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Impact of Judicial Activism in Deciding PIL

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ABSTRACT

The notion of Judicial Activism originated from the English principles of 'equity' and 'natural rights'. The potential for Judicial Activism has existed long before the terminology itself was introduced. In the United States, these concepts found expression in the idea of 'judicial review'. The American judiciary initiated the contemporary concept of judicial activism in 1954 with landmark rulings in various cases. The writ jurisdiction of the Supreme Court and the writ jurisdiction of the High Courts derive from the Constitution of India. Judicial activism refers to judicial decisions that are allegedly influenced by personal or political factors rather than established law. There have been numerous effects caused by judicial activism through Public Interest Litigation (PIL). While its importance and usefulness in maintaining the rule of law are unquestionable, its excessive and unprincipled application by courts at times has led to contentious debates surrounding PILs. One of the most perplexing issues for the courts has been the point of divergence regarding Locus standi. Conversely, in certain instances, courts have dismissed petitions due to a lack of public interest impact or because the petitioners did not have clear means to advocate for public interest in those particular situations. There exists a notable distinction between judicial activism in India and that in the USA. The term pertains to instances where a judge delivers a ruling that disregards legal precedents or past constitutional interpretations in favor of safeguarding individual rights and advancing a wider social or political agenda. Judicial Restraint might serve as a remedy to an overly activist judiciary, particularly when the safeguard resembles Julius Caesar.

Key words: Judicial Activism, PIL, Judicial Review, Judicial Restraint, Locus standi

1. Introduction

A judge making a decision based on personal political beliefs or inherent notions of justice, rather than relying on current laws or statutes, can be concerning. Challenging a judge's decision is uncommon; the only way to overturn such a ruling is for the affected party to file an appeal. However, an appeal requires a specific "ground" for it to be valid. This process goes beyond mere comments or the judge's individual opinions. The ruling is neither random nor unconstitutional. This phenomenon is termed JUDICIAL ACTIVISM. Activism involves actively campaigning to instigate change, whether it be in the political or social realm. The three branches of government—Legislative, Executive, and Judiciary—form the foundation of the Constitution. I haven't encountered the terms Legislative Activism or Executive Activism before. There are also systems of checks and balances that ensure no single branch of the Constitution holds unchecked authority. Thus, it raises the question of the necessity for Judicial Activism. Numerous judges, lawyers, and social activists believe that Public Interest Litigation (PIL) only arises through Judicial Activism. When discussing judicial Activism, it's important to consider the term Sentinel on the Qui Vive. This phrase has French origins and signifies being alert or vigilant, akin to police being cautioned to remain vigilant against terrorist threats. In India, it's commonly interpreted as Watchful Guardian; Qui Vive essentially means Watchful or Alert, with the Supreme Court of India referring to its role as a protector of citizens' rights and democracy. Consequently, the court acts like a sentinel, safeguarding the public, sometimes adapting its judgments as necessary. This assignment will explore the background and history of Judicial Activism in both the USA and India, defining Judicial Activism, tracing the origins and history of PIL, and noting its evolution. It will discuss the genesis of judicial activism in India and highlight key contributors to its development. The role of concerned citizens in shaping PIL and judicial activism will also be examined, alongside the writ jurisdiction of the Supreme Court and High Court for human rights violations under Article 32 and legal rights under Article 226 of the Constitution of India. The effect of judicial activism on PIL decisions will be analyzed, along with significant case laws that challenged parliamentary laws, as well as prominent cases that influenced PIL through Judicial Activism. It will also outline both the positive and negative consequences of judicial activism. Additionally, the major steps necessary to curb an overly activist judiciary from overstepping its bounds will be presented. A comparative analysis will be conducted on how judicial activism functions in the USA and its differences from the Indian Judiciary. The definition of procedural Activism and its impact on the US judicial system will also be discussed. Finally, the assignment will conclude with the author's personal insights.

2. Historical Background of Judicial Activism & PIL

2.1 Origin of Judicial Activism in the UK

The idea of Judicial Activism has its origins in the English principles of 'equity' and 'natural rights'. The potential for Judicial Activism has existed long before the term itself was established. Before the 20th century, serious scholars began examining the notion of Judicial regulation, which

involves making active regulatory decisions. "Where Blackstone leaned towards Judicial regulation as the most significant aspect of common law, Bentham considered it a violation of legislative authority and a case of 'misguided perception.'" Bentham's perspective was notably challenged by John Austin, who defended a variant of Judicial regulation in his well-known discussions on legislation. In the early 20th century, there was an influx of scholarship debating the merits of Judicial regulation, with prominent scholars taking sides in the discussion. Criticism of established Judicial regulation was particularly intense during the *Lochner* era. Critics took issue with the Court's favoritism towards economics as it repeatedly invalidated social regulations under the guise of substantial Due Process. While some contemporary scholars view *Lochner* and its successors as essentially synonymous with "Judicial Activism," the term was notably absent from the writings of that time. The New Deal and the "transformative" changes of 1937 sparked another wave of critical commentary, yet once again, contemporary literature did not use the term "Judicial Activism." Years later, after judges reached a consensus that the New Deal was constitutionally solid, the term eventually emerged in legal discussions.

Arthur Schlesinger Jr. introduced the term "Judicial Activism" to the public for the first time in an article for *Fortune* magazine dated January 22, 1947. Schlesinger's article examined each of the nine Supreme Court justices at the time and detailed their relationships and divisions. Although the exact origins of the term "Judicial Activism" within legal scholarship are challenging to pinpoint with certainty, it is clear that Joseph C. Hutcheson, Jr., was the first to use it in a judicial opinion. Judge Hutcheson, a tough yet committed jurist who rarely missed a chance for a Supreme Court appointment that went to Hugo Black, is generally praised for his contributions to legal scholarship and service on the bench. However, he initiated an unfortunate practice in legal writing that continues to this day. Judicial Activism is not a single, uniform concept. Instead, it can represent several distinct jurisprudential ideas that genuinely warrant further exploration. For example, when scholars argue that overturning seemingly established actions of other branches constitutes legal activism, they prompt discussion about fundamental questions regarding how the Constitution should be interpreted and what the proper scope of judicial review should be in our tripartite system of government. Furthermore, an accusation of judicial activism as a disregard for precedent raises complicated issues surrounding the nature of a legal holding and the extent of deference owed to various types of precedent.

2.2 Origin of Judicial Activism in the USA

On American soil, these concepts found expression in the notion of 'judicial review.' The landmark case that set this in motion was *Marbury v. Madison*.¹ In this case, for the first time, the judiciary took a proactive role and acted beyond legislative actions. Marbury was appointed as a judge under the Judiciary Act of 1789 by the U.S. National Government. Although the appointment warrant was signed, it could not be delivered. Marbury filed a lawsuit seeking the issuance of a writ of mandamus. At that time, Marshall had become the Chief Justice of the Supreme Court, having been appointed by the previous president who lost the election. Justice Marshall faced the imminent possibility that the Government might not comply with a judicial order if Marbury's case were upheld. In a notable display of judicial diplomacy affirming the Court's authority to review the actions of Congress and the Executive, Chief Justice Marshall denied the relief on the basis that Section 13 of the Judiciary Act of 1789, which was the basis for Marbury's case, was unlawful as it violated the U.S. Constitution by granting the Supreme Court original jurisdiction to issue writs of mandamus. He stated that the Constitution is the fundamental and supreme law of the land and that "it is for the court to say what the law is." He concluded that the explicit wording of the U.S. Constitution confirms and supports the principle deemed essential to all written constitutions. That any law contrary to the Constitution is void and that the courts, as well as other branches, are bound by that document. If there is a conflict between a law enacted by Congress and the provisions of the Constitution, it is the court's duty to uphold the Constitution and disregard the law. This ruling received numerous critiques from various sectors; however, judicial review had been established and was here to stay. The American judiciary initiated the modern concept of judicial activism in 1954 with the landmark ruling in *Marbury v. Madison*.

