view of the change of the land use which was approved way back in 1997 by the Yamuna Committee and NEERI permitting the DDA to use Pocket - III for "public and semi-public purpose" the contrary conclusion arrived at by the H.C. in liable to be set aside.

#### **Professional Ethics**

*In Ramesh Vs. Union of India*,<sup>11</sup> The Petitioner practicing advocate of High Court filed a public interest litigation under Art.32 to issue a writ of prohibition restraining the respondents, the Director General of Doordarshan, New Delhi from telecasting or screening the serial titled 'Tamas' written by Sri Bhisam Sahni, which clearly depicts as to how the partition of India took place and how the communal violence was generated by fundamentalists in both the communities and he argued that the Art.25 is disturbed by this serial. The Court held that there is no violation of Art.25 instead it teaches a good lesson to the people of India that such things should not be repeated again in future and the communal atmosphere is kept clean and unpolluted by the courts and the petitioner is right in his act of drawing the attention of the courts in this case and it is a social cause and thus the petitioner has a locus standi.

#### **Handicapped To Be Given Job Opportunities**

*In National Federation of Blind Vs. U.P.S.C.*,<sup>12</sup> The Supreme Court has held that the visually handicapped blind and partially blind are eligible

to compete and write civil services examination in the categories of group 'A' and 'B' posts which are suitable for the handicapped in Braille Script or with the help of a Scribe. The Court gave this description on the representative petition filed by the National Federation of Blind. The Court declared that visually handicapped constitute a significant section of our society and as such it is necessary to encourage their participants in every walk of life.

#### **Supreme Court As Protector And Guarantor**

*In Nixon M. Joseph Vs. Union of India,*<sup>13</sup> A Writ Petition in the nature of Public Interest Litigation bearing a question on independence of judiciary has been raised in Kerala High Court. The writ petition sought a ban on the retired High Court and Supreme Court Judges from contesting elections to the legislatures and accepting appointments as commissions of inquiry. The argument made was that it compromised their independence. The High Court emphasized Art.50 which states that the bedrock of the constitution is the principle of independence of the judiciary which can effectively combat corruption and nepotism in high places. "In fact it occupies an exalted position in the minds of the people as the saviour of democracy" and the High Court has emphasized that the principle of judicial propriety assumes vital importance and in the best interest of an independent judiciary and it being a matter of national concern and thus alone it can act as a protector and guarantor of Fundamental Rights of the Constitution.

#### **Power To Commute Death Sentence Into Life Imprisonment**

*In Harbans Singh Vs. State of Uttar Pradesh,*<sup>14</sup> The Supreme Court held that under Article.32 very wide powers has been conferred on the Supreme Court for due and proper administration of justice and this inherent power is to be exercised in extraordinary situations in the large interests of administration and for prevention of manifest injustice. Accordingly, the Court commuted the death sentence of the petitioner into the imprisonment for life on the ground that one of his co-accused's sentences was commuted by the Court. The Court recommended that the President should normally exercise his power under Art.72 to commute the death sentence because he has considered petitioner's mercy petition and rejected it and if he fails to do justice in a particular case. Under Art.32, the Supreme Court has the power to commute death sentence into life imprisonment if there is undue delay in execution of sentence of death. However, for this, no period can be fixed for making the sentence of death to be changed into life imprisonment. The Court will examine the nature of delay in the light of all circumstances of the case and then decide whether death sentence should be carried out or altered into life imprisonment.

#### **Protection Of Dignity And Honour Of Court**

*In Delhi Judicial Services Association Vs. State of Gujarat,*<sup>15</sup> The Supreme Court for the first time sent 5 police officers including an I.P.S. officer to jail as they were found guilty for committing criminal contempt by a Judicial Magistrate Court for harassing and hand cuffing the Chief Judicial Magistrate of Nadiad, Kheda District of Gujarat. On 25.09.1989, the police inspector of Nadiad arrested, assaulted and handcuffed the Chief Judicial Magistrate and tied him with thick rope like an animal and took him openly to the hospital for medical examination on the alleged charge of having consumed liquor in breach of the State Prohibition Law. The incident undermined the dignity of Courts in the country. A member of the Bar Associations and the Indian Judges Association approached the Supreme Court under Art.32 for saving the dignity and honour of the judiciary. The Court considered the Public Interest Petition and appointed a committee to inquire the matter and to submit the report to the Court and based on the report, seven police officers were found guilty of criminal contempt and sent to jail and thus the dignity of the Court is thus safeguarded.

