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# Public Interest Litigation – Guardian of Human Rights in India

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## ABSTRACT

*In India, legal system is not equally accessible to all. Its complex procedure and adversary character, the high-priced lawyers, fleecing stamp fee, passive judiciary, the traditional rules of locus standi, the uncertainty generated because of the contradictory opinions of different High Courts, the inordinate delays in hearing of the cases even where life and personal liberty are at stake, frighten away the poor man who is incapable of protecting them through law courts because of economical, geographical, psychological, language barriers.*

*It is a known fact that it is not just the nation's disadvantage and poor who often feel helpless in the society, but millions of middle-class citizens faced with governmental and institutional wrongful conduct, which they do not like but cannot seem to change. Citizens often feel frustrated and overpowered due to gross violation of human rights. While people affected have no voice in the decision-making process. The unavailability of legal representation to the affected people frequently prevents their practical access to courts, denying them the only forum in which they might assert their basic rights against the institutions that control them.*

*But now Public Interest Litigation has shown that - sometimes, something can be done, and that with the effective legal representation, citizen can often make their voices heard and help to shape the public policy decisions that affect their lives. The position of the Courts has, over the seventy years of its operational, undergone a change that has witnessed its emergence as an energetic institution playing an vigorous role in expanding the scope and content of personage and collective rights of society, in the civil and political spheres as well in the economic, social and cultural field.*

*In India Public Interest Litigation emerged due to the need of a great amount of people who individually lacked the fiscal resources or operational capability to justify their objection and their exact interest through court. In India, the courts perform their power of judicial review trace to its alarm that the poorest of the deprived, depraved, the uneducated, women, children and other downtrodden have either no access to justice or had been denied righteousness.*

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*A new branch of lawsuit known as PIL was evolved with a view to deliver complete justice to the aforementioned classes of persons. The court involves and renders suitable directions when there has been a component of violation of Article 21 of Constitution of India or of Human Rights or where the lawsuit has been commenced for the profit of the poor and the deprived that are powerless to come to the court due to some shortcomings.*

**Keywords:** *Economical, Geographical, Psychological, Human Rights, Adversary Character*

## I. INTRODUCTION

The evolution of Public Interest Litigation in India begins from the gratitude of constitutional responsibility by the courts towards the enormous sections of the people, the deprived and the marginalized sections of the society. This rule has been formed out by the judicial activism or creativity. In the case of *M. C. Mehta & Another v. Union of India & Others*<sup>2</sup> Chief Justice P. N. Bhagwati of Hon'ble Supreme Court observed that Article 32 of the Indian Constitution not just confers the power to issue direction, order or writ for the enforcement of fundamental rights to the courts. As an addition, it also gave a constitutional compulsion on this Court to protect the fundamental rights of the people. The court asserted that, in apprehension of this constitutional obligation, "it has all subsidiary and auxiliary powers as well as the power to forge new remedies and strategies deliberated to enforce the fundamental rights".

The expansion of PIL has seen tremendous significant in the development of the record in the Indian jurisprudence. The verdicts of the Supreme Court in the 1970's relaxed the stringent locus standi necessities to permit filing of petitions on behalf of marginalized and underprivileged sections of the society by public determined individuals, institutions and/or bodies. If analyse the cases of 70s and 80s, the majority of the PIL cases which were entertained by the judiciary are pertaining to enforcement of fundamental rights of marginalized and deprived sections of the society. This can be said that the first phase of the public interest litigation in India.

Litigation filed in a court of law, for the protection of —Public Interest (nebulous entity), such as pollution, Terrorism, Road safety, environmental hazards etc. can be termed as —Public interest Litigation (PIL), Article 32 of the Indian Constitution contains the instrument which straight forwardly joins the public with the judiciary. Public Interest Litigation is not defined in any Act or in any statute. It has been understood by judges to

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<sup>2</sup> AIR 1987 SC 1086, 1987 SCR (1) 819

consider the intent of public at mass. Although, the main focus of such lawsuits is only "Public Interest" there are various areas where a Public Interest Litigation can be filed. It is litigation which can be introduced in a court, not only by the affected or aggrieved person but also by the court itself (Suo moto) or by any private party. Meaning of —Public Interest Litigation is nothing but, legal action initiated in a court of law for the enforcement of public interest.

It was held in the case of *People's Union for Democratic Rights vs. Union of India*<sup>3</sup>, Justice P. N. Bhagwati of Hon'ble Supreme Court held that the Public Interest Litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two parties, one making a claim or Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantage position should not go unnoticed and un-redressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government.