Brown v. The Leading Group of Education

Beginning from this judgment and by a progression of decisions after this, the High Court of America precluded all the regulations that isolated the Negroes from the fields of everyday life. The previous position taken in the case below.²

Plessy v. Ferguson

That blacks could be treated as a different class, however, should be furnished with equivalent offices - separate yet equivalent - established on racial segregation was dismissed by the Supreme Court at the danger of upsetting the institutional comity and sensitive harmony between the three organs of the State. Not only did the Court abrogate the regulations that didn't conform to the recommended Constitutional standards, but it also incorporated more privileges that were not obviously accommodated in the Constitution³

2.3 Definition of Judicial Activism

The Oxford Learners Dictionary describes Judicial Activism as the concept that precise wording of the Constitution does not have to be adhered to when creating new laws.⁴ Black's Law Dictionary defines Judicial Activism as a judicial decision-making philosophy where judges permit their personal perspectives on public policy, among other considerations, to influence their rulings.⁵ Merriam-Webster characterizes Judicial Activism as the approach

¹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

² *Brown v. Leading group of Education*, 347 U.S. 483 (1954).

³ *Plessy v. Ferguson*, 163 U.S. 537 (1896)

⁴ <https://www.oxfordlearnersdictionaries.com/> (Last Visited Feb 09, 2022)

⁵ <https://legal.thomsonreuters.com/en/products/law-books/blacks-law-dictionary> (Last Visited Feb 09, 2022)

within the judiciary that seeks to safeguard or broaden individual rights through rulings that deviate from established precedent or stand in contradiction to the intended constitutional or legislative meaning.⁶

2.4 Judicial Activism in India

The concept of Judicial activism in India can be traced back to the inception of the Indian Constitution. The Constitution empowered the Supreme Court with limited authority over subordinate courts through Articles 141, 226, and 32, which further established the confidence of the judiciary by allowing individuals to approach the courts in cases of infringement of fundamental rights. Article 226 had a broader scope and also encompassed legal rights.⁷

However, traditional law restricted this right by imposing the principle of locus standi. The term locus standi, or the right to approach the court, generally implies that there must be a sufficient connection between the legal grievance challenged in court and the party raising such a challenge. Traditionally, this principle limited the right to seek a remedy from the courts to affected individuals or those with a direct link to such individuals. It allowed courts to dismiss cases without considering their merits if the case lacked standing. It was only with the emergence of public interest litigation that the scope of locus standi was broadened to include public interest standing, aimed solely at strengthening the socio-legal justice system. Marginalized social groups now had easier access to the courts through public-spirited individuals and organizations. However, the right to seek remedy through public interest standing was confined to constitutional wrongs and did not cover private wrongs.

The theory of separation of powers was introduced by the French jurist Montesquieu. This principle has also been adopted in India, where executive powers lie with the President, legislative powers reside in the Parliament and State Legislative Assemblies, and judicial powers are held by the Supreme Court and lower courts. However, the application of this concept in India is partial and not fully realized. This is because, while the Legislature and Judiciary are independent, the Judiciary is tasked with enforcing the laws created by the Legislature. Conversely, in the absence of laws on specific issues, the Judiciary issues rules and guidelines for the Legislature to follow. The executive also encroaches on judicial power when appointing judges to the Supreme Court and High Courts. Similarly, the Judiciary, through its power of review, examines laws enacted by the legislature, while the legislature intervenes concerning the impeachment of the President of India, who is part of the Union Executive. As previously mentioned, Judicial Activism in India can be observed in the review authority of the Supreme Court under Article 226 of the Constitution, particularly in public interest litigation cases. The Supreme Court has played a crucial role in establishing various principles in public interest litigation cases. For instance, the doctrine of "ABSOLUTE LIABILITY" was established in the Oleum Gas Leak case⁸, and the "PUBLIC TRUST DOCTRINE" was recognized in the Kamalnath Case⁹, among others. Furthermore, the Supreme Court has issued various guidelines in different cases of public interest litigation.¹⁰

For a long time, the Indian Judiciary had taken a conventional approach to the very concept of judicial activism. However, it would be inaccurate to claim that there have been no instances of judicial activism in India. Some scattered and isolated occurrences of judicial activism took place sporadically. Nevertheless, they did not gain prominence as the concept itself was unfamiliar to India. Yet, the history of judicial activism can be traced back to 1893 when Justice Mehmood of the Allahabad High Court delivered a dissenting judgment that established the foundation of activism in India. It was a case involving an under-trial who was unable to afford a lawyer. The question arose as to whether the court could decide his case solely by reviewing his documents (Justice J. S. Verma, 1996). Mehmood ruled that the prerequisite for a case being 'heard' (as opposed to merely being read) would only be fulfilled if someone argued it. Thus, he provided the broadest possible interpretation of the relevant law and laid the groundwork for judicial activism in India.

As the modern term suggests, judicial activism in India began much later. This inception can be linked to the Theory of Social Want. The judiciary felt compelled to intervene during judicial processes due to abuses and excesses by the executive. Let us examine the rationale for such intervention. After gaining independence from colonial rule, the executive has consistently viewed the judiciary as an adversarial component of the State. This perspective gained traction and popularity when the administration devolved into a system driven by personal rather than public interests. Corruption and malpractice became ingrained in the current political framework. The masses suffered beyond imagination due to the unchecked actions of those wielding financial, physical, media, and ministerial power (B. Venkatachalapathi, 1998). In this context, some urgent situations arose that could not wait for the Parliament to investigate. Subsequently, it turned into an obligation of the judiciary to effectively give relief to the persecuted masses of the general public.¹¹

In *Sunil Batra v. Delhi Administration*¹²

Justice V. R. Krishna Iyer portrayed the circumstance in the following words: "However, regulation was the best arrangement, yet when administrators take for unreasonably long for social persistence to endure. Courts need to manage with understanding and bend on wood, furthermore shape on stone without sitting tight for the far off marble."

