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JUDICIAL ACTIVISM AND GOVERNANCE BY JUDICIARY: A CONSTITUTIONAL ANALYSIS OF PIL JURISPRUDENCE

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Abstract

Judicial activism has emerged as a transformative feature of Indian Constitutional governance, primarily through the evolution of Public Interest Litigation (PIL). Rooted in the powers of judicial review under Articles 32 and 226 of the Constitution, judicial activism reflects the proactive role of the judiciary in protecting fundamental rights, promoting social justice and ensuring governmental accountability. This paper undertakes a constitutional analysis of judicial activism with particular emphasis on PIL jurisprudence and the expanding phenomenon of “governance by judiciary.” The study traces the evolution of judicial activism from an initial phase of institutional restraint to more assertive and interventionist approach, particularly in the post emergency period. The liberalization of locus standi and procedural flexibility transformed traditional adversarial litigation into a rights oriented and socially responsive mechanism. PIL emerged as a powerful tool for democratizing access to justice, enabling public-spirited individuals and organizations to seek judicial remedies on behalf of marginalized and disadvantaged sections of society. Over time, judicial intervention through PIL expanded into diverse areas of governance, including environmental protection, administrative accountability, anti-corruption measures, social welfare and digital rights. Through expansive constitutional interpretation, especially the right to life and personal liberty, the judiciary recognized a range of derivative rights, thereby strengthening constitutional adjudication and assumed a supervisory role in policy implementation and institutional reform. However, the increasing scope of PIL has generated important constitutional debates concerning separation of powers, democratic legitimacy and institutional competence. While judicial governance has frequently served as a corrective measure to executive inaction and legislative gaps, excessive intervention risks into blurring constitutional boundaries. The paper argues that the continued legitimacy of judicial activism depends upon principled self-restraint, procedural safeguards and adherence to constitutional norms. A balanced approach that harmonizes activism with institutional discipline is essential to sustain democratic governance

within India's constitutional framework. This research paper seeks to critically examine the constitutional dimensions of judicial activism through PIL jurisprudence, with particular emphasis on its role in governance. By analyzing landmark judgements, judicial trends and doctrinal developments, the paper aims to assess whether PIL- driven judicial governance serves as a necessary corrective to executive failure or constitutes an instance of judicial overreach. Ultimately, the study endeavors to strike a balance between constitutional empowerment and institutional restraint within India's democratic framework.

Keywords- Judicial Activism, Public Interest Litigation, Constitutional Governance, Basic Structure Doctrine, Democratic Accountability, Judicial Restraint, Constitutional Morality

Introduction

Judicial activism has surfaced as one of the most significant and debated phenomena in Indian constitutional governance. Entrusted with the role of guardian of the Constitution, the Indian judiciary has frequently adopted an extensive and purposive approach to constitutional interpretation in order to uphold fundamental rights, ensure governmental accountability and promote social justice. One of the most powerful instruments through which this activism has been manifested is Public Interest Litigation (PIL), a uniquely Indian innovation that has transformed traditional adversarial litigation into a rights- oriented and people-centric mechanism. The evolution of PIL jurisprudence in India marked a decisive shift from procedural rigidity to substantive justice. Over the years, PIL has transformed the judiciary from a traditional dispute-resolving institution into an active participant in governance, raising important constitutional and democratic questions. Through this mechanism, courts have addressed issues ranging from environmental protection and labour rights to custodial violence, corruption and administrative apathy. In doing so, the judiciary has often stepped beyond its conventional adjudicatory role and assumed functions resembling governance, thereby shaping public policy and administrative action. While judicial intervention through PIL has strengthened and fostered constitutional values such as the rule of law, social justice and accountability, it has also generated concerns regarding the limits of judicial power. It has been widely debated that excessive judicial activism risks encroaching upon the domain of the executive and legislature, potentially undermining the doctrine of separation of powers and democratic decision- making. The phenomenon of "governance by judiciary" thus raises complex constitutional questions about legitimacy, institutional competence and judicial restraint.