## **II. HISTORY OF PIL IN INDIA**

The word "PIL" was begin in the U.S in the mid of 1980's. In the 19th century, a variety of activities in that country had contributed to public interest law, which was part of the legal aid movement. The first legal aid office was established in New York in 1876. In the 1960's the Public Interest Litigation movement started to receive financial assistant from the office of Economic Opportunity, this optimistic approach encouraged advocates and public spirited persons to take up cases of the underprivileged and fight opposition to dangers to environment and public health and utilization of consumers and the downtrodden. The origin and evolution of PIL in India originated from the recognition of constitutional responsibility by the courts towards the vast sections of the society the underprivileged and the marginalized sections of the society.<sup>4</sup>

In 70s and 80th decade are analysed it can be observed that most of the Public Interest

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<sup>3</sup> AIR 1982 SC 1473, 1983 SCR (1) 456

<sup>4</sup> Justice P.N. Bhagwati, *Judicial Activism and Public Interest Litigation* , 23 *Columbia Journal of Transnational Law*, p. 561 (1985).

Litigation cases which were entertained by the courts were pertaining to enforcement of fundamental rights of marginalized and deprived sections of the society. This can be termed as the first phase of the public interest litigation in India. The situation gradually changed when the post emergency period the S.C tackled the problem of access to righteousness by citizens through drastic changes and alterations made in the necessities of locus standi and of party affected. The fabulous creativity of Justice P.N. Bhagwati as well as Justice V.R. Krishna Iyer was the key of this juristic revolution of eighties to convert the Apex Court of India into a Supreme Court for all Indians.

The ever first reported lawsuit of Public Interest Litigation in 1979 was focused on the inhuman conditions of prisons and under trial prisoners. In *Hussainara Khatoon v. State of Bihar*,<sup>5</sup> Justice P. N. Bhagwati of Hon'ble Supreme Court held that the Public Interest Litigation was filed by an advocate for the basis of the news which published in the Indian Express Newspaper, which stressed the plight of thousands of under trial prisoners suffered in various jails in the state of Bihar. These proceeding led to the let go of more than 40,000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been deprived of to these prisoners. The same set pattern was adopted in subsequent cases. Scope of Public Interest Litigation PIL is meant for enforcement of fundamental and legal rights of the citizens who are poor, pathetic, unaware of legal redressal structure or otherwise in a disadvantageous position, due to their social or economic background. Such litigation can be initiated only for redressal of a public injury, enforcement of a public duty or defend the interest of public nature. It is necessary that the petition is not filed for personal gain or private motive or for other extraneous consideration and is filed bona fide in community interest.

### **III. DOCTRINE OF LOCUS STANDI AND PIL**

To make 'access to justice' a reality, the judiciary is endeavouring to dismantle the barriers of poverty that exists between poor man and the justice system. And this task is accomplished by liberalizing the scope of "locus standi", and developing 'Public Interest Litigation', i.e., the courts are now allowing even the 'third' parties to vindicate the socio-economic rights of weaker sections. PIL or social interest litigation nowadays has great significance and drew the attention of all concerned.

The customary rule of "Locus Standi" that a person, whose right is violated alone can file a petition, has been significantly relaxed by the SC in its judgments. Now, the court allows PIL

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<sup>5</sup> AIR 1979 1369, 1979 SCR (3) 532

at the instance of the so called "PUBLIC SPIRITED CITIZENS" for the implementation of Constitutional and lawful rights. Now, any public spirited civilian can move or approach the court for the public cause (in the interests of the public or public welfare) by file petitions. Public Interest litigation is a litigation in which a person, even though not aggrieved personally, brings an action on behalf of the downtrodden masses for the redressal of their grievances. Public Interest Litigation may be defined as – a litigation undertaken for the reason of redressing public right violation, implement public duty, protecting social, collective and diffused rights, interests or vindicating public interest. The greatest service done by Indian Supreme Court to the poor of the country - is the development of Public Interest Litigation. Public Interest Litigation is also utilized for checking discrimination in giving benefits of reservations to members of SCs/STs; for grant of minimum 'basic needs'; for preventing abuse of power by political executive, making him thus publicly responsible for wrong acts done by taking undue advantage of the official position held; stopping the telecast of serials on Television if they are of controversial character, etc.

