

CHAPTER- V
EPISTOLARY AND CREEPING JURISDICTIONS OF THE
SUPREME COURT OF INDIA

5.1 Introduction

The Supreme Court of India is the protector and guarantor of fundamental rights and constitutional remedies which is the cornerstone of democratic edifice.¹ Speaking about the importance of Article 32 during debates in Constituent Assembly, Dr. Ambedkar said: “If I was asked to name any particular Article in the Constitution as most important without which, the Constitution would be nullity, I could not refer, to any other Article except this one. It is the very soul of the Constitution and the very heart of it”.² A right without a remedy is a legal conundrum of most grotesque kind”.

People of India have the right to life and personal liberty under Article 21. Justice is the basic foundation on which dignified and meaningful life is rested. Further the Apex Court has held that justice should be speedy and inexpensive otherwise it offends Article 21. Therefore, Judiciary has constitutional obligation to deliver speedy and cheap justice. Judiciary in late 20th century has invented the devise of Public Interest Litigation (herein after refereed to as PIL) which has become a main weapon in the armory to deliver speedy justice at affordable costs. Further judiciary has adopted new kinds of procedural techniques while dealing with PIL. Many technical rules of procedure have been relaxed; the burden of the individual in fighting the litigation is reduced by various beneficial principles. Acting on letters written by or on behalf of the oppressed people is a strategy adopted by the Supreme Court for facilitating access to justice. This is known as

¹ *Prem Chand Garag v. Excise Commissioner*, AIR 1963 SC 996.

² Constituent Assembly Debates, Vol. III, (New Delhi: Secretariat, Government of India, 1948-1949), p.953.

‘epistolary jurisdiction.’ The letters have been converted into writ petitions on the logic that Article 32 of the Constitution does not say as to “who” shall have the right to move the Supreme Court, nor does it say by “what” proceedings. The expression “appropriate proceedings” is too wide, and so moving the court through a letter can be appropriate proceedings because it would not be right to expect a person acting *pro bono publico* to incur expenses from his pocket for having a regular writ petition prepared by a lawyer. It has to be appropriate not in terms of any particular form, but appropriate with reference to the purpose of the proceeding.

5.2 Supreme Court as the Guardian of Justice

Sir Alladi Krishnaswami Iyer has rightly observed “The Supreme Court in Indian Union has more power than any Supreme Court in any part of the world”.³ But this was not the position in the Draft Constitution which had envisaged only a narrower jurisdiction for the Supreme Court than it has today. Some of the prominent lawyer members of the Constituent Assembly took the lead in enlarging the jurisdiction of the Supreme Court.

The jurisdiction of the Supreme Court can be divided into four main categories, original jurisdiction, appellate jurisdiction, advisory jurisdiction and review jurisdiction.

The original jurisdiction of the Court extends to two types of cases:

- i) Disputes relating to the Union and the States – The following disputes are covered under this jurisdiction:
 - a) Any dispute between the Government of India and one or more States; or
 - b) Disputes between the Government of India and any State or States on the one side and one or more States on the other side; or

³ Constituent Assembly Debates, Vol. VII, (New Delhi: Secretariat, Government of India, 1999), p. 596.

c) Disputes between two or more States.

ii) Disputes or cases involving the violation of fundamental rights.⁴

The cases involving violation of fundamental rights can be initiated in the Supreme Court. Article 32 of the Constitution imposes special responsibilities on the Supreme Court for the protection of fundamental rights of the citizens. In case violation of these rights, the Supreme Court can issue writs in the nature of *Habeas Corpus*, *Mandamus*, *Quo Warranto*, Prohibition and *Certiorari*.

The Supreme Court of India is constituted as a guardian of the Constitution and protector of the fundamental rights. Judicial review is the basic structure of the Constitution. The Court can declare any law which transgresses fundamental rights as invalid. Justice is basic foundation of just society which is read under Article 21 of the Indian Constitution by Apex Court in various cases.⁵ Justice not only is to be delivered in time but also it should be accessible to even have not's. Hence, the Supreme Court has relaxed the principle of *locus standi* in the PILs and has played a highly creative role in adding new dimensions to accessibility by inventing what is popularly known as epistolary jurisdiction.

