

**JUSTICE P.N.BHAGWATI: PIONEER OF PUBLIC INTEREST
LITIGATION**

-Swastika Sarangi¹

ABSTRACT

One of the most important developments that took place in the recent years is the process of social action and social reform through legal action known as Public Interest Litigation (PIL). Public interest litigation (PIL) has a vital role in the civil justice system in that it could achieve those objectives which could hardly be achieved through conventional private litigation. PIL, for instance, offers a ladder to justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about the social evils of the society. PIL could also contribute to good governance by keeping the government accountable. Until the emergence of PIL, justice was a remote reality for our illiterate, underprivileged and exploited masses. PIL is a strategic arm of the legal aid movement and is intended to bring justice within the reach of poor masses.

This article will show, with reference to the Indian experience, the transformation brought by Justice P.N.Bhagwati¹ through the introduction of PIL, his objectives behind the introduction of PIL, the phases of evolution of PIL, sea-change brought by PIL in Indian context, and last but not the least, some of my suggestions regarding better functioning of PIL.

KEY WORDS= PIL, JUDICIAL ACTIVISM, CASE LAWS

¹ Student, 3RD SEMESTER, UNIVERSITY LAW COLLEGE, VANIVIHAR, UTKAL UNIVERSITY, Email Id: swastika1.chinki@gmail.com

INTRODUCTION

What Indira Gandhi is to Indian Politics, J. Prafullachandra Natwarlal Bhagwati² is to the Indian Judiciary. He is the pioneer of judicial activism which is fundamental to the evolution of contemporary Indian Jurisprudence. Judicial Activism according to Justice P.N. Bhagwati, is “nothing but another form of constitutionalism which is concerned with substantivisation of social justice for all the citizens”³. The expression ‘*Judicial Activism*’⁴ signifies the anxiety of courts to find out appropriate remedy to the aggrieved by formulating a new rule to settle the conflicting questions in the event of lawlessness or uncertain laws. PIL and judicial activism go hand in hand. PIL itself is the result of judicial activism. One of the overarching aims of law and legal systems has been to achieve justice in the society and public interest litigation (PIL) has proved to be a useful tool in achieving this objective. The challenge of democratizing access to courts could have been met through expansion of legal aid but solution was seen as diluting judicial procedure by short-circuiting basic principles of adjudication. These visions of providing justice prepared the basis for future developments such as Lok Adalats at the lowest level, tribunalisation at the intermediate level and Public Interest Litigation (PIL) at the highest level of the judiciary and the credit goes to **J. Bhagwati**. Through PILs, he opened the doors of the SC to the lowliest of the low.

OBJECTIVE OF P.I.L.

Upendra Baxi⁵’s early critique of the Indian Supreme Court’s activism in the mid-1980s is the classic statement of the distinctiveness of the Indian genre of PIL⁶. Baxi uses the term —**social action litigation (SAL)**⁷ to emphasize the very different historical triggers, institutional settings, and conceptual groundings of PIL in the Indian context. PIL or “social action litigation,” as some call it, originated in the late 1970s when the judiciary, aiming to recapture popular support after its complicity in Indira Gandhi’s declaration of emergency rule, encouraged litigation concerning the interests of the poor and marginalized, and to do so loosened rules and traditions related to standing, case filing, the adversarial process, and judicial remedies. The emergency issue gave rise to concept of legal aid. In this regard **J.P.N. Bhagwati** rightly observed that⁸:

The legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to

resort to it for enforcement of its given to them by law, the poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts”.

The term "*Public Interest*" means the larger interests of the public, in general welfare and interest of the masses⁹ and 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 public or for removal of some public grievance.*" In simple words, public interest litigation means. any public spirited citizen can move/approach the court for the public cause (or public interest or public welfare) 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 or before the Court of Magistrate under Sec. 133¹⁰

PHASES OF EVOLUTION PUBLIC INTEREST LITIGATION

The term "PIL" originated in the United States in the mid 1960s¹¹. In the nineteenth century, various movements in that country have contributed to public interest law, which are a part of the legal aid movement¹². In England PIL made a mark during the years of Lord Denning in the 1970s. PIL had begun in India towards the end of 1970s and came into full bloom in the 1980s. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati, have delivered some landmark judgements which opened up new vistas of PIL¹³. 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 litigation¹⁴. Therefore, in order to appreciate the evolution of Public Interest Litigation in India, it is desirable to have a basic understanding of the constitutional framework and the Indian judiciary¹⁵. The main tools employed to achieve social changes to eradicate social evils to create social revolution, were the provisions on fundamental rights (FRs) and the directive principles of state policy (DPs), which Austin described as the "*Conscience of the Constitution*"¹⁶. In order to ensure that Fundamental Rights did not remain empty declarations, the founding fathers made various provisions in the Constitution¹⁷ to establish an independent judiciary¹⁷. Provisions related to Fundamental Right's, Directive Principle's and independent judiciary together provided a firm constitutional foundation for the evolution of Public Interest Litigation in India¹⁸.

