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# **JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION IN INDIA AND ISSUES INVOLVED**

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& K. SIVACHALAPATHI<sup>2</sup>

## **ABSTRACT:**

The term "Public Interest" refers to the broader concerns and well-being of the general public and the masses. In a similar vein, "Litigation" encompasses all legal proceedings initiated in a court of law to enforce rights or seek remedies. Therefore, "Public Interest Litigation" can be defined as any legal action conducted for the benefit of the public or to address public grievances. Put simply, public interest litigation allows any concerned citizen to approach the court, such as the Supreme Court under Article 32 of the Constitution, the high court under Article 226 of the Constitution, or the Court of Magistrate under Section 133 of the Code of Criminal Procedure, 1973, to raise issues related to the public welfare. The concept of public interest litigation was first introduced in India by Justice Krishna Iyer in 1976 in the case of *Mumbai Kamgar Sabha v. Abdul Thai*. It gained further prominence in the case of *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*, where an unregistered association of workers was allowed to file a writ petition under Article 32 of the Constitution to address common grievances. Justice Krishna Iyer explained the rationale behind liberalising the rule of *Locus Standi* (the right to bring a legal action) in the case of *Fertilizer Corporation Kamgar Union v. Union of India*, and the idea of 'Public Interest Litigation' flourished in the case of *S.P. Gupta and others v. Union of India*. The term 'Judicial Activism' denotes the proactive approach of courts to provide appropriate remedies to the aggrieved parties by formulating new rules to resolve conflicts arising from lawlessness or uncertain laws. In India, judicial activism can be observed through the review powers of the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution, particularly in the context of Public Interest Litigation. In England, there were two types of courts: Equity Courts (Court of Chancery) and customary Law Courts. Equity Courts aimed to decide cases based on principles of equity, such as justice, fairness, and good conscience, while common

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law courts relied on principles and rules developed by judges during their judgments. Consequently, common law is also known as 'Judge-made-law.' The courts of Equity and Chancery played a significant role in formulating new tort rules. Common law originated in England and was subsequently adopted in British colonies, including India. In the absence of existing rules for certain cases and predictable procedures, equity courts took the initiative to establish new rules. This proactive approach of the courts in resolving conflicting positions in such cases was referred to as 'Judicial Activism.' The merger of equity courts and common law courts occurred with the enactment of the Judicature Act in 1875. This paper explores the relationship between PIL and Judicial Activism, as well as the emergence of PIL in India. A convenient sampling method was employed to collect 200 samples, and the independent variables considered were age, gender, education, and occupation. The study reveals that despite similarities between English and Indian laws, English laws have evolved due to the gaps exposed by PIL and Judicial Activism. Finally, the paper analyses and concludes the reasons why a developing country like India faces challenges arising from the misuse of PIL and Judicial Activism.

**KEYWORDS:** Public Interest Litigation, Misuse of PIL, Judicial Activism, English laws, Justice, Equity and Good conscience.

## **INTRODUCTION:**

Public interest litigation, also known as social interest litigation, holds immense significance in the present day and has garnered widespread attention. The traditional rule of "Locus Standi," which limited the right to file a petition to individuals whose rights were directly infringed, has been considerably relaxed by recent decisions of the Supreme Court. The court now allows public interest litigation to be initiated by so-called "public-spirited citizens" for the purpose of upholding constitutional and legal rights. Any citizen driven by public welfare or the interests of the general public can now approach the court by filing a petition: within the Supreme Court under Article 32 of the Constitution of India, within the high court under Article 226 of the Indian Constitution, or within the Court of Magistrate under Section 133 of the Code of Criminal Procedure. During the time of independence, the court procedures were influenced by the Anglo-Saxon system of jurisprudence. The majority of citizens were unaware of their legal rights and lacked the means to assert them. As a result, there was a significant disconnect between the rights guaranteed by the Indian Constitution and the laws enacted by the legislature on one hand, and the illiterate majority of citizens on the other (Kumar et al.). However, this situation gradually changed when the post-emergency Supreme Court addressed the issue of access to justice through radical changes in the