Part III of the Constitution lays down various Fundamental Rights and also specifies reasons for restrictive these rights. "As a right without a remedy does not have much substance",<sup>6</sup>. The remedy to approach the Supreme Court directly for the enforcement of any of the Part III rights has also been made a Fundamental Rights. The holder of the Fundamental Rights cannot waive them. Nor can the FRs be curtailed by an amendment of the Constitution if such curtailment is against the basic structure of the Constitution. Some of the Fundamental Rights are available only to citizens while others are available to citizens as well as non-citizens, including juristic persons. Notably, some of the Fundamental Rights are expressly conferred on groups of people or community. Not all Fundamental Rights are guaranteed specifically against the state and some of them are expressly guaranteed against nonstate bodies. Although the Directive Principles of State Policy are not justiciable before the court of law, they are, "nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws".

#### **IV. PIL AS AN INSTRUMENT OF SOCIAL CHANGE**

The origin of the lawful instrument proved valuable for the developing nation like India. Public Interest Litigation is effective for the wellbeing of poor as well every section of people. It has been used as a tactic approach to fight against the atrocities existing in society. It is an institutional idea towards the wellbeing of the needy class of the people. In the case of

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<sup>6</sup> 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* (New Delhi: Oxford University Press, 2000), p.1 and p.76

Bhandua Mukti Morcha v. Union of India,<sup>7</sup> Justice P. N. Bhagwati of Hon'ble Supreme Court directed the release of bonded labourers. Likewise in the case of Murli S. Deora v. Union of India<sup>8</sup> In this Case Hon'ble Supreme Court banned smoking in public places. Delhi Domestic Working Women's Forum v. Union of India<sup>9</sup>. Justice S. Mohan of Hon'ble Supreme Court in this landmark judgment issued guidelines for rehabilitation and compensation for the rape on working Women. Likewise in the case of Vishaka v. State of Rajasthan<sup>10</sup> Chief Justice Sujata V. Manohar of Hon'ble Supreme Court laid down comprehensive guidelines for preventing sexual harassment of working women in place of their work. In essence the Public Interest Litigation develops a new concept of the accountability of the nation for constitutional and legal infringements adversely influenced the interests of the weaker elements in the community.

## **V. PIL AS GUARDIAN OF HUMAN RIGHTS**

The meaning of Human Rights is nothing but basic rights in political and social conditions variously defined to which all the individual is permitted to live as a human being. Initially they were called as natural rights or the rights of the society which included the rights to life, liberty and the enjoyment of happiness. The concept of human rights has been widened that consist of rights to social profit such as social security, rest and leisure and education. These rights are basic to human existence and hence are also called basic rights.<sup>11</sup>

The framers of the Constitution of India included human rights as two parts, both of that have same way as ICCPR (International Covenant on Civil and Political Rights was adopted in 1966) and ICESCR (The International Covenant on Economic, Social and Cultural Rights was adopted by the United Nations General Assembly in 1966.), where the first one is justiciable human rights were included in Part III of the Constitution of India and second one as a non-justiciable social, economic and cultural rights were set forth in Part IV of the Constitution of India. In addition, The Protection of Human Rights Act, 1993 also was enacted by the Indian Government. Therefore, human rights are guaranteed to the people of as a legal right in India. Now remains to be seen is whether these rights guaranteed alone should be adequate to safeguard the human rights.

The most essential thing among the human rights is the right to life guaranteed under Art.21

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<sup>7</sup> AIR 1984 SC 802, 1984 SCR (2) 67

<sup>8</sup> AIR (2001) 8 SCC 765

<sup>9</sup> AIR (1995) SCC (1) 14

<sup>10</sup> AIR 1997 SC 3011

<sup>11</sup> Indhrani Sridharan, "Practising Human Rights - A Feminist Perspective" (Ed) Chiranjivi J. Nirmal, Human Rights In India Historical, Social and Political Perspective, (New Delhi: Oxford University Press 2000), p.91.

of the Indian Constitution as right to life and personal liberty, numerous related human rights that do not find express reference in Part-III of the Constitution of India are brought under the scope of Art.21 by judicial explanation of the term 'life', since the courts opened up themselves by what is generally termed as judicial activism which resulted from PIL. It is the innovative approach of the courts towards the vindication of rights in circumstance of public interest litigation that has helped the millions of defenceless people to effectively implement their right to life.

## **VI. DEVELOPMENT OF PIL**

First phase (1970 – 1980): The PIL cases in general filed by public spirited persons or social activists. Most of the litigations related to the rights of underprivileged sects of people such as prisoners, mentally challenged, pavement dwellers, women, child labourers and bonded labourers. The relief given for that action or non-action on the part of executive agencies resulting in violations of Fundamental Rights under the Indian Constitution. During this stage, the judiciary responded by aware of the rights of these community and giving directions to the government to redress the alleged infringements. Means, it is arguable that in the first phase, the PIL truly became an instrument of the type of social transformation/revolution that the drafters had expected to achieve through the Constitution.