*Mumbai Kamghar Sabha v. Abdul Bhai*¹³,

⁶ <https://www.merriam-webster.com/> (Last Visited Feb 09, 2022)

⁷ Judicial activism to Public Interest Litigation by Anshika Agarwal, Ipleaders Indian Legal Solutions (2021)

⁸ M.C. Mehta v Union of India AIR 1987 SC 965

⁹ M.C. Mehta v Kamal Nath (1998) 1 SCC 388

¹⁰ Pritam Kumar Ghosh, Judicial activism and Public Interest Litigation In India by Pritam Kumar Ghosh, Galgotias Journal of Legal Studies (1997)

¹¹ Judicial Activism In India: A Necessary Evil by Arpita Saha (2021)

¹² Sunil Batra v. Delhi Administration, AIR 1978 SC 1548

¹³ Mumbai Kamghar Sabha v. Abdul Bhai, AIR 1976 SC 1465

In the historic case of the Apex Court, the regulation of legal activism was presented, however, without classification. The hypothesis of Judicial activism has gained driving force on account.

*Maneka Gandhi v. Union of India*¹⁴

Where the Pinnacle Court substituted the fair treatment condition in Article 21 rather than 'methodology laid out by regulation' to sidestep the absolutism of the Executive and its obstruction of personal opportunity. In the natural process of everything working out, the PILs continued with the undertaking of uncovering many tricks, giving equity to the residents, and furthermore to upgrade their privileges.

3. Evolution of PIL

The advancement of Public Interest Litigation encouraged legal entities to expand their focus towards new avenues of social and public concern. The concept of 'PIL' was first introduced in the United States during the mid-1980s. The phrase 'Public Law Litigation' was notably coined by American scholar Abram Chayes to describe the efforts of advocates or similar passionate individuals acting in the public interest, who seek to instigate social change through legal declarations that amend existing regulatory standards, uphold current norms, and clarify prevailing public policies. In line with this, the first legal aid office was established in New York in 1876. Subsequently, this evolution of PIL gained momentum when it was associated with the Economic Opportunity Office and began to spread rapidly. This affiliation with an economically driven organization sparked a new wave of public interest lawyering aimed at protecting marginalized groups, safeguarding the environment, and promoting optimal public health among citizens, among other goals. The PIL movement first started gaining traction in England during the 1970s. The initiation of PIL in India is fundamentally a developed phenomenon and is closely connected to the unique assertion of judicial power. Even though there has been a subtle assertion of judicial authority following the political crisis of the 1970s in India, such power had been articulated previously as well. The constitutional tension surrounding land reforms had already been manifested before the court and parliament.

The success of Mrs. Gandhi's Congress in the 1971 Lok Sabha elections, based on a pledge for a series of financial and social reforms, created an expectation that the court's approach would soon be overturned. Following this significant electoral victory was a relatively established state of emergency that persisted from 1975 to 1977. Consequently, there were judicial discussions and the overreach of power, resulting in a stark imbalance and deterioration of the independence of judicial institutions. This significant abuse of power was followed by the removal of the right to property from the list of fundamental rights in the Constitution. The failure to uphold the sanctity and integrity of fundamental rights during crisis periods led to a widespread belief that the nation's highest judicial body had become ineffective. Ultimately, this dissatisfaction led to the 42nd Amendment (42nd), which removed the judicial power of review.¹⁵

A surge of Judicial Activism emerged during the 1970s. In the case of *Kesavananda Bharati*,¹⁶ one of the judges remarked, "The Constitution is not meant to be the playground of legal disputants with deep pockets. It is crafted for ordinary citizens." Additionally, he stated, "The court is not elected by the people and is not accountable to them in the same manner as the House of the People is. However, it will... enhance its moral authority if it can shift the focus of legal review to the philanthropic aspect of protecting the vulnerable sections of the populace." Following this critical period of emergency, a completely distorted narrative of judicial interpretation and the evolution of Articles 14¹⁷ and 21¹⁸ began to emerge, exemplified in cases like *A.K. Gopalan*, where the highest judicial body was inconsistent with its decisions in *Kesavananda Bharati*¹⁹ and *Minerva Mills*.²⁰ To address this distortion and inconsistencies in judicial reasoning, there was a significant rise of PIL in India to amplify the voice of the marginalized sections of society and to reshape the courts' perception of citizens' rights. This growth also witnessed an adjustment in the courts' approach toward the principle of locus standi so that maximum benefit could be realized for the greatest number of individuals, a pragmatic characteristic. Due to the increasing popularity of PIL, new paths within the PIL culture began to be explored by figures such as Justice V.R. Krishna Iyer²¹ and Justice P.N. Bhagwati during the 70s and 80s.

3.1 PIL & Writ Jurisdiction

The Supreme Court's writ jurisdiction and the High Court's writ jurisdiction under the Constitution are both available for the protection of human rights as outlined in Article 32 and for legal rights under Article 226 of the Constitution of India.

Article 32

¹⁴ *Maneka Gandhi v. Association of India*, AIR 1978 SC 853

¹⁵ *Judicial activism in India: transgressing borders and enforcing limits* by S.P. Sathe & U. Baxi, (2nd ed. 2006).

¹⁶ *Kesavananda Bharati V State of Kerala* (1973) 4 SCC 225; AIR SC 1461

¹⁷ INDIA CONST. art. 14

¹⁸ INDIA CONST. art. 21

¹⁹ *A.K. Gopalan v. State of Madras*, 1950 SCR 88 (India).

²⁰ *Minerva Mills Ltd. & Ors. v. Union of India & Ors*, 1981 SCR (1) 206

²¹ "judges and distributive justice," in v.r. krishna iyer et al., *judges and the judicial power: essays in honour of justice v.r. krishna iyer* by Jagat narain, (1985);

The right to initiate appropriate proceedings in the Supreme Court for the enforcement of the rights granted by this Part is assured. The Supreme Court is empowered to issue directives or orders or writs, which may include habeas corpus, mandamus, prohibition, quo warranto, and certiorari, as may be suitable for the enforcement of any of the rights provided by this Part.

Additionally, without detracting from the powers granted to the Supreme Court under clauses (1) and (2), Parliament may enact a law to empower any other court to exercise all or some of the powers the Supreme Court possesses under clause (2) within its territorial jurisdiction. The rights guaranteed by this article cannot be suspended except as specifically allowed by this Constitution.²²

Article 226

Every High Court possesses the authority to issue directives, orders, or writs throughout the territories under its jurisdiction to any individual or authority, including relevant cases involving any Government within those areas, for enforcing any of the rights conferred by Part III and for other purposes as well. The authority granted by clause (1) to issue directives, orders, or writs to any Government, entity, or person may also be exercised by any High Court with jurisdiction over the territories where the cause of action arises, either wholly or in part, even if the Government or authority's seat, or the person's residence, is outside of those regions.