requirements of locus standi and the concept of the aggrieved party. Prior to the 1980s, only the affected party could seek justice and remedy for their grievances, while others who were not directly affected were unable to do so on behalf of the victim or the aggrieved party. Public interest litigation, as it has evolved in recent years, represents a significant departure from traditional judicial proceedings. The court is now seen as an institution that not only provides relief to citizens but also ventures into policy formulation, which the state must adhere to. The commendable efforts of Justice P.N. Bhagwati and Justice V.R. Krishna Iyer played a pivotal role in transforming the apex court of India into a Supreme Court that serves all Indians. Public interest litigation (PIL) has been an innovative and valuable judicial remedy, translating the rhetoric of fundamental rights into tangible realities for certain segments of our oppressed and marginalised population. It has brought relief to undertrial prisoners languishing in jails for excessively long periods, improved the living conditions of inmates in asylums and care homes, protected children working in hazardous occupations, and aided other disadvantaged groups. However, the development of public interest litigation (PIL) in the country has recently exposed its own pitfalls and disadvantages. The misuse of PIL in India, which began in the 1990s, has reached a point where it undermines the very purpose for which PIL was introduced. In other words, the negative aspects are gradually overshadowing the positive aspects of the PIL project. "The overuse of PIL for every conceivable public interest may dilute the original commitment to use this remedy solely for enforcing the human rights of victims and disadvantaged groups." If civil society and disadvantaged groups lose faith in the effectiveness of PIL, it could sound the death knell for this valuable tool. The **aim** of this paper is to identify the obstacles caused by PIL.

## **OBJECTIVES:**

- To study the problems faced by the court due to PIL.
- To study Relation between PIL and Judicial Activism and Emergence of PIL in India.
- To study the problems regarding the exercise of judicial activism through PIL.

## **REVIEW OF LITERATURE:**

The courts have provided benches for collecting information and submitting it before the bench in cases where the petitioner is unable to provide all the necessary evidence either because it is ample or because the party is weak socially and economically (Ghosh). India has a written constitution which gives a framework for regulating the state and its citizens under part III and part IV i.e. fundamental rights and directive principles of state policy respectively (Cassels). The

social and economic rights guaranteed by the constitution of India in part IV are not legally enforceable; courts have read them into fundamental rights and made them judicially enforceable (Dixit). (Chowdhury) For example- Article 21 Right to life has been extended right to live with dignity, right to free legal aid, right to work, right to education, freedom from torture etc. (Gill) India has the most developing social legislation difficult to found anywhere in the world for example, child labor, bonded labor, environmental protection, minimum wages etc. which enables the courts to pull up the executive when it abstains from its duties in securing the rights of the poor as per the law of the land (Mbazira). (Mohana and Akter) Sensitive judges have constantly innovated on the side of the poor for instance, in the Bandhua Mukti Morcha case in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer. (Chandrachud) Similarly in the Asiad Workers judgment case, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts. (Dembowski) The observant citizens of the country can find public interest litigation as an affordable legal aid due to the fixed nominal court fee involved in this. (Griffith) Through public interest litigation the litigants can concentrate towards achievement of result relating to larger public issues mainly in the field of consumer welfare, environment and human rights. (Mate) The court fee in PIL is very less as compared to private litigations due to which many people have started handling PIL as a tool for harassment. (Gauri) The character of PIL is flexible due to which the opposite party gets an opportunity to ascertain the specific claim and respond to particular issues. (Bhuwania) The judiciary has been criticised as it is unable to implement its orders efficiently due to overstepping of its jurisdiction. (Pleming) PIL is misused by the public to great extent provoked for private grudges and files petition for publicity rather than supporting public issues.

## **RESEARCH METHODOLOGY:**

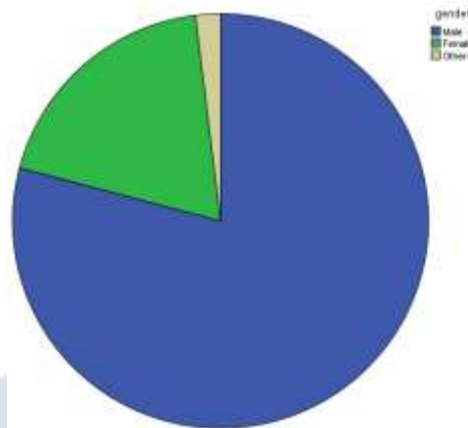
The current study is based on empirical research. It is consisting of the scientific frame of research. It began with the finding of research problems based on the review of literature. The major contribution of the study is to collect the legal facts of a particular area and to test the hypothesis of a cause and effect relationship between variables. The research design is exploratory and experimental. It explored the problem tested with hypotheses and provided the solution from the analysis. Convenient sampling method is used (Non probability sampling). The sample size is 200. Data is collected through the primary and secondary sources. Questionnaire is used as the primary data collection and the articles, journals, reports, newsletters are considered as the

secondary sources. The analysis is carried out for demographic statistics (Age, Gender, Educational qualification and Occupation) and hypothesis testing graphs are used.