At the risk of over-simplification and overlap, the public interest litigation discourse in India could be divided, in my view, into three broad phases¹⁹. One will notice that these three phases differ from each other in terms of at least the following four variables: first, who initiated public interest litigation cases; second, what was the subject matter of public interest litigation; third, against whom the relief was sought²⁰.

In the **first phase**²¹ which began in the late 1970s and continued through the 1980s, the Public Interest Litigation 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. During this phase, the judiciary responded by recognising the rights of these people and giving directions to the government to redress the alleged violations.

The **second phase**²² of the Public Interest Litigation was in the 1990s during which several significant changes in the chemistry of PIL took place. 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 width 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. 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 public interest litigation for private purposes. The courts enforced fundamental rights against private individuals and granted relief to the petitioner without going into the question of whether the violator of the fundamental right was the state.

On the other hand, the **third phase**²³, the current phase, which began with the 21st century, is a period in which anyone could file public interest litigation for almost anything. 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.

At last, it seems that the judicial attitude towards PIL in these three phases is a response, at least in part, to how it perceived to be the issue(s) in vogue. 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 the second phase, and development and free market considerations might dominate the third phase. So, the way the courts have reacted to PIL in India is merely a reflection of what people expected from the judiciary at any given point of time²⁴. 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.

CHANGES BROUGHT BY PIL

Social change is the necessity of any society. In India this is done by J. P.N.Bhagwati through the weapon called PIL. Through this paragraph, I want to assess the impact of PIL over Indian society. The emergency of 1976 marked not just a political watershed in this country, but a judicial one as well. In the euphoria of the return to democracy and in an attempt to refurbish its image that had been tarnished by emergency situations, the SC of India opened the floodgates to PIL. There were many problems before the introduction of PIL. However, all these scenario gradually changed when SC tackled the problem of access to justice by people through radical changes with the splendid efforts of J. P.N.Bhagwati who was instrumental to this juristic revolution²⁵.

- Prior to 1980s, only the the aggrieved party had the *locus standi* to file a case and the non affected had no right to do so. The relaxation of the rule of *locus standi* has resulted in representative action . The rule of *locus standi* was diluted and the traditional meaning of ‘aggrieved person’ was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system
- The first and foremost advantage of PIL is access to a National Forum of decision making and power by those who were until now voiceless and invisible.
- Predominantly, 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 courts’ deep and intense urge to fulfil its bounded duty and constitutional obligation.

- PIL has also given the court an opportunity to address important issues in areas which affect a large number of people. It has helped in protection and preservation of ecology, forests, marine life, wildlife, consumer protection, eradicating corruption for good governance etc. The courts' directions to some extent have helped in maintaining probity and transparency in the public life.

IMPORTANT CASES OF PIL

- The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamgar Sabha vs. Abdul Bhai*²⁶ where the Court made conscious efforts to improve the judicial access for the masses by relaxing the traditional rule of *locus standi* .
- The landmark case which saw the emergence of public interest litigation in India, later known to every law student in India as *Hussainara Khatoon*²⁷ case was the first PIL in India. PIL on behalf of prisoners awaiting trial in the jails of Bihar for a period longer than the sentence supposed to be imposed. P. N. Bhagwati, J. has observed “That today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system. The poor in their contact with the legal system have always been on the wrong side of the line. They have always come across law for the poor; rather than law of the poor”.
- The Supreme Court held in *Akhil Bharatiya Soshit Karamchhari Sangh (Railway) (Supra)*²⁸ that our current position of jurisprudence is not of individualistic Anglo Indian mould. It is broad-based and people-oriented, and envisions access to justice through class actions, public interest litigation, and representative proceedings. Indeed, Indians seeking remedies in large numbers in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concepts of cause of action, person aggrieved' and individual litigation are becoming obsolescent in some jurisdictions.
- P.N.Bhagwati J., enunciated the reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar Union v. Union of India*²⁹