#### **Adequate Medical Services**

*In Paschim Banga Khet Mazdoor Samity Vs. State of West Bengal*<sup>16</sup>, The Supreme Court has observed that it is the paramount medical aid to every injured citizen brought for treatment immediately without waiting for procedural formalities to be completed in order to avoid negligent death and it is the constitutional obligation of the State to provide adequate medical services to the people as enshrined in Art.47. The Petitioner is a human right activist and he also appended to the article published in Hindustan Times, a report about "Law helps the injured to die" and the Supreme Court took this writ petition as it is a valid one in the public interest and held that this right which has a status of fundamental right is culled out from Art.47 together with Art.21 and stated that in a welfare state, the primary duty of the Government is to secure the welfare of the people by running hospitals and health centres and providing medical care.

#### **Payment Of Living Wages**

*In All India Reserve Bank Employees Vs. Reserve Bank,*<sup>17</sup> The Supreme Court in this Public Interest Litigation has observed that the political aim is living wage for all workers, in actual practice, this ideal has eluded our efforts so far and that our general wage structure has at best reached the lower level of 'fair wage' and a 'fair wage' is a mean between 'living wage' and 'minimum wage' and the living and fair wages have to be fixed keeping in view the capacity of the industry to pay. Fixing of minimum wages under the Minimum Wages Act has been characterized as "just and first step" in the direction of fulfilling the mandate of Art.43 and in course of time, the State has taken more steps to implement that minimum

wages mandate.

#### **FREE LEGAL AID**

In *Suk Das Vs. Union Territory of Arunachal Pradesh*,<sup>18</sup> The Supreme Court in this Public Interest Litigation filed by the social activist has held that Art.39A read with Art.21 states that free legal assistance at state cost has been raised to the status of a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and the Presiding Judge has been obligated by the State to inform the accused that he can obtain free legal service at the cost of the state if he is unable to engage a lawyer because of his indigence.

In *H.M.Hoskot Vs. State of Maharashtra*,<sup>19</sup> The Supreme Court has held that the "legal aid" and "speedy trial" concepts enshrined in directive principle of state policy are fundamental right available to all prisoners under Art.21 and it is also available to all citizens during judicial proceedings in a court of law and can be enforced by courts as one of the fundamental right available to every citizens by way of writ proceedings

#### **Speedy Trial And Equal Justice**

In *Hussainara Khatoon Vs. Home Secretary, State of Bihar*,<sup>20</sup> The Supreme Court by this Public Interest Litigation has held that the State is under a duty to provide a lawyer to a poor person and it must pay to the lawyer his fee as fixed by the courts and the "Free legal aid" and "equal justice" and "speedy trial" enshrined in Art.39-A has held to be a Fundamental Right and thereby cast a duty on the State to secure that the operation of legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way – by legislation or otherwise so that justice is not denied to any citizen by reason of economic or other disabilities. It means justice according to law.

#### **Rape On Working Women**

In *Vishaka Vs. State of Rajasthan*,<sup>21</sup> The Supreme Court in this Public Interest Litigation filed by non-governmental organisation has formulated effective measures and exhaustive guidelines to check the evil of sexual harassment of working women at all work places until legislation is enacted for this purpose and to guarantee gender equality of right to work with human dignity as enshrined in Arts. 14, 15, 19(1) (g) and 21 of the Constitution and thereby safeguards against sexual harassment implicit therein. The Courts by reading the Directive Principle enshrined in Art.51(c), brought the international norms and measures under Art.21 and made it as a fundamental right and held that the Court has the power under Article.32 to lay such guidelines for effective enforcement of fundamental rights.

#### **Power To Award Compensation**

In *Rudal Shah Vs. State of Bihar*,<sup>22</sup> The Supreme Court awarded Rs.30,000/- as compensation to

the petitioner who had to remain in jail for 14 years because of the irresponsible conduct of the State authorities and in this Petition under Art.32 of the Constitution, the Supreme Court laid down that the power of the court to grant such remedial relief may include the power to award compensation in appropriate cases and in this case the court exercised its power to award compensation.