**ANALYSIS:**

**VARIABLES:**

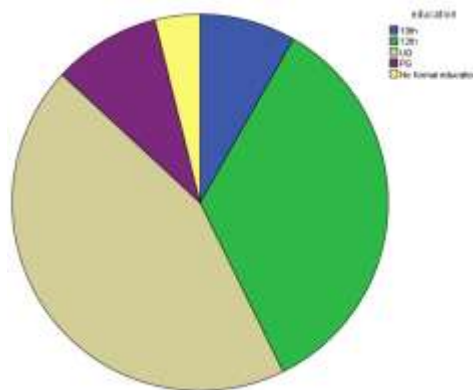
**Gender:**



**FIG.1**

**LEGEND:** From fig.1 it's observed that the majority of the respondents are men and a small portion of the respondents are women and mere 2% of the respondents belong to the other category.

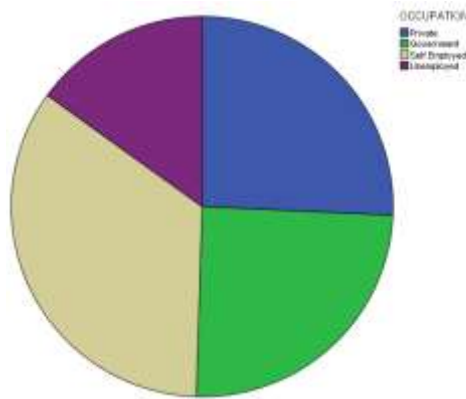
**Education:**



**FIG.2**

**LEGEND:** From fig.2 it's observed that the majority of the respondents have completed their UG. Other respondents have completed their HSC out of the other respondents some have completed their PG, SSLS and some have no formal education.

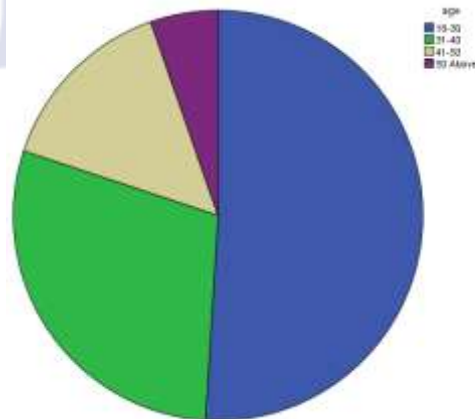
**Occupation:**



**FIG.3**

**LEGEND:** From fig.3 it's observed that the majority of the respondents are self employed. There are an equal amount of private, government employees and a small portion of unemployed respondents.

**Age:**



**FIG.4**

**LEGEND:** From fig.4 it's observed that the majority of the respondents are from the age group 18-30. The next majority group are 31-40. There are 10% of respondents from the age group 41-50 and mere 4% of respondents belong to the age group of 50 Above.

## QUESTIONS:

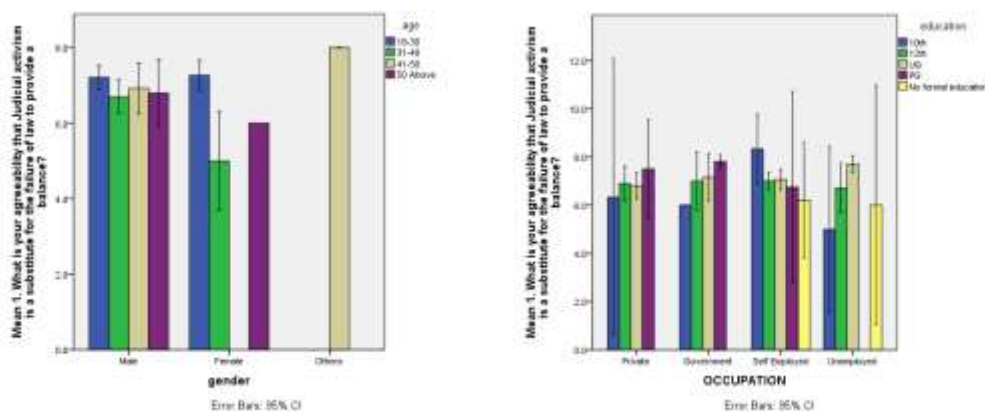
1. “Judicial Activism provides judges to use their personal wisdom in cases where the law failed to provide a balance.”