The Second phase (1990's and soon after period) through which a number of important changes in the process and development of PIL took place. In relationship to the 1st phase, the filing of Public Interest Litigation cases became more institutionalized in that numerous specialized Non Governmental Organizations and lawyers started bringing matters of public interest to the courts on a much regular basis. The breadth of issues raised in PIL also expanded extremely from the protection of environment to corruption free administration, right to education, sexual harassment at the workplace, relocation of industries, rule of law, good governance, and the general accountability of the Government. It is well known that in this phase, the petitioners sought relief not only against the action but also for non action of the executive but also against private individuals, in relation to guiding principle or policy matters, and regarding something that would undoubtedly fall within the domain of the legislature.

In the third phase (Present phase), this phase began with the 21st century is an era in which any person could file a Public Interest Litigation for roughly anything. It seems that there is an additional expansion of issues that could be raised as Public Interest Litigation, for e.g., calling back the Indian cricket team from the Australia tour and preventing an alleged

marriage of an actress with trees for astrological reasons. From the judiciary's point of view, one could argue that it is time for judicial introspection and for reviewing what courts tried to attain through Public Interest Litigation.

It seems that the court of law attitude towards Public Interest Litigation in these three phases is a response, at least in part, to how it supposed to be the issues 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 second phase, and development and free market considerations might rule over the third phase. So, the way courts have reacted to PIL in India is merely a reflection of what people legitimately expected from the Indian judiciary at any given point of time. If the courts deviate too much from the prevailing social expectations, it might not command the public support that it necessitates to sustain Public Interest Litigation.

### **Who can File Public Interest Litigation?**

Any person of public spirited or activist even a foreign person also can file a Public Interest Litigation on behalf of others nevertheless it is essential that only the person who is filing a Public Interest Litigation should not get profit out of it. That is, whoever is filing Public Interest litigation should be only for the profit of other people. In case only one person is getting affected by any act then that is not a valid ground of filing Public Interest Litigation. Even only the person whose interest is directly along with others can use such litigation.

### **Against whom Public Interest Litigation can be File**

Any public spirited or activist person can file Public Interest Litigation however only against the state and central government or any municipal authority but not against the private person. But it doesn't mean that private party does not come under the field of Public Interest Litigation. A private party or person also can be tried by the PIL by adding them as along with the concern state authorities. But public interest litigation can be not filed against only private party without concerning state govt. or central govt.

### **Procedure to file Public Interest Litigation**

Filing a PIL is like general writ petition either in the High Court or the Supreme Court.

**In High Court** – If a Public Interest Litigation is being filed in a High court, then two (2) copies of the petition have to be filed. as well, an advance copy of the petition has to be served on each respondent, i.e., opposite party, and this proof of service has to be affixed on the petition.

**In Supreme Court** – If a PIL is filed in the Supreme Court, then 1 plus 5 (i.e., 6) sets of petition has to be filed opposite party is served, the copy only when notice is issued.

**Court Fees** – A Court fee of Rs. 50, per respondent (i.e., for each number of opposite party, court fees of Rs. 50) has to be affixed on the petition. In Criminal matter no court fee is to be fixed.

### **Procedure**

1. Proceedings, in the PIL commence and carry on in the same manner, as other cases.
2. However, in between the proceedings if the judge feels he may appoint a commissioner, to inspect allegations like pollution being caused, trees being cut, sewer problems, etc.

## **VII. HUMAN RIGHTS AND THE INDIAN CONSTITUTION**

The basis of ancient human rights jurisprudence was Dharma - the ideal of ancient Indian legal theory was the establishment of socio-legal order free from traces of conflicts, exploitations and miseries. Such a law of "Dharma" was a model for the universal legal order.

### **Theoretical Basis of Human Rights**

Human rights are those irreducible minima which belong to every member of the human race when pitted against the state or other public authorities or group or gangs and other oppressive communities. As a member of human family, he has a right to be treated as human. It is an inalienable right. When this right is denied, human mind expresses dissatisfaction. Whenever there was an attempt "to suppress the individual's freedom an appeal to natural law was made on the assumption that, beyond religious superiors and crowned heads, there was a system of natural law which embodied reason, justice and universal ethics".<sup>12</sup>

### **Natural Law Theory**

Natural rights which were kin to modern human rights were derived from natural law. The credit of giving birth to natural law goes to the Greek, with great scholars like Sophocles and Aristotle. Romans further developed it. The early law of Romans was called "Jus civil". Later the Romans developed the legal systems called "Jus gentium", this was the law of universal application. In the republican era of Rome, jus gentium was reinforced by natural law as jus natural. Jus natural meant "the sum of those principles which ought to control human conduct because founded in the very nature of man as a national and social being. According to Romans natural law embodied the elementary principles of justice which were the dictate of

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<sup>12</sup> V. R. Krishna Iyer, *Human Rights and the Law*, Vedpal Law House, Indore, 1986, p.5

right reason. From this natural law based on right reason, “the right of man as a legal or moral concept” first appeared in the form of natural rights.<sup>13</sup> As man is endowed with reason, he is also endowed with “certain rights without which he ceased to be a human being. Thus, the natural rights were derived from the nature of man for these are inherent in the nature of man and form part of his intrinsic nature”.