#### **Corruption In Public Life and Pii**

The Supreme Court and the High Court by way of Public Interest Litigation have thrown light to those scams like Hawala Scam, Uria Scam, Fooder Scam in Bihar, St. Kits Scam, Ayurvedic Medicine Scam and Illegal Allotment of Government Houses, Petrol Pumps, 2-G Spectrum Scam and proved that they are the strong and potent weapon in enabling the truth as it is and by punishing the guilt involved in the corruption and scam cases.

#### **Directions To Cbi and Others**

In *Vineet Narain Vs. Union of India*,<sup>23</sup> The petitioner by way of Public Interest Litigation brought before the Court that the government agencies like the CBI, revenue authorities has failed to perform their duties in investigating the crimes and corruptions at high places in public life and the Supreme Court hearing the petition issued directions to make the CBI, Central Bureau of Investigation; CVC, Central Vigilance Commission, Enforcement Directorate and Nodal Agency are the independent agencies and hence they are in a position to function effectively against corruption and scams.

#### **Custodial Death**

In *Nilabati Behara Vs. State of Orissa*,<sup>24</sup> The Supreme Court has laid down the principle on which compensation is to be awarded by the Court under Arts.32 and 226 to the victim of State action. The object to award compensation in public law proceedings under Arts.32 and 226 is different from compensation in private tort law proceedings. Award of compensation in proceeding under Arts.32 and 226 is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity. In this case the Supreme Court has held that due to the custodial death of the person directed the State to pay Rs.1,50,000/- as compensation to the deceased mother and a further sum of Rs.10,000/- as costs and the court further clarified that this will not affect the petitioner right to claim compensation in other proceedings by the Court.

#### **Guideline For Exercise Of Rights Under Article 32**

In *P.N.Kumar Vs. Municipal Corporation of Delhi*,<sup>25</sup> The two judges Bench of the Supreme Court held that the Citizens should not come to the Court directly for enforcement of their fundamental rights but they should first seek directly for the enforcement of their fundamental rights, but they should first seek remedy in the

High Courts and then if the parties are dissatisfied with the judgment of the High Court, they can approach the Supreme Court by way of Appeal.

The following guidelines were made by the Apex Court in this case:

The scope of Art.226 is wider than Art.32

The parties to seek relief from High Court then they should come to Supreme Court

The High Court has eminent judges, good bar and it has its own tradition.

The Supreme Court has no time to decide cases pending therein

The time consumed by Supreme Court will be considerably minimized.

The dignity, majesty and efficiency of the High Courts are protected.

#### **Distinction Between Articles.32 & 226**

In *Romesh Thappar Vs. State of Madras*,<sup>26</sup> The Supreme Court in this case has clearly explained the difference between the two articles namely Art.32 and 226. Articl.32 can be exercised for the enforcement of fundamental rights only as per the constitutional provisions as an important part of the basic structure of the Constitution because it is meaningless to confer the fundamental rights without providing an effective remedy for their enforcement when they are violated whereas the Article.226 can be exercised not only for the enforcement of fundamental rights only but for "any other purpose". Hence the power of the High Court is wider than the power conferred by Article.32 on the Supreme Court.

#### **Judicial Restraint Or Limitation On Pil**

##### **Judicial Activism And Separation of Power**

Although doctrine of separation of powers has not been recognised under the constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State, Legislature, executive and Judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another.....judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social economic justice."

The predominant approach of the Indian Judiciary was positivist, to interpret the Constitution literally and to apply it more or less the same restrictive canons of interpretation as are usually applied to the interpretation of ordinary statutes. This approach emanates from the basic traditional theory that a judge does not create law but merely declares the law and judicially the principle was laid down in these words: "In interpreting the provisions of our Constitution, we should go by

the plain words used by the Constitution Makers.

The General rules of Construction in the General Clauses Act also apply to the Constitution and interpretation of legislative enactments. The Judicial Activism is the process by which the courts checks whether a law is valid or not and a law to be valid must confirm with the Constitutional norms. The Constitutionality of a statute arises from various constitutional violations like:

Violation of the scheme of distribution of powers between the Centre and the States;

Infringement of a Fundamental Rights;

Violation of other Constitutional restrictions / limitations.

A statute which is not within the scope of legislative authority or which offends any of the provisions of Constitutional restriction or prohibition is said to be unconstitutional and hence void. To struck down a statute from the statute books, the main importance is given to its Constitutionality tests and it is validity under the eyes of law and a onerous burden is placed on the Courts because a Statute is enacted by elected members which are the required aspirations of the people.