If any party against whom an interim order is issued, whether as a result of an injunction, stay, or any other means related to a petition under clause (1), has not been provided with copies of the petition and all supporting documents, and has not had the opportunity to be heard, and then applies to the High Court for vacating the order while also giving a copy of the application to the party benefitting from such order or their counsel, the High Court shall resolve the application within two weeks from when it is received or from when the copy is provided, whichever is later. If the High Court is not in session on the last day of that period, the matter should be resolved before the end of the following day when the High Court reopens; if the application is not addressed within that timeframe, the interim order shall automatically be vacated. The power granted to a High Court by this article does not diminish the authority bestowed upon the Supreme Court by clause (2) of article 32.²³

Article 39A

The State must ensure that the legal system operates to promote justice on the basis of equal opportunity and must, in particular, offer free legal aid, through appropriate legislation, schemes, or any other means, to guarantee that no citizen is denied access to justice due to economic or other disadvantages.²⁴

Article 32 is known as the "Constitutional Remedy" for the enforcement of Fundamental Rights. This provision is part of the Fundamental Rights and, therefore, cannot be denied to anyone. Dr. B.R. Ambedkar referred to Article 32 as the most vital article, stating that without it, the Constitution would hold no value. It is often regarded as the heart and soul of the Constitution. By incorporating Article 32 into the Fundamental Rights, the Supreme Court has been designated as the protector and guarantor of these Rights. An application submitted under Article 32 to the Supreme Court cannot be rejected on procedural grounds. Besides the specified five types of writs, the Supreme Court has the authority to issue any other suitable order. Moreover, only issues related to Fundamental Rights can be addressed in proceedings concerning Article 32. Under Article 32, the Supreme Court can issue a Writ against any person or government within India. If there is evidence of a violation of a Fundamental Right, the Supreme Court cannot deny assistance on the basis that the affected individual may have other recourses available through different courts or under general law.²⁵

3.2 PIL & Public-Spirited Citizens

Public interest litigation, also known as social interest litigation, holds significant importance today and has captured the attention of all stakeholders involved. The traditional principle of "Locus Standi," which states that only individuals whose rights are violated can file a petition, has been significantly relaxed by the Supreme Court in its recent rulings. Now, the court allows public interest litigation to be initiated by what are termed "PUBLIC-SPIRITED CITIZENS"²⁶ for the purpose of upholding Constitutional and Legal rights. Hence, any concerned citizen can approach the court for a public interest cause (in the interest of the public or public welfare) by submitting a petition:

1. In the Supreme Court under Article 32 of the Constitution of India.
2. In the High Court under Article 226 of the Indian Constitution.
3. In the Court of Magistrate under Section 133 of the Code of Criminal Procedure.

Justice Krishna Iyer, in the *Fertilizer Corporation Kamgar Union*²⁷ case, listed several reasons for the relaxation of the Locus Standi rule:

1. The use of State power to combat corruption may inadvertently interfere with individual rights.

²² INDIA CONST. art. 32

²³ INDIA CONST. art. 226

²⁴ INDIA CONST. art. 39A

²⁵ Public Interest litigation – Judiciary, <http://legalserviceindia.com/> (Last Visited August 25 2025)

²⁶ They are people of this country who do not have direct interest at stake in the PIL filed before a Court but work Pro Bono Publico, i.e. in the larger interests of the public and for their general welfare in good faith. Noted public-spirited citizens in India who have represented mass interests before the Supreme Court and other High Courts are M.C. Mehta and Subhas Dutta

²⁷ *Fertilizer Corporation Kamgar Union v Union of India* 1981 AIR 344, 1981 SCR(2) 52

2. Social justice necessitates broad judicial review of administrative actions.
3. Restrictive standing rules are contrary to a robust system of administrative action.
4. Activism is vital for participatory public justice.

Therefore, a citizen with public-mindedness should have the opportunity to approach the court in the public interest. Additionally, Justice Bhagwati, known for his support of the underprivileged and politically engaged decisions, firmly established the validity of public interest litigation in the *S.P. Gupta vs Union of India*²⁸ case, commonly referred to as the "JUDGES TRANSFER CASE." Since then, a significant number of public interest litigation petitions have been submitted. It is important to recognize at the outset that PIL, as it has developed in India, differs from class action or group litigation. While the latter is primarily driven by efficiency considerations, the former focuses on providing access to justice for all segments of society. In India, PIL is a facet of constitutional litigation rather than common litigation. To understand the evolution of PIL in India, it is essential to grasp the foundational structure and the Indian judiciary. Following independence from British rule on August 15, 1947, the people of India adopted a Constitution in November 1949, aiming to establish a "sovereign socialist secular democratic republic."

Among other objectives, the Constitution seeks to enable class or group litigation. While the latter is principally motivated by efficiency, PIL is aimed at ensuring access to justice for all societal groups. PIL in India has been a component of constitutional litigation rather than common litigation. Among its various goals, the Constitution aims to provide all its citizens with justice (social, economic, and political), liberty (of thought, expression, belief, faith, and worship), and equality (in status and opportunity). These goals were not mere ideals; the framers sought to achieve societal transformation through the Constitution.

4. Fundamental Rights & DPSP

The key instruments employed to achieve such social change were the provisions concerning Fundamental Rights and the Directive Principles of State Policy, which Austin described as the "conscience of the constitution." To ensure that Fundamental Rights did not remain mere declarations, the original architects included various provisions in the Constitution to establish an independent Judiciary. As will be discussed below, the provisions related to Fundamental Rights, Directive Principles of State Policy, and the independent judiciary collectively provided a solid constitutional foundation for the evolution of Public Interest Litigation (PIL) in India. Part III of the Constitution outlines several Fundamental Rights and also specifies the grounds for limiting these rights. "A right without a remedy lacks significant substance"; therefore, the ability to approach the Supreme Court directly for the enforcement of any rights under Part III has also been established as a Fundamental Right. The holder of Fundamental Rights cannot waive them, nor can these rights be reduced by an amendment to the Constitution if such a reduction violates the fundamental structure of the Constitution. Some Fundamental Rights are available solely to citizens, while others are accessible to both citizens and non-citizens, including legal entities. Notably, certain Fundamental Rights are explicitly granted to groups or communities. While not all Fundamental Rights are guaranteed specifically against the state, some are expressly protected against non-state entities.

Indeed, the term "state" is broadly defined in Article 12 of the Constitution to include "the Government and Parliament of India and the Government and the legislature of all the states, as well as all local or other authorities within the territory of India or controlled by the Government of India." The phrase "other authorities" has been interpreted broadly, meaning that any organization or instrumentality of the state will fall within its scope. The Directive Principles of State Policy are found in Part IV of the Constitution. Although the Directive Principles of State Policy are not enforceable by law, they are "fundamental in the governance of the country, and it is the duty of the state to apply these principles in the making of laws."

After initial divergence, the Supreme Court accepted that Fundamental Rights do not take precedence over Directive Principles of State Policy because the latter are non-justiciable; instead, Fundamental Rights and Directive Principles of State Policy are complementary, with the former serving as a means to achieve the objectives outlined in the latter. This position was definitively established in the *Minerva Mills Ltd v Union of India* case, where the Court ruled that "the harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution." Since that time, the judiciary has employed the Directive Principles of State Policy to interpret the substance of various Fundamental Rights.

The original architects envisioned "the judiciary as a stronghold of rights and justice." An independent judiciary, empowered with the authority of judicial review, was the constitutional mechanism chosen to fulfill this purpose. The authority to enforce Fundamental Rights was conferred upon both the Supreme Court and the High Court—the courts that have handled all the PIL cases. The judiciary has the power to challenge not only the validity of laws and executive actions but also constitutional amendments. It holds the final authority on interpreting the Constitution and its provisions and is equipped with the power to punish for contempt, allowing it to reach individuals throughout the nation. Since its inception, the Supreme Court has rendered decisions of great significance, addressing not only dispute resolution but also the safeguarding of public policies and the establishment of the rule of law and constitutionalism.