### **Theories based on Justice**

If law is a system of rules, then some aspects of “procedures” and of “formal” justice may be inherent in it. When justice is used as the measure of the law, the assumption is that law could be made to conform to justice; “justice” in this context stands for a substantive moral criterion sometimes called “distributive justice” or more recently “social justice”. The law ought to distribute rights and duties in a certain way, and if it does not it is unjust.

Thus, the object of justice is proper distribution of social goods. This theory of human rights based on justice is advanced by Prof. John Rawls. According to John Rawls, the chief exponent of this theory,<sup>14</sup> “Justice is the first virtue of social institutions”. The role of justice is crucial to understanding the human rights. Human rights are an end of justice. For Rawls, the principles of justice provide a way of assigning rights and duties in the basic institution of society and also define the appropriate distribution of benefits and burdens of social cooperation. The general conception of justice behind the principles of justice is one of fairness. The concept of fairness is found throughout in theories based on justice. The concepts of fairness and justice help to determine all social primary goals, such as liberty and opportunity, income and wealth, and the leases of self-respect which are to be distributed equally unless an exception is made for the benefit of least forward.<sup>15</sup>

### **Theory based on Equality of Respect and Concern**

The basic premises of this theory propounded by Dworkin is that governments must treat all their citizens with equal concern and respect. He proposes the “right to treatment as an equal to be taken as fundamental under the liberal conception of equality”. He even advances the idea of state intervention in order to achieve social welfare. In his view, “a right to liberty is too vague to be meaningful” but there are certain specific liberties, such as, freedom of speech, freedom of worship, rights of association and personal and sexual relation require special protection against government interference. Dworkin’s theory of human rights seems

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<sup>13</sup> Parmanand Singh, “What are Human Rights? Human Rights: Issues and Perspectives”, Jawahar L. Kaul, (ed.), Human Rights, (New Delhi: Regency Publications, 1995), p.6.

<sup>14</sup> John Rawls, A Theory of Justice, (Cambridge Mass: Harvard University Press, 1971), p. 71.

<sup>15</sup> Dr. Kapoor S.K., International Law and Human Rights 2016, Central Law Agency, Mumbai, p. 4.

to be similar to the rights in the natural law tradition. He minimises the tension between liberty and equality, by retaining both the benefits of rights theory without the need for an ontological commitment and the benefits of utilitarian theory without the need to sacrifice basic individual rights.

### **Theory based on Dignity**

Dignity of a person or human dignity is an expression of a basic value accepted by all. The expression human dignity finds place in many of the international instruments<sup>16</sup> on human rights and freedoms. Human rights originate from the inherent dignity of an individual. In one sense dignity is the intrinsic worth of human person. The worth of every person should mean “that individuals are not to be perceived or treated merely as objects of the will of others”. The idea that human rights originate from the dignity of the individual has two corollaries. The first corollary is the idea that basic rights are not given by authority and therefore may not be taken away; the second is that they are rights of person, every person. This way dignity is private or individual. In the other sense, dignity is collective, “prescribed by social norms”. Dignity here means the particular cultural understanding of the inner moral worth of their human person and the person’s political relation with the society.

## **VIII. CONSTITUENT ASSEMBLY AND HUMAN RIGHTS**

The Constituent Assembly included in the Constitution of India the essence of the rights asserted and approved by the General Assembly in the UDHR. Further on 10th December 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the UDHR, which surely influenced the framing of India's Constitution. Viewed from the Indian standpoint, human rights have been synthesized, as it were, not as an integrated fabric by the Preambular promises and various Constitutional clause of the National Charter of 1950. The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture."