#### **Pil Guidelines and Abuses**

The Supreme Court has laid down the guidelines that it is the duty of the Court to decide from case to case and upon the facts and circumstances of the case, the person approaching the Court by way of Writ or PIL for relief has "sufficient interest" and has not acted with malafide or political motives and not come to court with clean hands and it came to conclusion that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provisions of the Constitution or the law and seeks enforcement of such public duty and observance of such constitutional or legal provisions and it is absolutely necessary for maintaining the rule of law and thereby realization of the Constitutional objectives. The scope of Locus Standi is thereby liberalized but this rule of law must not be misused by vested interests and it is again the duty of the Court not to allow the remedy to be abused.

In *Janatal Dal Vs. H.S.Chowdhari*,<sup>27</sup> In the Bofors Gun Purchase Scam, the CBI registered a case against 3 named and 11 unnamed accused and it moved an application before the special judge to issue a letter of rogatory to Switzerland for getting more information and evidence from Swiss authorities. At this stage, the Petitioner, an advocate, Sri Harinder Singh Chowdhari made an application in PIL under Art.51-A before the Special Judge requesting that the Court not to issue the letter of rogatory unless allegations against named persons are proved. The Judge dismissed the petition for want of Lous Standi and against the order, Criminal Revision filed before the High Court of Delhi and the High Court held

that the Petitioner has no locus standi to file the case and hence it is not maintainable and the Court taking into the illegalities in the trial court ordered that the FIR filed by the CBI be quashed.

#### **Apex Court Ruling**

The Supreme Court held that the Liberal approach of the Rule of Locus Standi is misused by the petitioner in this case and thus the Supreme Court agreed with the first part of the ruling and quashed the second part of the order of the High Court.

In *Krishnaswami Vs. Union of India*,<sup>28</sup> The Petitioners filed a PIL under Art.32 of the Constitution for quashing the motion given to the speaker by 108 members of ninth lok sabha for initiating proceedings for the removal from office of Mr. Justice V. Ramaswami of the Supreme Court against whom there were allegations of financial irregularities and they further prayed to quash the Inquiry Commission under the Judges (Inquiry) Act, 1968 as it is unconstitutional. The Supreme Court held by 4-1 majority that the petitioners have no locus standi to file this petition as they have no public purpose for filing this petition.

In *Bandhu Mukti Morcha Vs. Union of India*,<sup>29</sup> The petitioners, an organisation through a letter to the Supreme Court informed about their survey in Faridabad District stone quarries at Harayana and found that the labours in that quarry were in inhuman and intolerable conditions and many of them were bonded labours and the petitioners prayed that a writ be issued for proper implementation of the constitution towards the bonded labours in that stone quarry. The Supreme Court has observed that the right to live with human dignity is enshrined in Art.21 which derives its life breath from the Directive Principle and the petitioner organisation is moving the Court for social cause and thus they have locus standi to pray a relief for those labours. In this case to secure the release of bonded labour and free them from exploitation was held to be valid and the courts also insisted for proper rehabilitation after release of bonded labourers and thereby safeguarded their fundamental rights.

In *Mohanlal Sharma Vs. State of Uttar Pradesh*,<sup>30</sup> The petitioner sent a telegram to the court alleging that his son was murdered by the police in the police lock up and the telegram was treated as a writ petition by the Court and the case was directed to be referred to C.B.I. for a complete and thorough and detailed investigation as the locus standi principle is liberalized to a level to treat a letter as a writ petition.

#### **Need For Care and Caution**

There are certain shortcoming which needs to be considered by judiciary while playing activist role in deciding cases:

By assuming additional responsibility the judicial system has done a disservice to itself in the sense that it is crumbling under the burden of

additionally collected cases over and above the insurmountable backlog of arrears.

There are several such issues which need expertise- financial, technical or otherwise which the judiciary is not possessed of and hence the possibility of directions being issued without an in-depth consideration of all the relevant factors cannot be ruled out.

The judicial decision suffers from inflexibility. Having delivered a decision, the courts becomes functus officio and cannot mould its decision with the needs of changing times which the Legislature and Executive can always do. The court cannot have recourse to the innovative technique of issuing continuing mandamus in all the cases.

Constitutionally the courts do not have any machinery of their own for implementing their decisions. The only power available is the one of contempt which cannot be exercised frequently and certainly not always, and

Higher assumption of responsibility by the judiciary has the deleterious effect of weakening other wings of governance which is not a good indication of otherwise healthy constitutional democracy.