5. Impact of Judicial Activism in PIL

Judicial activism is characterized as a "philosophy of judicial decision-making in which judges permit their personal opinions about public policy, among other factors, to influence their rulings." This term refers to judicial decisions that are said to be founded on personal or political motivations instead of

²⁸ *S.P. Gupta versus Union of India*²⁸. (AIR 1982 SC 149)

existing laws. Numerous public interest litigations (PIL) have been significantly influenced by judicial activism. We will examine several notable cases that have notably shaped PIL through judicial activism.

The first PIL in India was initiated in 1976.

In the case of *Mumbai Kamghar Sabha v. Abdul Bhai*,²⁹ a significant number of laborers were employed by various small business owners in a particular area of the city. Before 1965, these employers provided ex gratia payments to their workers in the form of bonuses, which they ceased to do after that year. A Board of Arbitrators, established under Section 10A of the Industrial Disputes Act, rejected the workers' request for bonuses. The matter eventually proceeded to an Industrial Tribunal, which dismissed the workers' claim on the grounds of res judicata, citing the Arbitration Board's prior decision.

Additionally, the Tribunal maintained that the bonuses previously distributed were based on tradition and custom, and therefore, did not fall within the provisions of the Bonus Act, which is a comprehensive framework, ultimately ruling that the workers were not entitled to bonuses.

Upon appealing to this Court, three contentions were raised:

- (i) the appellant-Union lacked locus standi since it was not a party to the dispute,
- (ii) the workers' claim was not related to profit-based bonuses, which is the focus of the Bonus Act; thus, the Act was irrelevant to this case, and
- (iii) as no argument regarding customary or contract bonuses was presented before the Arbitration Board, this ground was barred by general principles of res judicata.

The Court held that the notion that a decision from a superior court constitutes binding law is not absolute but rather a rational interpretation within the context of facts where judicial reasoning plays a pivotal role. Thus, there is no barrier in interpreting Ghewar Chand's case as limited to profit-based bonuses, allowing space for the non-statutory consideration of customary bonuses. That particular case pertains to profit bonuses as outlined in the Industrial Disputes Act. The fundamental premise of the statute is that it exclusively addresses profit-based bonuses. There is no explicit provision in the Bonus Act that invalidates all other types of bonuses, nor does such a conclusion logically follow from necessary implications. The central issue regarding the Parliament's policy deliberated in that case revolved around the use of the Industrial Disputes Act as a distinct avenue for claiming profit bonuses separate from the Bonus Act, and the Court reasoned that it would undermine the intent of the Act to permit such an encroachment. A thorough and clear analysis of the Act's framework and the Court's reasoning firmly indicates that the Act does not interfere with customary bonuses.³⁰

Payment of Customary Bonus within the Bonus Act

In instances of customary or traditional bonuses, it is important to assess whether the payment has been made consistently over an extended time, regardless of profit levels, and at a consistent rate. The Bonus Act is all-encompassing, and any type of bonus will not receive legal recognition if it falls outside the parameters of the Act. The payments in question are traditional and were included in the employment terms. In fact, since the Act serves as a complete framework, it would encompass this type of payment as well.³¹

Mother of PILs

The significant case is known as the Hussainara Khatoon case from 1979. Hussainara was one of six female prisoners, earning her the designation "Mother of PILs." This case sparked a transformation in the Indian legal framework.

*Hussainara Khatoon v The State of Bihar*³²

The writ petition was presented to the Court regarding the release of under-trial prisoners in Bihar. The Court instructed the state of Bihar to submit an updated chart that breaks down the under-trial prisoners year by year, categorizing them into minor and major offenses that had not been addressed.

The Court ordered the immediate release of those under-trial prisoners whose details were provided in Mrs. Hingorani's list, as their continued detention was unlawful and violated their fundamental rights under Article 21 of the Constitution due to having been incarcerated for longer than the maximum sentence they could have faced if convicted.

Additionally, the Court directed that during subsequent remand hearings, when under-trial prisoners facing bailable offenses appear before the Magistrates, the State Government should appoint a lawyer at its expense to apply for bail and contest remand unless an objection is raised against such a lawyer, with the intention of facilitating a speedy trial. The State Government and High Court were also tasked with providing details regarding the locations of the magistrates' and sessions courts in Bihar, as well as the total number of pending cases in each court as of December 31, 1978. They were required to explain why these cases, which had been pending for over six months, had not been resolved.

Ratio decidendi of the case

The case highlighted the situation of under-trial prisoners who had been confined for more than half of the maximum sentence they could receive if convicted. There is no justification for allowing these under-trial prisoners to remain incarcerated simply due to the State's failure to conduct their trials in a timely manner. The prospect of some being acquitted after spending years in prison for charges they ultimately did not commit poses a threat to their

²⁹ *Mumbai Kamghar Sabha v. Abdul Bhai*, AIR 1976 SC 1465

³⁰ *Mumbai Kamghar Sabha v. Abdul Bhai*, AIR 1976 SC 1465

³¹ Payment of customary bonus the cornerstone of industrial harmony <https://thecompany.ninja/> (Last Visited Feb 03,2022)

³² *Hussainara Khatoon v The State of Bihar* 1979 AIR 1369, 1979 SCR (3) 532

personal liberty. Thus, ensuring a swift trial for individuals accused of crimes is vital to guarantee they do not remain in jail longer than necessary. The Court urged both the State and Central Government to implement a comprehensive legal services program, mandated not only by Article 14, which promises equal justice, and Article 21, which guarantees the right to life and liberty, but also found in the constitutional directive of Article 39A.

The State cannot refuse the constitutional right to a speedy trial based on claims of financial or administrative limitations. The Court is, therefore, required to take an activist stance and issue directions to the State to take proactive steps to uphold the fundamental right to a swift trial.³³

One of the "Three Judges Cases" consists of three significant cases:

- 1) *S. P. Gupta v. Union of India* - 1982 (often referred to as the *Court of Appeal*)
- 2) *Supreme Court Advocates-on-Record Association v. Union of India* - 1993
- 3) *In Re Special Reference 1 of 1998*

In *S. P. Gupta v. Union of India*,³⁴ several courts that referred cases to the Supreme Court highlighted "a crucial constitutional issue concerning judicial independence" related to judicial appointments. The core aspect of the case involves the release of certain documents that were exchanged between the Minister of Justice, the Chief Justice of Delhi, and the Chief Justice of India, along with the pertinent notes related to the non-appointment of a judge over time and the appeal regarding the High Court Judge. The appellants, alongside one of the judges involved, sought the release of these documents. The government contended that the documents should remain undisclosed for two reasons: first, as advice from the Ministerial Council to the President, which is protected under Article 74 (2)³⁵ of the Constitution; and secondly, that their disclosure may serve the public interest, based on Section 123 of the Indian Evidence Act. Section 123³⁶ states: "No individual is permitted to provide evidence from unpublished official records regarding any state matters without obtaining the consent of the respective department head, who will decide whether to grant or deny such permission." Ultimately, the validity of any dispute will be resolved by the court.