Evolution of judicial activism in India

Judicial activism in India has evolved as a dynamic and adaptive response to changing constitutional, political and social realities. Anchored in the power of judicial review bestowed by the constitution, the Indian judiciary has progressively expanded its role from a strict interpreter of law to an active guardian of constitutional values. This evolution can be understood through distinct historical phases, each marked by shifts in judicial philosophy and constitutional interpretations. In the early years following independence, the judiciary largely adopted a conservative and positivist approach. The Supreme Court emphasized parliamentary supremacy and exercised restraint in interfering with legislative and executive action. This phase is reflected in decisions such as *A.K. Gopalan v. State of Madras*¹, where fundamental rights were interpreted narrowly and in isolation from one another. Judicial activism during this period was limited, and the courts were hesitant to challenge state authority, particularly in matters involving socio-economic policy. A gradual shift began in the late 1960s and the early 1970s with the emergence of a more assertive judiciary. Landmark judgments such as *Golaknath v. State of Punjab*² and *Kesavananda Bharti v. State of Kerala*³ marked a turning point in constitutional jurisprudence. By asserting the power to review constitutional amendments and propounding the Basic Structure Doctrine, the judiciary firmly established itself as the ultimate interpreter and protector of the constitution. This period signifies the foundation of judicial activism aimed at preserving constitutional supremacy and democratic values.

The post-emergency era witnessed a significant expansion of judicial activism, driven by the judiciary's introspection following its failure to protect civil liberties during the Emergency, as exemplified in *ADM Jabalpur v. Shivkant Shukla*⁴. In response, the Supreme Court adopted an explicitly activist stance, focusing on social justice and human rights. The development of Public Interest Litigation (PIL) during the late 1970s and 1980s transformed access to justice by liberalizing locus standi and introducing procedural innovations. Decisions such as *S.P. Gupta v. Union of India*⁵ and *Hussainara Khatoon v. State of Bihar*⁶ highlighted the judiciary's commitment to protecting the rights of the marginalized. In subsequent decades, judicial

¹ AIR 1950 SC 27

² AIR 1967 SC 1643

³ (1973) 4 SCC 225

⁴ (1976) 2 SCC 521

⁵ 1981 Supp SCC 87

⁶ (1979) 3 SCC 532

activism expanded into areas of governance and policy. Through PILs, courts addressed environment protection, administrative accountability, corruption and electoral reforms. The use of continuing mandamus and judicial monitoring reflected an increasingly interventionist role. However, this phase also attracted criticism for smearing the constitutional separation of powers and raising concerns of judicial overreach. In contemporary times, the Indian judiciary has shown an increasing awareness of the need for judicial restraint alongside activism as seen in *Divisional Manager, Aravali Golf Club v. Chander Haas*⁷. While continuing to protect fundamental rights and constitutional morality, courts have emphasized institutional balance and democratic legitimacy. Thus, the evolution of judicial activism in India reflects a complex journey- from restraint to assertiveness, from rights protection to governance intervention- shaped by constitutional imperatives and societal needs.

Concept and Nature of Public Interest Litigation

Public Interest Litigation (PIL) represents one of the most significant innovations in Indian constitutional jurisprudence. It emerged as a judicial response to the limitations of the traditional adversarial system, which often excluded marginalized and disadvantaged sections of society from accessing justice. Conceptually, PIL refers to litigation initiated not for the enforcement of private rights, but for the protection of public interest, particularly where fundamental or legal rights of a large number of people are affected. It reflects a shift from individual- centric adjudication to a broader, community- oriented model of justice. Traditionally, the doctrine of locus standi required that only a person whose legal rights were directly violated could approach the court. This restrictive approach was gradually relaxed by the Supreme Court in the late 1970s and the early 1980s to promote access to justice. In *S.P. Gupta v. Union of India*, the court held that any public-spirited individual acting bona fide could approach the court for redressal of public wrong or enforcement of fundamental rights of those unable to do so themselves. This marked the formal recognition of PIL in India and laid the foundation for what is often described as “social action litigation”. The flag bearers of Public Interest Litigation in India were J. Krishna Iyer and J. P. N. Bhagwati.