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<sup>16</sup> Preamble of UN Charter; UN Declaration of Human Rights and the Helsinki Accords etc

**Similar provisions of the Universal Declaration of Human Rights, 1948 and the  
Indian Constitution**

No.	Name of Right	Universal Declaration	Indian Constitution (Fundamental Rights)
1.	Equality before law	Article 7	Article 14
2.	Equality of opportunity in matters of public employment	Article 21(2)	Article 16(1)
3.	Protection of certain rights regarding freedoms of speech, etc,	Article 19	Article 19(1) A
4.	Protection in respect of conviction for offences	Article 11(2)	Article 20(1)
5.	Protection of life and personal liberty	Article 9	Article 21
6.	Prohibition of trafficking in human beings and forced labor	Article 14	Article 23
7.	Freedom of conscience and free Profession practice and propagation of religion	Article 18	Article 25(1)
8.	Protection of Interests of minorities	Article 22	Article 29(1)
9.	Right of minorities to establish and administer Educational Institutions	Article 20(3)	Article 30(1)
10.	Right to property	Article 17(2)	Not a fundamental rights after 44 <sup>th</sup> amendment, but now in Article 300A
11.	Remedies for enforcement of rights conferred by this part	Article 8	Article 32

### **Preamble of the Indian Constitution and Human Rights**

Constitution is a document having special legal sanctity, which sets out the framework and the principal functions of the organs of the government of state and declares the principles governing the operation of those organs. On 10th December, 1948, when the Constitution of India was in making, General Assembly of UN asserted and implemented the UDHR, which prejudiced the framing of India's Constitution. The human rights principles have been synthesized as it were, into the fabric of the constitutional clauses.

Thus, the preamble concisely sets out an embodiment of human rights, which represents the aspiration of people, who have established the Constitution. The word "sovereign" emphasizes that India has been forthright and consistent in upholding tradition of self-determination. This is in consonance with the Article 1 of ICCPR, 1966. The word "secular"

is in consonance with the article 18 of the UDHR, 1948 and also article 18 of the ICCPR,1960.

The term “democratic” indicates that the Constitution has established a form of government when it gets authority from the will of the people. Justice, liberty, equality and fraternity, which are essential characteristics of a democracy, are declared in the preamble to the Constitution. The expression “democratic republic” in the preamble assures the people of the right of equal participation in polity.

### **Fundamental Rights and Human Rights**

The Fundamental Rights included in the Indian Constitution are guaranteed to all Indian citizens. These civil liberties take primacy over any other law of the land. They include human being rights common to most tolerant democracies, such as:

1. Equality before the law,
2. Freedom of speech and expression,
3. Freedom of association and peaceful assembly,
4. Freedom of religion, and the right to constitutional remedies.

Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of any of the fundamental right, is void. In *ADM Jabalpur v. Shiv S. Shukla*<sup>17</sup>. In this Case then Chief Justice A. N. Ray of Hon’ble Supreme Court observed that the “object of making certain general aspects of fundamental rights is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State”. In *I. C. Golak Nath v. State of Punjab*<sup>18</sup> then Chief Justice K. Subba Rao of Hon’ble Supreme Court had rightly observed that "Fundamental rights are the modern name for what have been traditionally known as natural rights."

The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, In *Kesavananda Bharati v. State of Kerala*<sup>19</sup> Justice Y. V. Chandrachud of Hon’ble Supreme Court observed that "I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact, India was a party to the Universal Declaration of Rights and that Declaration describes some fundamental rights as

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<sup>17</sup> AIR 1976 1207, 1976 SCR 172

<sup>18</sup> AIR 1967 SC 1643, 1967 SCR (2) 762

<sup>19</sup> AIR 1973 SC 1461

inalienable." In *State of West Bengal v. Subodh Gopal Bose*<sup>20</sup> then Chief Justice M. Patanjali Shastri of Hon'ble Supreme Court observed and referred to fundamental rights as those great and basic rights, which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country.

### **Fundamental rights which are available to citizens only**

The Indian Constitution has classified fundamental rights into two categories:

1. Fundamental rights which are available to citizens only;
2. Fundamental rights available to all persons residing within the territory of India for the time being and subjected to its jurisdiction.

The first of the category, which is available to the citizens includes:

(a) Article 15 relating to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(b) Article 16 relating to equality of opportunity for all citizens in matters of public appointment

(c) Article 19 relating to protection of rights

1. Freedom of speech and expression
2. To assemble peaceably and without arms
3. To form associations or unions
4. To move freely throughout the territory of India
5. To reside and settle in any part of the territory of India and
6. Article 19(1) (f) relating to the right to own and
7. Acquire property was deleted by the Constitution 42<sup>nd</sup> Amendment Act 1978 with effect from 20-06-1979
8. To practice any profession or to carry on any occupation, trade or business.