In this case, the Supreme Court of India dismissed the government's argument for keeping the documents confidential and mandated the Union of India to unveil the documents requested. A transparent and accountable democracy requires public access to information concerning government performance, as exposure to public scrutiny fosters clean governance and acts as a deterrent against oppression, corruption, and misuse of power. The concept of an open government is directly linked to the right to know, which is ensured by the right to freedom of expression outlined in Article 19 (1) (a)³⁷ of the Constitution of India. Therefore, access to information about government operations should not be constrained by secrecy, except when there is a compelling public interest. Concerning Article 74 (2)³⁸ The Court affirmed that while the President's advisory communication from the Ministerial Council is shielded from judicial scrutiny, the exchanges in this instance among the Minister of Justice, the Chief Justice of Delhi, and the Chief Justice of India were not automatically protected just because they were labeled as counsel.

There are only two grounds on which the Local Government's decisions concerning appointments and transfers can be contested: inappropriate reasoning. The communication in question needs to serve two purposes that justify disclosure. The public interest serves as the foundation for the request for protection under the Evidence Act. Given these factors, the Court must ascertain whether the release of specific documents would contradict the public interest. It must weigh the public's interest in ensuring transparent justice through disclosure against the public interest in maintaining confidentiality and determine whether the document should remain protected. The communication in this case was classified as inappropriate and was related to the appointment and transfer of judges, which is inherently a matter of public interest. The possibility of vague or harsh public criticism was insufficient to warrant the protection of the documents. After examining the document, the Court determined that the Central Government's directive regarding non-appointment was legitimate.

In the *Advocates-on-Record Association v. Union of India*³⁹ case, the National Judicial Appointments Commission (NJAC) Act and the corresponding constitutional amendment were deemed unconstitutional by the Supreme Court, with a majority ruling of 4:1. The Act was invalidated for infringing upon judicial independence, leading to the continued operation of the existing collegium system governing the transfer and appointment of judges. Justice Khehar articulated that the complete independence of the judiciary from other branches of government is essential for safeguarding citizens' rights.

The Bhanwari Devi Case: A Landmark Ruling on Workplace Sexual Harassment

*Vishaka & Ors. v State of Rajasthan*⁴⁰

³³ Summary of Hussainara Khatoon Case <https://lawtimesjournal.in/> (Last Visited Feb 06, 2022)

³⁴ *S. P. Gupta v. Union of India* AIR 1982 SC 149, 1981 Supp (1) / SCC 87, 1982 2 SCR 365

³⁵ INDIA CONST. art. 74

³⁶ *The Indian Evidence Act, 1872*, No. 1, Acts of Parliament, 1872 (India)

³⁷ INDIA CONST. art. 19(1)(a)

³⁸ INDIA CONST. art. 74

³⁹ *Advocates-on-Record Association v. Union of India* AIR 1994 SC 268

⁴⁰ *Vishaka & Ors. v State of Rajasthan* (1997) 6 SCC 241

The Bhanwari Devi case represents a groundbreaking Supreme Court decision that addressed women's sexual harassment in professional settings. This historic judgment led to the creation of the renowned Vishaka guidelines, making it compulsory for organizations across both government and private sectors to establish complaint redressal systems for sexual harassment issues.

Background of the Case

In 1985, Bhanwari Devi, a resident of Bhateri village in Rajasthan, began her employment with the state government's Women's Development Project (WDP). Seven years later, in 1992, her professional duties involved advocating against child marriage as part of an official government initiative. Despite the illegality of such practices, local community members remained supportive of child marriages due to a lack of awareness.

When the Ram Karan Gurjar family planned to marry off their young daughter, Bhanwari intervened to dissuade them from proceeding with the ceremony. Her efforts proved unsuccessful, and the family remained determined to conduct the wedding. On May 5th, 1992, administrative officials including the sub-divisional officer and Deputy Superintendent of Police intervened and prevented the scheduled marriage. Nevertheless, the ceremony took place the following day without any law enforcement intervention. The community subsequently traced the official interference back to Bhanwari's involvement.

The Tragic Consequences

The village community retaliated against Bhanwari and her family through social ostracism, resulting in her unemployment. On September 22nd, 1992, seeking vengeance, five men launched a vicious attack - four members of the Gurjar family (Ram Sukh Gujjar, Gyarsa Gujjar, Ram Karan Gujjar, and Badri Gujjar) along with Shravan Sharma assaulted Bhanwari's husband and subjected her to brutal gang rape.

The police response proved deeply problematic, employing various tactics to discourage her from filing a formal complaint. This resulted in significant delays in both the investigation process and medical examination, which was postponed for 52 hours. Consequently, the medical report contained no mention of sexual assault.

During her ordeal at the police station, Bhanwari endured continuous harassment and ridicule from female personnel throughout the night. She was instructed to surrender her clothing as evidence and return to her village wearing only her husband's bloodstained dhoti, forcing the couple to spend the entire night at the station.

Due to insufficient evidence and political influence from local MLA Dhanraj Meena, all defendants received acquittals from the Trial Court. However, women's rights advocates and organizations refused to accept this outcome, mounting significant protests against the verdict. The women's rights organization 'Vishaka' filed a Public Interest Litigation emphasizing the protection of women's fundamental workplace rights under Constitutional Articles 14, 15, 19, and 21, specifically addressing the need for protection against workplace sexual harassment.

The Historic Judgment

The Supreme Court determined that workplace sexual harassment constituted a violation of fundamental rights protected under Articles 14,⁴¹ 15⁴², 19(1)(g)⁴³, and 21⁴⁴ of the Indian Constitution. The Court provided a comprehensive definition of sexual harassment as unwelcome "sexually determined conduct (whether direct or indirect)" encompassing physical contact, sexual advances, requests for sexual favors, sexually explicit comments, pornography display, or any other unwelcome physical, verbal, or non-verbal behavior of a sexual nature.

The judgment incorporated international legal standards, referencing Articles 11(1)(a), 11(1)(f), and Article 24 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴⁵. The Court clarified that sexual harassment extends beyond physical contact to include any behavior creating a hostile work environment through inappropriate jokes, verbal abuse, rumor-mongering, and similar conduct.

The Supreme Court established comprehensive guidelines for preventing workplace sexual harassment, known as the 'Vishaka Guidelines,' which acquired legal force under Article 141 of the Constitution, ensuring prompt complaint resolution. These guidelines subsequently formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.⁴⁶

The Vishaka Guidelines

Employers should implement preventive measures that explicitly prohibit harassment and ensure a healthy work environment concerning hygiene, comfort, and health.

In the event of violations of administrative rules in the workplace, appropriate disciplinary actions must be taken. If the offences committed are covered under The Bharatiya Nyaya Sanhita 2023, the employer is obligated to inform the authorities.

An organization is required to establish a redressal committee to handle harassment issues. This committee should operate independently of whether the actions constitute an offence under The Bharatiya Nyaya Sanhita 2023, or any other law. Moreover, the committee must comprise women as more than

⁴¹ INDIA CONST. art. 14

⁴² INDIA CONST. art. 15

⁴³ INDIA CONST. art. 19

⁴⁴ INDIA CONST. art. 21

⁴⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

⁴⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

half of its members, and its leader must also be a woman, along with providing a counselling service. Additionally, an annual report on the committee's progress must be submitted to the government.