- Further, Bhagwati J. known as one of the pro-poor and activist judges of the Supreme Court in *S.P. Gupta vs. Union of India*³⁰. (AIR 1982 SC 149) popularly known as “*JUDGES TRANSFER CASE*”, firmly established the validity of the public interest litigation. Justice Bhagwati in S.P. Gupta’s case pointed out the essentials of PIL, as under :
 - a) There must be a legal wrong caused to a person or to a determinate class of person, on whom burden is imposed in violation of law or without legal authority.
 - b) The wrong must arise from violation of any constitutional or legal right.
 - c) The wronged person (or determinate group of persons) must be unable to approach court for relief by reason of – (i) poverty, (ii) helplessness; or (iii) social or economic disability or socially or economically disadvantaged person.
 - d) If the above conditions are satisfactory, then any member of the public can seek judicial relief for the above wrong.
 - e) But the court should be anxious to ensure that the person initiated the proceeding to acting bonafide to get redress for a public grievance and not to pursue personal gains or from malicious motives.
 - f) If the case is otherwise appropriate for PIL then the court can act even on letter addressed to it. Since then, a good number of public interest litigation petitions were filed.
- Justice P.N. Bhagwati, in *Bandhua Mukti Morcha Vs. Union of India*³¹, opined that “PIL 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 them social and economic justice which is the signature tune of our Constitution. The government and its officers must welcome PIL because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social entitlements or they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community. When the court entertains PIL, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue

programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The court is thus merely assisting in the realization of the constitutional objective.

The cases covered in a survey exemplify the judicial activism which has become the hallmark of the judicial role in India as redefined by PIL.

1. THE RIGHT TO LIFE- *Mohd. Haroon v. Union of India*³², *Ajay Bansal v. Union of India*³³
2. RIGHTS OF WOMEN- *Laxmi v. Union of India*³⁴, *Budhadev Karmaskar v. State of West Bengal*³⁵
3. RIGHTS OF CHILDREN- *Bachpan Bachao Andolan v. Union of India*³⁶, *Voluntary Health Association of Punjab v. Union of India*³⁷
4. PIL AND THE ENVIRONMENT- *G. Sundarrajan v. Union of India*³⁸
5. FREEDOM OF SPEECH AND EXPRESSION- *Awdhesh Singh Bhadoria v. Union of India*³⁹

CONCLUSION

It is revealed that the public interest litigation is the outcome of judicial activism. The need for innovation of public interest litigation in India arose due to failure of discharging the constitutional obligations as well as the voluntary abdication of powers by the executive and the legislature. Activism in the Court has taken on new dimensions through public interest litigation. Judges have begun to enter realms of decision making previously reserved for the legislative or executive wings of the government. PIL has also helped in the development of legal principles. I would like to suggest certain things for good implementation:

- For good implementation of any legislation, its acceptance is important and it should have a very strong social backing. The human element is a big factor here. Developing this human factor is again a challenging task as breaking certain iron-clad notions, ideas and practices takes time and efforts. Education can come to rescue and catalyze this process; it will give thinking power to individuals and the boon of perspectives.

- Along with propagating education, introduction of ‘Constitutional Law’ as a mandatory subject in curriculum of schools (in middle school – 9th or 10th standard) will be a great step, as individuals will know what rights does their nation provide and what platforms are available to enforce such rights, moreover this will lead to each one of us respecting each other’s rights as well.
- It is suggested that it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. For that judiciary needs the support from state administration to conduct legal literacy programme.
- But strictly speaking the need of the hour is cooperation, and not confrontation among the three organs of the state – the legislature, the executive and the judiciary. In India it is the Constitution which is supreme. The above three organs are supposed to act within the bounds of the Constitution. They should act harmoniously. Though the Indian judiciary has a place of primacy in the constitutional scheme, it can be rendered ineffective by the Parliament or even by the executive.

PIL paves the way for the participation of public spirited and enlightened people in India's development process and displays the potentiality of the legal system to offer justice to the poor and the oppressed. The strategy has brought to light many a medieval practices still prevalent in India such as relief to prisoners, plight of women in protective homes, victims of the flesh trade and children of juvenile institutions and exploitation of the bonded and migrant labourers, untouchables, tribal *etc.* The attempt has been made to show how in taking up such cases, the Supreme Court is emerging as the guardian of the rights and liberties of the victims of repression, cruelty and torture. This will help in growth of the human element and lead to fundamental change as well.

So, let us slowly move into the sunlight for, in the words of **Martin Luther King**: *“Injustice anywhere is a threat to justice everywhere.”*

FOOTNOTES:

1. Justice P.N.Bhagwati was the 17th CJI of SC of India
2. Full name of J. P.N.Bhagwati, Pioneer of PIL
3. Collected Speeches of Justice P.N.Bhagwati- An Australian Appreciation.