The nature of PIL is deep-rooted in the constitutional mandate under Articles 32 and 226, which empower the Supreme Court and High Courts to enforce fundamental rights. PIL thus serves as a procedural innovation to comprehend substantive constitutional goals, including social

⁷ (2008) 1 SCC 683

justice, equality and human dignity. The constitutional basis of PIL is also closely connected with Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Indian Constitution. Through creative judicial interpretations, the courts have harmonized these two parts to advance socio-economic justice. Through PIL, the judiciary has expanded the interpretation of Article 21, transforming the “right to life” into a source of numerous derivative rights such as the right to livelihood, health, education and a clean environment. Decisions such as *Hussainara Khatoon v. State of Bihar*⁸ and *Bhandua Mukti Morcha v. Union of India*⁹ signify the court’s commitment to protecting vulnerable populations through PIL. Another distinctive feature of PIL is procedural flexibility. The courts have relaxed evidentiary rules, accepted epistolary petitions (letters treated as writ petitions), appointed commissions for fact-finding and adopted the device of continuing mandamus to monitor compliance with judicial directions. This flexible approach underscores the non-adversarial and remedial nature of PIL, distinguishing it from conventional litigation. However, PIL is not without limitations. The Supreme Court has repeatedly cautioned against its misuse for private, political or publicity-oriented motives. In the case of *State of Uttaranchal v. Balwant Singh Chauhan*¹⁰, the Court laid down guidelines to prevent frivolous PILs and emphasized the need to preserve its sanctity. In essence, Public Interest Litigation is both a constitutional instrument and a socio-legal movement. It embodies judicial creativity aimed at democratizing access to justice and enforcing constitutional governance. At the same time, its legitimacy depends on maintaining a balance between activism and judicial restraint to ensure that it remains a tool for genuine public welfare than an avenue for judicial overreach.

Governance by Judiciary- Conceptual analysis

Judicial activism through Public Interest Litigation (PIL) has considerably expanded the scope of constitutional governance in India. What began as a mechanism to ensure access to justice for marginalized communities has evolved into a powerful instrument for enforcing constitutional accountability and advancing social transformation. The scope of judicial activism through PIL extends across diverse areas including fundamental rights protection, environmental governance, administrative accountability and policy intervention. The phenomenon of “governance by judiciary” refers to the increasing role of courts in directing, supervising and sometimes shaping public policy and administrative action. In the Indian

⁸ (1979) 3 SCC 532

⁹ (1984) 3 SCC 161

¹⁰(2010) 3 SCC 402

context, this development is closely linked with the evolution of Public Interest Litigation and the judiciary's wide interpretation of constitutional principles, particularly Articles 21, 32 and 226. While judicial review forms part of the basic structure of the constitution as held in the landmark case of *Kesavananda Bharti v. State of Kerala*¹¹, governance by judiciary signifies a transition from dispute resolution to active constitutional supervision of governance. One of the most prominent dimensions of judicial activism through PIL has been the enlargement of Article 21 of the Constitution. In *Maneka Gandhi v. Union of India*¹², the Supreme Court broadened the interpretation of the "right to life and personal liberty", laying the foundation for rights-based activism. Subsequently, through PILs such as *Hussainara Khatoon v. State of Bihar*, the Court recognized the right to speedy trial as a fundamental right. In *Olga Tellis v. Bombay Municipal Corporation*¹³, the right to livelihood was read into Article 21. These decisions and multiple others demonstrate how PIL became a channel for transforming socio-economic concerns into enforceable constitutional rights.

Environmental protection constitutes another significant dimension of judicial activism through PIL and governance by the Judiciary. In *M.C. Mehta v. Union of India*¹⁴ and subsequent cases, the Supreme Court developed principles such as absolute liability, the precautionary principle, and sustainable development. Through continuous monitoring and directions to executive authorities, the Court effectively shaped environmental governance in India. Judicial activism through PIL also strengthened administrative and executive accountability. In *Vineet Narain v. Union of India*¹⁵, the Supreme Court issued guidelines to ensure independence and transparency in the functioning of investigative agencies. Similarly, PILs have addressed corruption, prison reforms, bonded labour and electoral transparency, thereby reinforcing the rule of law. Judicial governance has also been visible in institutional reforms. In *Prakash Singh v. Union of India*¹⁶, structural reforms in police administration were mandated. Similarly, in *Subramaniam Swamy v. CBI*¹⁷, the Court strengthened anti-corruption mechanisms striking down protective provisions shielding senior officials. In the situation of legislative vacuum, the judiciary has framed binding norms. In *Vishaka v. State of Rajasthan*¹⁸,