The organization should take adequate steps to raise awareness about this issue.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, emerged sixteen years after the Vishaka case was adjudicated in 1997, primarily due to the activism of the Supreme Court, which empowered women to enter the workforce with their rights. Although a particular petition may not always yield immediate comprehensive relief or may face delays in its enforcement, litigation still plays a crucial role in fostering constructive and meaningful reforms by igniting the need for change.⁴⁷

Sheela Barse v. State of Maharashtra

A letter from a journalist was sent to the Supreme Court, reporting on the custodial violence against women prisoners in jail. The court acknowledged this letter as a writ petition, took note of the issue, and issued appropriate guidelines to the relevant state authorities.⁴⁸

Sunil Batra v. Delhi Administration

The court utilized its epistolary jurisdiction, allowing a letter from a prisoner to be considered as a petition. The letter alleged that the head warden brutally inflicted pain and assaulted another inmate. The court asserted that technicalities should not obstruct its role in safeguarding the civil liberties of individuals. There have been occasions when judicial activism has crossed into judicial overreach. The Parliament of India has held the judiciary accountable for intervening and exceeding its constitutional authority.⁴⁹

6. Positive Impact of Judicial Activism

Judicial activism, particularly through Public Interest Litigation (PIL), has led to numerous impacts. Below are some examples:

1. Positive outcomes
2. The judiciary's pro-environmental approach
3. Jurisprudence concerning gender issues
4. Empowerment of marginalized communities
5. Protection of Human Rights

In challenging times, the judiciary has consistently supported the oppressed and vulnerable groups within society. Moreover, NGOs, advocates, and other individuals have stepped forward pro bono, and the judiciary has cooperated in establishing new rights that are seen as fundamental human rights. Additionally, the Supreme Court introduced the 'doctrine of basic structure' to create a formidable barrier against any arbitrary and tyrannical actions by the executive or legislature. This marks a significant advancement in Indian jurisprudence, addressing the issues and challenges faced by our democratic and secular Republic.⁵⁰

The Indian judiciary has adopted an assertive position in safeguarding the environment for the benefit of the populace. Numerous environmental advocates have expressed gratitude toward the judiciary for its supportive stance in several recent rulings. The earlier period of disregard and apathy from the Indian judiciary regarding environmental concerns has shifted to a more sympathetic and proactive approach, particularly following the Bhopal Gas Tragedy, by incorporating pro-environmental measures into the Constitution and recognizing the right to a healthy environment as a fundamental right under Article 21.⁵¹

In India, gender jurisprudence has developed as a result of the judiciary's proactive measures in this area. Although there are various constitutional provisions and other laws aimed at preventing violence against women and addressing gender disparities, these legislative measures have largely remained theoretical until the judiciary took an active role in enforcing existing laws to eradicate violence against women.⁵² The Court has established comprehensive guidelines to combat sexual harassment in workplaces. Furthermore, the Supreme Court has instituted detailed guidelines for safeguarding women involved in prostitution and for the rehabilitation of their children.⁵³

Although the legislature had contemplated the liberation of the Shudras and lower castes from various forms of oppression and social discrimination long ago, and necessary laws were enacted to achieve this, the goal remained unfulfilled due to ineffective execution and a lackadaisical approach from the executive. In light of this situation, the judiciary took proactive measures and developed Dalit jurisprudence to alleviate the dire conditions faced by

⁴⁷ Abuse of public interest litigation in India need of legal safeguards, by Satinder Kumar, (2015) <http://shodhganga.inflibnet.ac.in/handle/10603/39837> (Last visited, Feb 06, 2022)

⁴⁸ *Sheela Barse v. State of Maharashtra* 1983 AIR 378, 1983 SCR (2) 337

⁴⁹ *Sunil Batra v. Delhi Administration* (1978) 4 SCC 409

⁵⁰ *Keshvanand Bharati v. State of Kerala*, AIR 1973 SC 1641

⁵¹ *Union carbide corporation v Union of India Etc* 1989 SCC (2) 5

⁵² *Gaurav Jain v. Union of India*, AIR 1997 SC 3021

⁵³ *Vishaka & Ors. v State of Rajasthan* (1997) 6 SCC 241

Dalits (which includes Harijans, Girijans, and Adivasis collectively). The Supreme Court has issued several rulings aimed at improving the status of Dalits and establishing their equality with other castes in society.⁵⁴

In terms of essential human rights, the judiciary has continuously been forging new pathways towards an egalitarian, democratic, and liberated society, aligning with the emerging universal socio-political and economic framework, by recognizing certain rights as Fundamental Rights under Part III of the Constitution. Notable rights include the right to information,⁵⁵ right to work,⁵⁶ right to minimum wages,⁵⁷ right to a speedy trial,⁵⁸ right to confidentiality,⁵⁹ and the right against inhuman treatment, among others.⁶⁰

Although the legislative body had contemplated the liberation of the Shudras and lower castes from various forms of oppression and social discrimination long ago, and necessary laws were enacted to achieve this, the objective remained unfulfilled due to ineffective implementation and a lackadaisical attitude from the executive branch. In this context, the judiciary actively intervened, introducing Dalit jurisprudence to improve the dire circumstances faced by Dalits (the Harijans, Girijans, and Adivasis grouped together).⁶¹

The Supreme Court has delivered several rulings aimed at enhancing the status of Dalits and establishing their equality with other castes in society. In the realm of fundamental human rights, the judiciary has consistently forged new connections aimed at creating an egalitarian, democratic, and free society in line with the evolving global socio-political and economic landscape by recognizing certain rights as Fundamental Rights under Part III of the Constitution. Among these rights are notable examples such as the right to information, the right to work, the right to minimum wages, the right to a speedy trial, the right to privacy, and the right against inhumane treatment.

7. Adverse Effects of Judicial Activism

1. An excessively active judiciary
2. Judicial Activism is distinct from PIL
3. Judicial Activism is not Judicial Adventurism
4. Judicial Activism as a drawback

Significant measures must be implemented to prevent an “over-activist” judiciary from overshooting its boundaries. Some of these measures can be elaborated as follows: Public Interest Litigation, commonly known as PIL, has become a significant and prominent aspect of the jurisdiction of the Supreme Court and 21 High Courts in India. While its necessity and usefulness in maintaining the rule of law are undeniable, the sometimes excessive and unprincipled applications by courts have led to controversy surrounding PIL.

Judicial activism is often associated with PIL, primarily because it serves as a convenient means for presenting public grievances to the courts, and the outcomes of PIL cases tend to be extensive and occasionally sensational. Once courts keep these foundational principles of judicial review in mind while exercising PIL jurisdiction, it can be a beneficial judicial tool for the public's advantage, especially for the poor, underprivileged, and marginalized groups whose fundamental rights need protection through court orders. It is the historic and constitutional responsibility of the courts to defend and enforce individual liberties and rights. A court operates with maximum strength and minimal vulnerability when its interventions focus on safeguarding individual rights against authorities. In such scenarios, concerns of the court violating the separation of powers do not arise, as it executes its constitutional role of protecting individual rights.