4. Arthur Schlesinger Jr. coined the term in a January 1947 Fortune Magazine article titled “THE SUPREME COURT 1947”.
5. Upendra Baxi is a legal scholar, since 1996 working as professor of law in Univ. of Warwick, UK.
6. Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 THIRD WORLD LEGAL STUD. 107, 108 (1985).
7. *See id.* at 108–09 of *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 THIRD WORLD LEGAL STUD. 107, 108 (1985).
8. Report of the Legal Aid Committoel **1971**, (which was headed by Justice **Bhagwati** and submitted to the Government of Gujarat, 1971); Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. VV Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsinh F. Solanki, M.L.A, Mr. Girishbhai C. Patel, Principal, New Lal College, Ahemdabad. His Lord ship answered to the question of inequality in the administration of justice between the rich and the poor.
9. Oxford English Dictionary 2nd Edn Vol.XII
10. Sec 133 of Code of Criminal Procedure, 1973 of India
11. 2013 GJLS Vol.1, No.1 Galgotias Journal of Legal Studies ISSN. 2321-1997
12. Baxi, “Taking Suffering Seriously” (1985) *Third World Legal Studies* 107; Bhagwati, “Judicial Activism and Public Interest Litigation” (1984) 23 *Columbia Journal of Transnational Law* 561. “The PIL represents for AMERICA a distinctive phase of socio-legal development for which there is no counterpart in India; and the salient characteristics of its birth, growth and, possibly, decay are also distinctive to American history.” Baxi, “Taking Suffering Seriously” (1985) *Third World Legal Studies*
13. Two CJIs of SC of INDIA and pioneer of PIL
14. The Indian Code of Civil Procedure though allows for class action: ord.1 r.8 of the Code of Civil Procedure 1908. Furthermore, s.91 of the Code provides: *“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.”*
15. Sheetal B. Shah, *“Illuminating the Possible in the Developing World: Guaranteeing the Human Right to Health in India”* (1999) 32 *Vanderbilt Journal of Transnational Law* 435, 463.
16. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, 1966, Oxford: Clarendon Press, p.27. *“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, *Cornerstone of a Nation*, p.26, quoting K. Santhanam, a Member of the Constituent Assembly.)

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17. M.P. Jain, “The Supreme Court and Fundamental Rights” in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India—Its Grasp and Reach*, 2000, Oxford University Press, New Delhi, pp.1, 76.
18. J. Bhagwati and J.Iyer These two judges headed various committees on legal aid and access of justice during 1970s, which provided a backdrop to their involvement in the PIL project. See Jeremy Cooper, “Poverty and Constitutional Justice: The Indian Experience” (1993) 44 *Mercer Law Review* 611, 614–615.
19. Dam divides SAL in three functional phases: creative, lawmaking and super-executive. Shubhankar Dam, “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)” (200) 13 *Tulane Journal of International and Comparative Law* 109, 115–116. This division, however, does not fully explain the complexity of PIL, because it focuses only on one aspect of it.
20. See Surya Deva, *Public Interest Litigation in India: A Critical Review*, 28 CIV. JUST. Q. 19, 27–29 (2009) (explaining how PIL discourse in India can be divided into three broad phases that differ from each other in terms of who initiated PIL cases, what the subject matter or focus of PIL was, against whom the relief was sought, and how the judiciary responded to PIL cases).
21. See Surya Deva PIL
22. SAME AS ABOVE
23. SAME AS ABOVE
24. 2013 GJLS Vol.1, No.1 Galgotias Journal of Legal Studies ISSN. 2321-1997
25. Upadhyay Videh, *Public Interest Litigation in India: Concepts, Cases, Concerns*, LexisNexis Butterworths, New Delhi, 2007
26. (AIR 1976 SC 1455)
27. Full Court Reference held on 13 February 2014 at the Supreme Court of India. For detailed discussion on the evolution and development of PIL, see C D Cunningham *The world’s most powerful Court: Finding the roots of India’s Public Interest Litigation revolution in the Hussainara Khatoon Prisoner’s case in Liberty, Equality and Justice: Struggles for a new social order*, S.P. Sathe & Sathya Narayan (EBC Publishing (P) Ltd., Lucknow 2003); A Hingorani, “Indian Public Interest litigation: Locating Justice in State Law” XVII *Delhi Law Review* at 159 (1995); C D Cunningham, “Public Interest Litigation in Indian Supreme Court: A Study in Light of the American Experience” 20 *JILI* 494(1987); Upendra Baxi “*The Supreme Court under Trial: Undertrials and the Supreme Court*” 1 SCC 35 (1980); “Personal Liberty” XVASIL 418 (1979).
28. A.B.S.K.Sangh v. Union of India, AIR 1981.SC 298. Found in S.K. Agarwal, *Public Interest Litigation in India : A Critique*, N. M. Tripathi Pvt. Ltd, Bombay, 1985, p.36.
29. AIR 1981, SC 434.
30. P.N. Bhagwati, —Social Action Litigation: The Indian Experience, *Rote of the Judiciary in Plural Societies*, (1987).
31. Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802: (1984)3 5CC 161.

32. (2013) 11 SCALE 675.
33. (2013) 7 SCALE 568
34. (2013) 9 SCALE 290
35. (2013) 1 SCC 294.
36. (2013) 7 SCALE 507
37. (2013) 1 SCALE 383
38. (2013) 7 SCALE 102
39. AIR 2013 (NOC) 253 M.P.

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