¹¹ (1973) 4 SCC 225

¹² (1978) 1 SCC 248

¹³ (1985) 3 SCC 545

¹⁴ (1987) 1 SCC 395

¹⁵ (1998) 1 SCC 226

¹⁶ (2006) 8 SCC 1

¹⁷ (2014) 8 SCC 682

¹⁸ (1997) 6 SCC 241

guidelines on prevention and protection of sexual harassment of women at workplace were laid down, which laid down a piloted approach for the legislature to enact statute on the given matter. More recently, *Common Cause v. Union of India*¹⁹, recognized passive euthanasia and prescribed detailed procedural safeguards. Decisions such as *Navtej Singh Johar v. Union of India*²⁰, *Joseph Shine v. Union of India*²¹ and *Shayara Bano v. Union of India*²², reflect transformative constitutional governance impacting criminal law and personal laws. The judiciary's role during crises further illustrates governance by judiciary. In *Anuradha Bhasin v. Union of India*²³, guidelines were laid down on internet shutdowns and also held that right to internet is intrinsic of Article 19 and 21. During the COVID-19 pandemic, in *Re: Distribution of Essential Supplies and Supplies During Pandemic*²⁴, the Supreme Court actively monitored oxygen supplies and public health measures. Thus, governance by judiciary represents a complex constitutional evolution- serving as a corrective mechanism against state inaction while raising vital questions about democratic legitimacy and separation of powers. Its constitutional validity ultimately depends upon proportionality, accountability and judicial self-restraint.

However, the expanding scope of PIL has also led to the phenomenon of “continuing mandamus”, where courts monitor the implementation of their orders extended periods. While this has ensured compliance and effective relief, it has also distorted the boundaries between adjudication and governance, raising concerns regarding judicial overreach. In essence, the scope and dimensions of judicial activism through PIL reflects the judiciary's proactive role in safeguarding constitutional values. It has served as a catalyst for social justice and institutional accountability, while simultaneously provoking debate about the appropriate limits of judicial intervention within a constitutional democracy.

Impact of PIL on Democratic Governance

Public Interest Litigation has profoundly influenced democratic governance in India by transforming the judiciary into an active constitutional guardian. While originally perceived as a mechanism to ensure access to justice for marginalized communities, PIL has evolved into a

¹⁹ (2018) 5 SCC 1

²⁰ (2018) 10 SCC 1

²¹ (2019) 3 SCC 39

²² (2017) 9 SCC 1

²³ (2020) 3 SCC 637

²⁴ (2021) 7 SCC 772

powerful instrument for promoting transparency, accountability and rights-based governance. Its impact on democratic structures is both enabling and complex, particularly in the light of recent judicial trends.

1. **Strengthening Constitutional Morality and Rights-based Governance:** In recent years, PIL has played a transformative role in aligning governance with constitutional morality. In *Navtej Singh Johar v. Union of India*²⁵, the Supreme Court decriminalized consensual same-sex relations, reshaping state policy concerning LGBTQ+ rights and reinforcing constitutional guarantees of equality and dignity. Similarly, in *Indian Young Lawyers Association v. State of Kerala*²⁶, the Court intervened in religious practices to uphold gender equality under Article 14 and 25, illustrating the judiciary's influence in redefining public norms and governance standards. Through such decisions, PIL has strengthened democratic governance by ensuring that state policies conform to constitutional principles rather than majoritarian impulses.
2. **Enhancing Transparency and Combating Corruption:** PIL has significantly contributed to clean governance. In *Subramanian Swamy v. Director, CBI*²⁷, the Supreme Court struck down Section 6A of the Delhi Special Police Establishment Act, removing prior sanction protection for senior officials in corruption investigations. This judgment reinforced equality before law under Article 14 and enhanced accountability within administrative systems. Further, in *Manoj Narula v. Union of India*²⁸, the Court emphasized constitutional morality in the appointment of ministers with antecedents, thereby influencing standards of executive responsibility.
3. **Policy Oversight and Administrative Reform:** PIL has increasingly functioned as a mechanism for overseeing public policy and initiating administrative reforms, particularly in situations where legislative or executive actions have been delayed or inadequate. Through PIL, the judiciary has addressed governance gaps by laying down procedural safeguards, issuing regulatory directions and ensuring that public authorities act in conformity with constitutional values. This has enabled the courts to influence areas such as social welfare policy, institutional accountability and regulatory compliance. In many instances, judicial intervention has prompted the state to reconsider outdated practices, modernize administrative framework and implement reforms that align with principles of equality, dignity and fairness.