Frequency table:

1. What is your agreeability that Judicial activism is a substitute for the failure of law to provide a balance?		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	2.0	3	1.5	1.5	1.5
	3.0	5	2.4	2.4	3.9
	4.0	4	1.9	1.9	5.8
	5.0	12	5.8	5.8	11.7
	6.0	39	18.9	18.9	30.6
	7.0	56	27.2	27.2	57.8
	8.0	68	33.0	33.0	90.8
	9.0	17	8.3	8.3	99.0
	10.0	2	1.0	1.0	100.0
	Total	206	100.0	100.0	

**LEGEND:** The table shows the responses for the question.

Graphical presentation:



**FIG. 5&6**

**LEGEND:** It shows the gender distribution of various Age groups, Occupational distribution of Educational qualifications and their agreeability towards “Judicial Activism provides judges to use their personal wisdom in cases where the law failed to provide a balance.”

**RESULT AND DISCUSSION:** The result of Fig. 5&6 shows that judicial activism provides wisdom in cases where law fails to provide balance. Self employed and unemployed postgraduates highly agree that traditional healthcare systems attract foreign tourists, other respondents agree to the question and the government employees who have completed their UG and HSC partly agree (neither agree nor disagree) to traditional healthcare. The gender distribution clearly states that the respondents strongly agree that the judicial activism provides judges to use their personal wisdom in cases where the law failed to provide a balance.

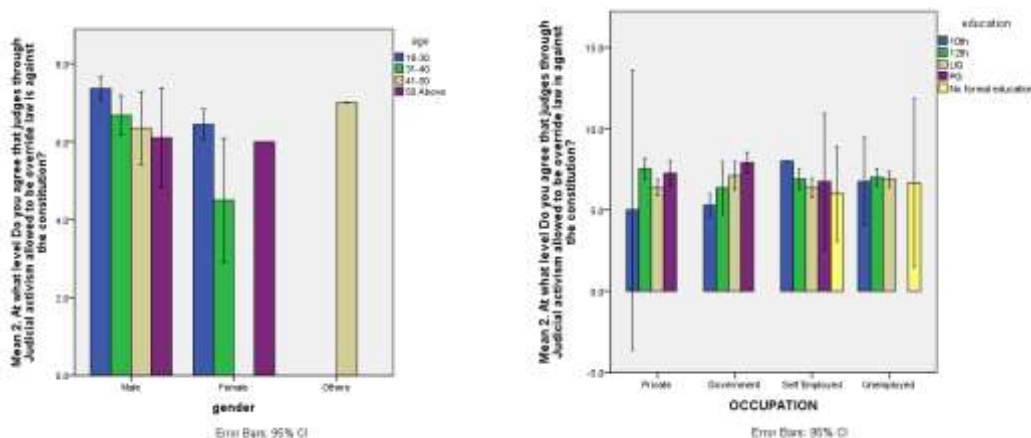
2. “Judges can override any existing law. Hence, Judicial Activism clearly violates the line drawn by the constitution.”

**Frequency table:**

<b>2. At what level Do you agree that judges through Judicial activism allowed to be override law is against the constitution?</b>					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1.0	1	.5	.5	.5
	2.0	4	1.9	1.9	2.4
	3.0	5	2.4	2.4	4.9
	4.0	7	3.4	3.4	8.3
	5.0	29	14.1	14.1	22.3
	6.0	24	11.7	11.7	34.0
	7.0	65	31.6	31.6	65.5
	8.0	42	20.4	20.4	85.9
	9.0	28	13.6	13.6	99.5
	10.0	1	.5	.5	100.0
	Total	206	100.0	100.0	

**LEGEND:** The table shows the responses for the question.

**Graphical presentation:**



**FIG.7&8**

**LEGEND:** It shows the gender distribution of various Age groups, Occupational distribution of Educational qualifications and their agreeability towards “Judges can override any existing law. Hence, Judicial Activism clearly violates the line drawn by the constitution.”

**RESULT AND DISCUSSION:** The result of Fig.7&8 shows that Judges can override any existing law. Hence, Judicial Activism clearly violates the line drawn by the constitution. Self Employed and unemployed postgraduates highly agree that traditional healthcare systems attract foreign tourists, other respondents agree to the question and the government employees who have completed their UG and HSC partly agree (neither agree nor disagree) to traditional healthcare. The gender distribution clearly states that the respondents strongly agree that the Judges can override any existing law. Hence, Judicial Activism clearly violates the line drawn by the constitution.