Over time, the original aim of PIL has been overlooked, as it is now viewed as a general jurisdiction for rectifying government actions or omissions, irrespective of established judicial review principles. Since the court cannot ignore the law in judicial review or the fundamental responsibilities, PIL orders must adhere to the law; they cannot take control of governance by the government or public authorities under the pretext of enhancing governance or preventing abuse of power. It is this misapplication of judicial activism that a Supreme Court bench recently criticized in strong terms in the Aravalli Golf Club case⁶². This judgment was both timely and highlighted the issue of misplaced judicial activism, but it did not engage with the acceptable scope of judicial intervention.

Such instances have led the intellectual community to believe that PIL has transformed from a means of social reform into a failed tactic for claiming judicial intervention for personal gain and vendetta, an opportunity for establishing a private practice, an effortless path to fame, and a way to overburden an already strained judiciary.⁶³ A persistent issue for the courts has been identifying the point of divergence concerning Locus Standi.⁶⁴ In some instances, courts have accepted petitions from third parties lacking any connection to the issue or cause of action of those affected.⁶⁵ Conversely,

⁵⁴ State of Karnataka v. Appa Balu Ingale AIR 1993 SC 1126

⁵⁵ People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473

⁵⁶ R. Rajagopal v. State of T.N., (1994) 6 SCC 632

⁵⁷ Kishore Singh v. State of Rajasthan, AIR 1981 SC 625

⁵⁸ Hussainara Khatoon v The State of Bihar 1979 AIR 1369, 1979 SCR (3) 532

⁵⁹ Justice K.S Puttaswamy v Union of India 2017 10 SCC 1

⁶⁰ L.I.C. v. Manubhai Shah, AIR 1993 SC 171

⁶¹ Sodan Singh v. New Delhi Municipal Committee, AIR 1989 SC 1988

⁶² Aravali Golf Club & Anr. Vs. Chander Hass & Anr (2008) 1 SCC 683

⁶³ Public interest litigation in India: A Socio-Legal Study by M.S Ahuja, (1996) ETHESES, <http://etheses.lse.ac.uk/1417/> (Last visited Feb, 06, 2022)

⁶⁴ Locus Standi Has Widening the Scope of Public Interest Litigation by Mahesh R Halde (2011) SSRN ELECTRONIC JOURNAL

⁶⁵ Ashok Desai & S. Muralidhar, Public Interest Litigation: Potential and Problems by Ashok Desai & S. Muralidhar (2000) International Environment

there have been cases where courts have dismissed petitions due to a lack of public interest being impacted or because the petitioners had no defined basis for advocating public interest in the specific circumstances.

8. Comparative study of judicial Activism in India -USA

There exists a notable distinction between the judicial activism in India and the USA. In the US, judicial activism refers to the approach judges take or are perceived to take when exercising judicial review. This term denotes situations where a judge makes a ruling that disregards established legal precedents or previous constitutional interpretations to protect individual rights and further a more extensive social or political agenda. In the US, there are two types of judicial activism. First, a judge may ignore precedent, invalidate a law passed by Congress, or deviate from the conventional model. Second, a judge may write a judgment with hidden motives to attain a specific social objective. In India, the term judicial review is seldom mentioned within the context of judicial activism. Judicial activism in India is primarily associated with the Supreme Court's power under Articles 32⁶⁶ and 226⁶⁷ of the Constitution, particularly in cases of public interest litigation. The Supreme Court has played a crucial role in establishing certain principles in public interest litigation cases. Thus, Indian judicial activism focuses on Articles 32 and 226 of the Constitution. However, it commonly involves invalidating laws that violate the fundamental rights of individuals enacted by the legislature. The Warren Court was the first Supreme Court bench recognized as judicially active for its rulings. Chief Justice Earl Warren led the court from 1953 to 1969, and his notable rulings include *Brown v. Board of Education*⁶⁸ and *Miranda v. Arizona*.⁶⁹ Justice Krishna Iyer was a pioneer of judicial activism in India. He served on the bench from 1968 to 1980 after being a judge at the Kerala High Court before becoming a Supreme Court judge. Noteworthy cases he handled include *Fertilizer Corporation, Kamgar Union*,⁷⁰ and *Sunil Batra v. Delhi Administration*.⁷¹ The US also follows another form of judicial activism known as procedural activism. This refers to instances where a judge's ruling addresses a legal question outside the immediate legal matters at hand. In contrast, Indian judicial activism will cease when matters extend beyond the legal framework. The Supreme Court has the authority to issue writs against any individual or government operating within Indian territory. Once a violation of a fundamental right is established, the Supreme Court of India cannot deny relief, citing that the affected individual might have remedies available in other courts or under common law. In cases where no regulations exist on a specific issue, the judiciary issues rules and directions for the legislature to follow. The executive also encroaches upon judicial authority when appointing justices to the Supreme Court and High Courts.

9. Conclusion and Opinion

In conclusion, Public Interest Litigation (PIL) and Judicial Activism share an intrinsic, mutually dependent relationship where each element reinforces the other's effectiveness. The majority of transformative legal precedents and significant court decisions have emerged through PIL proceedings and suo moto actions, with judges delivering innovative, unconventional rulings that transcended traditional legal boundaries.

The judiciary has evolved into a guardian institution for society's marginalized and vulnerable populations. However, this raises a critical question about the sustainability and appropriateness of Judicial Activism in contemporary times. History provides a cautionary tale through Julius Caesar, who was initially appointed as a temporary protector of the Roman Republic during a crisis, authorized to suspend democratic processes when external threats emerged. However, Caesar ultimately retained this extraordinary power and transformed into a dictator. This historical precedent raises concerns about whether India's judiciary might similarly assume excessive authority under the guise of Judicial Activism.

Judicial activists make decisions based on their personal judgment in cases, addressing legal matters while considering contemporary social requirements and needs. Conversely, there exists an opposing perspective suggesting that "the judiciary represents the weakest among the three governmental branches," thereby justifying Judicial Activism as a necessary counterbalance.

Recently, the legal community has increasingly criticized Judicial Activism for violating the separation of powers doctrine by encroaching upon the domains of other governmental institutions. Montesquieu warned that combining judicial and executive powers would endanger citizens' lives and liberty, as judges would function as oppressors, leading to arbitrary governance.

The scope of Judicial Activism has broadened through the relaxation of standing requirements, expansion of Judicial Review, constitutional amendments, and the introduction of PIL, also known as Social Action Litigation (SAL). It becomes essential to examine the circumstances that compelled the judiciary to adopt such an active stance.

During periods characterized by widespread corruption, political monetization, parliamentary negligence, and executive indifference, the judiciary cannot remain a passive observer. To fulfill constitutional obligations, preserve democratic values, and guide society toward the correct path, the judiciary will employ any necessary measures to accomplish these objectives.

When the judiciary overreaches its boundaries, Judicial Restraint serves as a corrective mechanism. Judicial Restraint advocates that judges should minimize their power by avoiding personal biases and preferences from influencing their decisions or proceedings. Judges should demonstrate reluctance in overturning legislation unless such laws clearly violate constitutional provisions. This philosophy argues that judges lack policy-making authority.

While it's true that judges assuming executive and legislative responsibilities may create problems, including expertise deficiencies and separation of powers violations, India's complex contemporary legal landscape requires judicial creativity and individual intellectual contributions from judges when interpreting intricate cases.