²⁵ (2018) 10 SCC 1

²⁶ (2019) 11 SCC 1

²⁷ (2014) 8 SCC 682

²⁸ (2014) 9 SCC 1

4. **Digital Rights and Contemporary Governance:** Recent judicial trends show PIL expanding into new governance domains such as digital freedoms and state surveillance. As governance increasingly operates in digital spaces, courts have been called upon to examine the constitutional implications of internet restrictions, data protection policies and technological monitoring. Through PIL, the judiciary has asserted that constitutional guarantee of freedom of speech, privacy and trade extend to the digital realm, ensuring that executive actions in cyberspace remain subject to constitutional scrutiny. Judicial interventions in this domain emphasized proportionality, transparency and procedural safeguards when the state imposes restrictions in the name of national security or public order. By articulating standards that balance individual liberties with state interests, the courts have shaped contemporary governance in a technologically evolving society. At the same time, this expansion into digital governance reflects the judiciary's adaptive role in responding to new constitutional challenges while reinforcing the fundamental principles of accountability and rule of law.
5. **Emerging Judicial Restraint:** Alongside its activist role, the judiciary has increasingly emphasized the importance of restraint in the exercise of its power under Public Interest Litigation. Recognizing the potential for misuse, courts have cautioned against entertaining petitions driven by political motives, personal grievances or publicity interests. This shift reflects an awareness that excessive judicial intervention may disrupt the constitutional balance between the legislature, executive and judiciary.

Recent trends, indicate a conscious effort to preserve the integrity of PIL by scrutinizing the bona fides of petitioners and ensuring that only matters involving genuine public interest are entertained. The impact of PIL on democratic governance has been transformative. It has reinforced constitutional supremacy over arbitrary state actions, enhanced transparency and anti- corruption mechanism, expanded civil liberties into new domains like digital rights and catalyzed legislative and administrative reforms. By reinforcing procedural discipline and respecting institutional boundaries, the judiciary seeks to maintain its legitimacy while continuing to uphold constitutional values. This movement towards regulated activism underscores the need to harmonize judicial responsibility with democratic principles and the doctrine of separation of power. When exercised responsibly, PIL strengthens democracy by ensuring governance remains accountable, rights-oriented and constitutionally grounded.

Safeguards, Restraints and Reforms in PIL jurisprudence

Public Interest Litigation has been one of the most innovative and transformative developments in Indian constitutional law. While it has significantly enhanced access to justice and strengthened accountability in governance, its expansive use has also necessitated the evolution of safeguards and restraints to prevent misuse. Over time, the judiciary has recognized that without institutional discipline, PIL may drift from its original purpose of protecting marginalized communities and instead become a tool for personal, political or publicity-driven litigation. Consequently, a framework of judicial safeguards and reform-oriented measures has emerged to preserve the integrity of PIL jurisprudence. One of the primary safeguards lies in the careful scrutiny of the bona fides of the petitioner. Courts increasingly examine whether a petition is genuinely filed in public interest or motivated by private gain, political rivalry or media attention. This screening mechanism helps ensure that judicial time and resources are reserved for matters involving substantial public concern rather than trivial or oblique interests. By imposing preliminary checks, the judiciary aims to prevent the dilution of PIL's credibility. Another critical restraint is the emphasis on separation of powers. Although PIL has enabled courts to intervene in governance, there is growing recognition that judicial overreach may undermine democratic legitimacy. Courts have therefore reiterated that policy formulation primarily lies within the domain of the executive and legislature. Judicial intervention is warranted only when there is a clear violation of constitutional or legal mandates, arbitrariness or failure to perform statutory duties. This principle of self-restraint helps maintain institutional balance and respect for democratic processes. The doctrine of judicial self-limitation operates as an integral safeguard. Courts have increasingly acknowledged the need to avoid continuous monitoring in matters that are better handled by administrative authorities. While continuing mandamus remains a useful tool in cases of systematic rights violation, excessive supervision may transform courts into administrators. A standardized approach ensures that judicial directions are precise, enforceable and time-bound rather than open-ended. Procedural reforms further strengthen the responsible use of PIL. Courts have encouraged the filing of well-documented petitions supported by credible evidence, thereby discouraging speculative or poorly researched claims. The imposition of costs and penalties in cases of frivolous or motivated PILs acts as a deterrent against abuse. Such measures reinforce seriousness and responsibility in invoking constitutional jurisdiction. Reforms in PIL jurisprudence also emphasized the need for institutional competence and expertise. In complex matters involving environmental regulations, economic policy or technological governance, courts have increasingly relied on expert committees and independent bodies to assist in fact-finding and