These are the few aspects which the Courts shall have to keep in mind as dictating the need for exercise of self-restraint while expanding the arena of their jurisdiction in public interest.

Justice J.S.Verma, has indicated "Judicial Activism is a delicate exercise involving creativity, great skill and dexterity is required for innovation. Judicial creativity is needed to fill the void occasioned by any gap in the law or inaction of any other functionary, and, thereby, to implement the rule of law. ....In short, the need for self-restraint must never be lost sight of."<sup>31</sup>

A word of caution by Benjamin Cardozo in his book "The Nature of Judicial Process" is very apt to be remembered by the Judges while exercising their discretion. "The Judges even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not night-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains."

Some recent cases decided by the Supreme Court of India in which it asserted the needs of Judicial Restraint as are follows:

In *Aravali Golf Club and Another v. Chander Hass and Another*<sup>32</sup> The Supreme Court Bench comprised with A.K.Mathur and Markandey Katju, JJ, held that "The Court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the Court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organization.

Therefore, the directions given by the High Court and First Appellate Court to create the posts of tractor driver and regularize the services of the respondents against the said posts cannot be sustained and are hereby set aside." By this way the learned Judges of Apex court allow the respondent either to be exploited in the hands of appellate or left him in a situation to take the law in his own hand. Being the guardian of the Constitution the Apex Court is under obligation to fill the gap where legislature and executive fails to exercise their own functions.

Further observed, "If the legislature or the executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations, or by other lawful methods e.g. peaceful demonstrations. The remedy is not in the judiciary taking over the legislative or executive functions, because that will not only violate the delicate balance of power enshrined in the Constitution, but also the judiciary has neither the expertise nor the resources to perform these functions."<sup>33</sup> The researcher seem that this guidelines given by the Apex Court is not fit for this case, one individual can't change the government by exercising his franchise. This decision is not seems to be fit for the Indian peculiar situation of India.

In *Common Cause (A Regd. Society) Vs. Union of India (UOI) and Ors.*<sup>34</sup>

H.K. Sema and Markandey Katju, JJ, held that "When other agencies or wings of the State overstep their constitutional limits, the aggrieved parties can always approach the courts and seek redress against such transgression. If, however, the court itself becomes guilty of such transgression, to which forum would the aggrieved party appeal? As the ancient Romans used to say "Who will guard the Praetorian guards?" The only check on the courts is its own self restraint."<sup>35</sup>

Court further held that "It must be remembered that a Judge has to dispense justice according to the law and the Constitution. He cannot ask the other branches of the State to keep within their constitutional limits if he exceeds his own."<sup>36</sup>

In *Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Anr.*<sup>37</sup>

Markandey Katju and Gyan Sudha Misra, JJ, High Court quashed Notification issued by Central Government, by which Sugar Industry was de-licensed under Section 29 of Act and debarred Respondent no. 6 from establishing sugar industry without obtaining licence under Section 11 of Act. Supreme Court held that Judiciary should apply the doctrine of self restraint specially in the policy decision of the legislature, it could make no difference that policy was framed by legislature or executive and in either case there could be judicial restraint. Hence, Notification was validly issued under Section 29B of Act and judgment of High Court could not be sustained."

### Conclusion

India is a largest democracy in the world and about 1.21 billion populations are living here.<sup>38</sup> India being a democratic set up country ruled by the citizens of this country, according to the norm laid down in her written Constitution. About 20% Indian people are living below the poverty line. Supreme Court is guardian of the Constitution of India, thus Supreme Court is under Constitutional obligation to watchdog all organs of the State and ensure that all organs are working properly for the welfare of the citizens. In failure of the other organs of the state the duties must shift on the guardian of the Constitution to acts for the welfare of the citizens and of the State.

The Supreme Court has now realized its proper role in a Welfare State, and it is using this new strategy not only or helping the poor by enforcing their fundamental rights of a person's but for the transformation of the whole society as an ordered and crime free society and the role of individuals and group of people in participating the government day to day issues and checks all the activities of the concerned authorities like Central Investigating Authorities to discharge their legal obligations in the various scams cases, need for enactment of Uniform Civil Code, Pollution Control, Preservation of historical monument like Taj Mahal, cleaning and keeping the big cities more hygienic, ban of smoking in public places, removal of encroachments, interim compensation to rape victims, speedy trial, legal aid to all prisoners and economically backward people, puncturing the ego of Chief Election Commissioner T.N.Seshan and senior Karnataka IAS officer, Vasudevan are the notable approach by the Courts. Thus the filing of Writ Petitions and Public Interest Litigations are the two eyes of the Courts which guards the Constitution from all kind of encroachments and this is the dynamic approach of Activism.