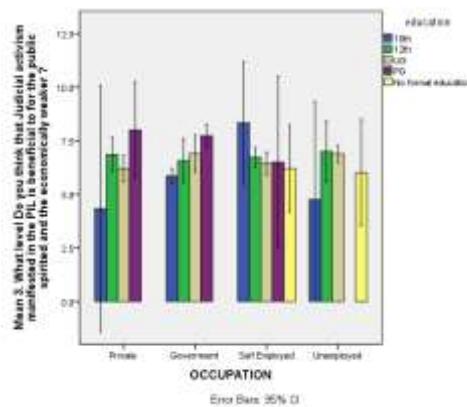
3. “The judicial activism manifested in the strategy of PIL paves the way for the participation of public spirited and enlightened people in India's development process and displays the potentiality of the legal system to offer justice to the poor and the oppressed.”

**Frequency table:**

3. What level Do you think that Judicial activism manifested in the PIL is beneficial to for the public spirited and the economically weaker ?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1.0	1	.5	.5	.5
	2.0	3	1.5	1.5	1.9
	3.0	6	2.9	2.9	4.9
	4.0	10	4.9	4.9	9.7
	5.0	21	10.2	10.2	19.9
	6.0	33	16.0	16.0	35.9
	7.0	75	36.4	36.4	72.3
	8.0	41	19.9	19.9	92.2
	9.0	15	7.3	7.3	99.5
	10.0	1	.5	.5	100.0
	Total	206	100.0	100.0	

**LEGEND:** The table shows the responses for the question.

**Graphical presentation:**



**FIG. 9**

**LEGEND:** It shows the gender distribution of various Age groups, Occupational distribution of Educational qualifications and their agreeability towards “The judicial activism manifested in the strategy of PIL paves the way for the participation of public spirited and enlightened people in India's development process and displays the potentiality of the legal system to offer justice to the

poor and the oppressed.”

**RESULT AND DISCUSSION:** The result of Fig.9 shows that The judicial activism manifested in the strategy of PIL paves the way for the participation of public spirited and enlightened people in India's development process and displays the potentiality of the legal system to offer justice to the poor and the oppressed. Self employed and unemployed postgraduates highly agree that traditional healthcare systems attract foreign tourists, other respondents agree to the question and the government employees who have completed their UG and HSC partly agree (neither agree nor disagree) to traditional healthcare. The gender distribution clearly states that the respondents strongly agree that the Judges can override any existing law. Hence, Judicial Activism even if it clearly violates the line drawn by the constitution it is useful to offer justice to the poor and the oppressed.

## CONCLUSION:

Judicial activism, as demonstrated through the mechanism of public interest litigation (PIL), creates opportunities for the participation of enlightened and socially conscious individuals in India's development process. It highlights the potential of the judicial system to deliver justice to the impoverished and oppressed. PIL has brought attention to archaic practices that still prevail in India, such as the plight of prisoners, the situation of women in protective homes, victims of the flesh trade, children in juvenile institutions, and the exploitation of bonded labourers, untouchables, and tribal communities. By taking up such cases, the Supreme Court has emerged as the protector of the rights and freedoms of those subjected to repression, cruelty, and torture. In its activist role with regard to PIL, the Supreme Court has adopted a goal-oriented approach in the pursuit of justice by simplifying complex and outdated procedures. By expanding the scope of Article 32 and expediting the process of socio-economic transformation, it has brought justice to the doorsteps of the vulnerable, underprivileged, and exploitative segments of society, thereby revolutionising constitutional jurisprudence in the 1980s. PIL plays a crucial role within the civil justice system as it provides a pathway to justice for disadvantaged sections of society, including those who may be unaware of their rights. Moreover, it offers a means to enforce diffuse rights in cases where identifying an aggrieved individual is challenging or where aggrieved persons lack the incentive to approach the courts. PIL can also contribute to good governance by holding the government accountable. Lastly, PIL enables civil society to actively raise awareness about human rights, give a voice to marginalised communities, and facilitate their participation in governmental decision-making. Based on the Indian experience, it is evident that PIL can achieve many of these

significant policy objectives. However, it is crucial to ensure that PIL does not become a means to exploit the justice system for personal interests, settle political scores, or seek publicity. Courts should refrain from using PIL to govern the country on a day-to-day basis or encroach upon the legitimate domains of the executive and legislature. Therefore, the way forward for India, as well as other jurisdictions, lies in striking a balance by allowing legitimate PIL cases while discouraging frivolous ones. One approach to achieve this objective could be to primarily limit PIL to cases where access to justice is impeded by certain disabilities. Another useful measure could involve providing economic disincentives for those found to be using PIL for ulterior motives. Simultaneously, it is worth considering the provision of economic incentives such as protected cost orders, legal aid, pro bono litigation, funding for PIL by civil society, and friend of the court briefs to encourage legitimate PIL cases. This is important because, given the underlying rationale for PIL, potential plaintiffs may not always possess adequate resources.

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