policy assessment. This collaborative approach ensures informed decision-making while respecting administrative specialization.

Another emerging reform dimension is the promotion of alternative dispute resolution and participatory governance. Instead of adversarial confrontation, courts have sometimes encouraged mediation, stakeholder consultations and policy dialogue. This fosters cooperative governance rather than purely directive adjudication. Importantly, reforms seek to restore PIL to its foundational purpose- advancing social justice and protecting vulnerable groups. By prioritizing cases involving fundamental rights violation, systematic injustice and public accountability, courts reaffirm the core objective of PIL as an instrument of constitutional empowerment rather than judicial populism. In conclusion, safeguards, restraints and reforms in PIL jurisprudence reflect a maturing constitutional culture. While PIL remains a powerful mechanism for democratic accountability, its continued legitimacy depends on principled self-restraint, procedural discipline and institutional balance. A carefully regulated PIL framework ensures that it strengthens, rather than distorts, democratic governance and constitutional supremacy.

Conclusion

Judicial activism through Public Interest Litigation (PIL) has emerged as one of the most defining features of India's constitutional evolution. What began as a procedural innovation to expand access to justice has matured into a powerful instrument of constitutional governance. Through PIL jurisprudence, the judiciary has not only enforced fundamental rights but has also shaped public policy, strengthened institutional accountability and reinforced the supremacy of the Constitution. In doing so, it has transformed the traditional understanding of the judiciary from a passive adjudicator to an active constitutional guardian. The constitutional legitimacy of judicial activism lies in the expansive powers of judicial review under Articles 32 and 226 and in the transformative vision of the Constitution itself. By harmonizing Fundamental Rights with Directive Principles and interpreting Article 21 in a purposive manner, the judiciary has ensured that constitutional guarantees are not merely aspirational but enforceable. PIL has thus functioned as a democratic equalizer, empowering marginalized communities and compelling state authorities to discharge their constitutional obligations. At the same time, the phenomenon of "governance by judiciary" raises complex constitutional questions. While judicial intervention has often been justified as a response to executive inaction, legislative vacuum or systematic rights violations, it has also generated concerns regarding separation of powers and

institutional competence. The shift from adjudication to continuous monitoring, policy directives and structural reforms has blurred traditional boundaries among the organs of the state. A constitutional analysis, therefore, requires recognition that judicial activism, though essential in safeguarding rights must operate within principled limits. Recent trends in PIL jurisprudence reflects an awareness of these tensions. Courts have increasingly emphasized safeguards against misuse, instead on bona fide public interest and acknowledged the importance of judicial restraint. This calibrated approach seeks to preserve democratic legitimacy while retaining the judiciary's vital role as a constitutional sentinel. The sustainability of PIL as a tool of governance depends not on the breadth of intervention, but on the fidelity of such intervention to constitutional norms, proportionality and accountability. In essence, judicial activism through PIL represents a dynamic interplay between constitutional empowerment and institutional restraint. It has strengthened democratic governance by ensuring transparency, responsiveness and adherence to rule of law. Yet, its continued vitality depends on maintaining equilibrium between activism and restraint. When exercised with constitutional discipline, judicial governance enriches democracy by reinforcing its foundational values; when unchecked, it risks unsettling the delicate architecture of separation of powers. The enduring challenge, therefore, lies in sustaining PIL as a transformative yet constitutionally balanced instrument of justice and governance.

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