(d) Article 29 relating to protection of interests of minorities

Fundamental rights are available to all the persons of this country and those who are not citizens of this country and who come here as tourists or in any other capacity, are entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to life in this country. Thus, they also have the right to live with human dignity so long

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<sup>20</sup> AIR 1954 SC 92, 1954 SCR 587

as they are here in India. Article 14 which guarantees equality before law and equal protection of laws within the territory of India is applicable to "person" who would also include both the "citizens" of this country and non-citizens.

## **IX. JUDICIARY AS PROTECTOR OF HUMAN RIGHTS THROUGH PIL**

In a democracy, the judiciary is instituted as the sole arbiter of the constitution and the sovereign protector of freedom and liberty. Human rights are secured and tyranny of the majority contained by judicial vigilance, that is to say, the legislative and the executive action is counterbalanced by judicial verdict. The device of judicial review has been enacted in clause (2) of Article 13, which reads,

“The state is prohibited from making any law which takes away or abridges any of the rights conferred by Part-III. A law made in contravention of clause (2) shall, to the extent of the contravention, be void”.

The Indian judiciary occupies a unique and exalted position. It stands in a high pedestal and must remain so. The judiciary is effective and essential machinery for the protection of the rights of the citizens.

### **Writ Jurisdiction of the Supreme Court and the High Courts in India**

The most significant of the Human Rights is the exclusive right to Constitutional remedies under Articles 32 of the Constitution of India and 226 of the same documents. Those persons whose rights have been violated have right to approach the HCs and the SC for redressal of grievances and implement of FR's. In such a case the judiciaries are empowered to grant appropriate directions, orders or writs together with writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By good value of Article 32, the Supreme Court of India has extended the domain of Judicial Review to include review of all those state measures, which either go against the Fundamental Rights or infringe of the Basic Structure of the Constitution. The supremacy of Judicial Review exercised by the SC is intended to keep every limb of the state within its limits laid down by the Constitution of India and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the approach in PIL.

The right to move to the Apex Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32. This Fundamental Right has been described as —the Basis of the Democratic Edifice as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. at whatever time, the

legislative or the executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court can be invoked. The Right to Constitutional remedy under Article 32 can be suspended during the period of promulgation emergency under Articles 32(4), 358 and 359). Accordingly, in case of violation of Fundamental Rights, the petitioner under Article 32 for enforcement of such right cannot be moved during the period of emergency.

It's stated in Article 226 of the Constitution, the High Courts have parallel jurisdiction with the SC in the matter giving way to relief in cases of violation of the Fundamental Rights, though the High Court's exercise jurisdiction in case of any other rights also. The Supreme Court upheld that where the High Court dismissed a writ petition under Article 226 of the Indian Constitution after hearing the issues on merits, a subsequent petition in the Supreme Court under Article 32 of the Constitution on the same facts and for the same relief filed by the same parties will be barred by the tenet of Res judicata. The obligatory character of the judgment of the court of competent jurisdiction is in essence, a part of the rule of law on which, the administration of righteousness is founded. Therefore, the judgment of the High Court's under Article 226 declared after hearing the parties on virtues must bind the parties till set aside in the appeal petition as provided by the Constitution of India and cannot be permitted to be avoided by a petition under Article 32 of the Constitution of India.

In the case of *People's Union for Democratic Rights v. Union of India*<sup>21</sup> Justice P. N. Bhagwati of Hon'ble Supreme Court upheld that the court of law not for sole motive to enforcing the right of one person against another as happened in the case of usual litigation, but it is proposed to promote and maintain public interest which demands that breach of Constitutional or legal rights of large number of people who are underprivileged, uninformed or in a socially or economically disadvantageous position should not go without being seen and unredressed.

In *Bandhu Mukti Morcha v. Union of India*<sup>22</sup>, Justice P. N. Bhagwati of Hon'ble Supreme Court held that Public Interest Litigation through a letter should be permitted, but expressed the view that, in entertaining such petitions, the court must be cautious so that, it might not be abused. The court suggested that all such letters must be addressed to the entire court and not a particular judge and secondly it should be entertained only after proper verification of materials supplied by the petitioner. This is known as epistolary jurisdiction.

The remedial fundamental right is enshrined in Article 32 which was called by Dr. Ambedkar

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<sup>21</sup> AIR 1982 SC 1473, 1983 SCR (1) 456

<sup>22</sup> AIR 1984 SC 802, 1984 SCR (2) 67

the —very soul and heart of the constitution.<sup>23</sup> The Article confers a right on a person whose fundamental right is violated to move the Supreme Court directly. In *Ramesh Thapar v. State of Madras*<sup>24</sup> Justice S. Fazal Ali of Hon'ble Supreme Court said that the remedial right contained in Article 32 is itself made fundamental thereby making the Supreme Court protector and guarantor of fundamental rights. Article 32 authorizes the SC to issue any writ order direct to the enforcement of fundamental rights.