At the same time all the three organs of democracy under our Constitution must confine themselves to their limits so that to maintain the constitutional mandate of Separation of powers. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within

the constitutional limits. It is the sentinel of democracy.

In order to achieve this goal, even if one wing of Government takes upon itself the responsibility that is supposed to be carried out by the other wings, there requires no eyebrow to be raised. Therefore, it is strongly contended that Public Interest Litigation in India is justified because of its peculiar circumstances different from western countries. It is submitted that PIL in India is justified to the extent it safeguarded basic human rights of citizens and gave a new hope to the downtrodden that judiciary is one of the organs of the state to turn to, when there is failure on the part of other organs to perform their duties. It is the creativity of the Supreme Court of India that has preserved the basic human rights of the citizens. As a guardian and watchdog of fundamental rights it is within the mandate of the Court to infuse a new life in Article 21 and broaden the scope of 'right to life' and 'personal liberty' so as to make it meaningful and cherish it for the generations to come.

Thus, in the wake of all the above cited cases it is becoming evident that the Indian Judiciary has evolved itself as a saviour of mankind by interpreting Article 21 of the Constitution in the widest possible manner. The Supreme Court has interpreted right to life to include right to live with human dignity, right to pollution free environment, right to livelihood, freedom from noise pollution etc. The Court day-by-day is enhancing the ambit of right to life and personal liberty. There is considerable scope for further expansion of the content of Article 21 by the judiciary with the objective of taking India forward towards a modern industrial society.

Public Interest Litigation (PIL) has been an invaluable innovative judicial remedy It has translated the rhetoric of fundamental rights into living reality for at least some segments of our exploited and downtrodden humanity. Under trial prisoners languishing in jails for inordinately long periods, inmates of asylums and care-homes living in sub-human conditions, children working in hazardous occupations and similar disadvantaged sections.

Before entering into the age of globalization the supreme court of India and High courts in India were accepting PIL as rule and Judicial Restraint as an exception to this rule but now its become vis-à-vis. The Supreme Court in India is not only a highest court but it is a guardian of Indian Constitution. Hence its responsibilities are greater to ensure the rights of the poor and deprived section of the society.

#### Footnotes

1. *M/s Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Ors.* - AIR 2008 SC 913, para 19.
2. *Dalvir Bhandari, J., "Public Interest Litigation : Definition, Origin & Evolution : Supreme Court"* Legal Blog, 05/02/2011.
3. AIR 1981 SC 298
4. AIR 2002 SC 40<sup>1</sup> AIR 1978 SC 1975
5. AIR 1986 SC 1773

6. AIR 1990 SC 1412
7. AIR 1997 SC 734
8. AIR 1987 SC 359<sup>1</sup> AIR 2002 SC 1696
9. AIR 2009 SC (Supp) 353
10. *Ibid*
11. AIR 2010 SC 2516
12. AIR 1988 1 SCC 668
13. AIR 1993 2 SCC 411
14. AIR 1998 Ker 385
15. AIR 1982 SC 849
16. AIR 1991 4 SCC 406
17. AIR 1996 SC 2426: (1996) 4 SCC 37
18. AIR 1966 SC 305, 317: (1966) 1 SCR 25
19. AIR 1986 SC 991
20. AIR 1978 SC 1548
21. AIR 1979 SC 1322
22. AIR 1997 SC 3011
23. AIR 1983 4 SCC 141
24. AIR 1997 SC 889
25. AIR 1993 2 SCC 746
26. AIR 1987 4 SCC 609
27. AIR 1956 SC 124
28. AIR 1992 4 SCC 653
29. AIR 1992 4 SCC 605
30. AIR 1984 SC 802
31. AIR 1989 2 SCC 609
32. *In his book New Dimentions of Justice , p81. Universal law Publication Corpn. Pvt. Ltd, 2000 edition.*
33. AIR 2008 SC (Supp.) 360
34. *Ibid.*
35. AIR 2008 SC 2116
36. *Id. Para 46*
37. *Ibid para 48*
38. (2011) 1 SCC 640
39. *According to 2011 Census, released on 31.03.2011*