## **X. CONCLUSION**

Public Interest Litigation became a tool to uphold rule of law, demand fairness and precision, remove corruption in administration, and improve the overall responsibility of the government agencies. The primary explanation for these public demands and the judicial interference was to reinforce constitutionalism—a constant desire of the civil society to keep government powers under check. This resulted in the courts giving directions to the government to follow its constitutional duties.

The two ways in which PILs have helped the general public are:

In PIL observant citizens of the country can find an economical legal remedy because there is only an insignificant fixed court fee concerned in this.

Through the Public Interest Litigation, the applicants can focus on and attain results relating to greater public issues, particularly in the fields of human rights and environment.

Thus, Public Interest Litigation has helped the Indian courts to gain public assurance and ascertain authority in the civilization in recent years, PILs have been brought not only for the violation of Fundamental rights but also for a various other issue. The judiciary, for instance, has addressed issues such as: the constitutionality of the Government's privatisation and disinvestment policies, defacing of rocks by painted advertisements, the danger to the Taj Mahal from a refinery, pollution of rivers, relocation of industries out of Delhi, lack of access to food, deaths due to starvation, use of environment-friendly fuel in Delhi buses, out of turn allocation of government lodging, prohibition of smoking in public places, uninformed allocation of petrol outlets, examination of alleged bribe taking, employment of children in risky industries, rights of children and bonded labours, extent of the right to strike, right to health, right to education, sexual harassment in the workplace, and female foeticide and infanticide through modern technology. In Tamil Nadu, the Madras High Court and Madurai

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<sup>23</sup> Diwan, Paras and Peeyushi, *Human Rights and Law - Universal and Indian*, Deep and Deep Publication, 1998, p.19.

<sup>24</sup> AIR 1950 124,1950 SCR 594

Bench of Madras High Court entertained PIL for issues relating to placing digital Banners which affect traffic, cleaning of canal to prevent breeding of mosquitos, action against usury money leaders, etc...

Public Interest Litigation has a significant role to play in the justice system in that it affords a ladder to justice to deprived sections of civilization. It also provides an opportunity to implement subtle rights for which either it is hard to recognize a distressed person or where aggrieved persons have no means to approach the courts. Public Interest Litigation could also contribute to good governance by keeping the government responsible. Public Interest Litigation permits civil society to play a lively role in dispersion of social consciousness about human rights, in giving voice to be marginalized sections of civilization, and in allowing their contribution in government decision making.

## **XI. SUGGESTIONS**

Public Interest in Litigation in India has produced astonishing results which were impossible to think thirty years ago. The utmost contribution of it has been improving the responsibility of governments towards human rights of underprivileged. Judges alone cannot provide effective responses to governmental lawlessness but they can surely develop a culture where political power becomes increasingly sensitive to human rights. Even though it is very much necessary to curtail the exploitation and abuse of Public Interest Litigation, any move by the government to control the Public Interest Litigation results in extensive protests from those who are not aware of its exploitation and compare any form of principle with wearing away of their fundamental rights. PIL must be accepted that it is working as a significant tool of social change. It is operational for the interests of every section of civilization. It is the weapon of every one used only for taking the justice. The improvement of this fair instrument proved helpful for the developing country like India. Public Interest Litigation has been used as an approach to battle the violence prevailing in civilization. It is an institutional scheme towards the interests of the deprived class of the society.

The Supreme Court and High Courts in India have used Public Interest Litigation to protect and safeguard the basic Human Rights of the poor and other disadvantaged section of the society. The Supreme Court of India through judicial activism, the scope and ambit of Human Rights has been widened. Judicial Activism has not only protected the Human Rights of the people but it has also led to the granting exemplary compensation to the victims of police atrocities, which resulted in Human Rights violation.

The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of

genuine public harm or public injury. The courts should prima facie verify the credentials of the petitioner before entertaining a PIL. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

Judicial acknowledgment and enforcement of human rights has become essential as the rights are encroached upon by state establishment directly or indirectly. When they are violated by persons and the state fails to prevent, then state becomes accountable for such violation. Legislative assertion of these rights clearly defining the rights with demarcating their scope is very much needed.

PIL has come to stay and the study shows that it is through the plethora of cases by public spirited people and institutions that the matter of human rights violations was fought out successfully, whether it was for protecting and enforcing these rights or for alleging compensation in suitable cases. It is suggested that the activist persons and organizations should be encouraged in their effort. The interest in pro bono services must not be allowed wane away for any reasons.

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