5.3 Epistolary Jurisdiction of the Supreme Court

Lord Devlin has said that "If our methods were as antiquated as our legal methods, we should be a bankrupt country."⁶ The traditional method of initiating proceedings in the court is by filing a petition containing the facts giving rise to a legal action. This is true in customary proceedings before the judiciary. However in cases of

⁴ See, Article 131 of the Constitution.

⁵ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, *Manake Gandhi v. Union of India*, AIR 1978 SC 597, *Sunil Batra v. Delhi Administration*, (1979) 1 SCR 392.

⁶ *Hussein v. Chong Fook Kam* [1970] AC 942, at pp. 948-49.

PIL judiciary has departed from these conventional procedural shackles, it has liberalized the adversarial procedure with the change in the character and functions of the State. The flexibility of procedure can best be illustrated by what is termed as 'epistolary jurisdiction'. Taking a cue from the American Supreme Court's decision in *Gideon v. Wainwright*,⁷ where a postcard from a prisoner was treated as a petition, the Supreme Court adopted the innovative methods to provide justice, liberalized the rule of *locus standi* and treated the letter as writ. This innovation represents the fact that the rules of procedure of the court are to aid the administration of justice, to advance the cause of justice and not defeat it. If there is a conflict between the law of procedure and substantive rights of the parties, the latter prevails as the ultimate end of law is justice.⁸

The judicial scene is rightly described by Y.V. Chandrachud J.,⁹

I am no pessimist but at times I see dark clouds gathering over law's rarefied atmosphere... Long and interminable arguments, whisperings of heavy professional fees, the unethically expensive impost of court fees by the State which does not plough back its profits from justice by undertaking programmes like free legal aid, the chronic delays in disposal of cases and, may I say, the not-so-chronic delay in decision-making are all matters which require of the men of law, a careful and urgent attention.

Now, with change in character and functions of State, if justice is to be in consonance with the concept of social justice, the reformatory efforts were to be initiated by the justice delivery system. Accordingly the Apex Court initiated procedural innovations in the public interest litigation by treating a letter as a writ petition. Some judges have been strong protagonists of PIL, on the Bench and outside it. In fact they

⁷ (1963) 372 U.S. 335.

⁸ Dr. Mamta Rao, *Public Interest Litigation Legal Aid and Lok Adalats*, 3rd edn. (Lucknow: Eastern Book Company 2010), p.259.

⁹ Former Chief Justice of India speaking on Law Day function on 26th November, 1980.

have been mentioned as soliciting¹⁰ such petitions. The letters were, therefore, addressed to them. They used to place them on their own board after converting the letters into writ petitions, for disposal. A well known journalist has wittingly remarked, "...the point that the opponents of the case were making was that the litigants were choosing a judge. As it turns out, some judges were choosing their litigants."¹¹

This practice was criticized by Tulzapurkar, J., in a public lecture at Poona on October 29, 1982¹² on the ground that "such a practice would result in conferring a privilege on the complainant to have a judge or forum of his own choice, which is clearly subversive of the judicial process which enjoins that no litigant can choose his own forum; moreover it will result in the erosion of the administrative powers of the Chief Justice..." Pathak R.S. J., has observed on this practice in the *Bandhua Mukti Morcha*¹³ that, no such communication or petition can properly be addressed to a particular judge. Which judge or judges will hear the case is exclusively a matter concerning the internal regulation of the business of the Court, interference with which by a litigant or member of the public constitutes the grossest impropriety.... It is only right and proper that this should be known clearly to the lay public.... They also embarrass the judge to whom they are personally addressed. A.N.Sen J., has also observed, "A private communication by a

¹⁰ Arun Shourie, in an interview to *Facets* has observed, "A Judge of the Supreme Court asked a lawyer to ask me to ask the reporter to go to these areas, get affidavits from some of the victims who are still alive and some of them who were dead, from their families. The affidavits were got compiled, sent and he entertained a writ. Eight months later someone came to me saying that the same judge had sent him... to ask me to ask the correspondent to file such and such information in a letter through so and so... A third time a civil rights activist asked that the same thing be done. He said the same judge had asked him". See *Facets*, 1983, Vol. II No. 1, p.3.

¹¹ Arun Shourie, in an interview to *Facets*. See *Facets*, 1983, Vol. II No. 1, p.4.

¹² AIR 1983 Journal, "Judiciary: Attacks and Survivals", pp. 9-18.

¹³ AIR 1984 SC 802 at p.848.

party to any learned judge over any matter is not proper and may create embarrassment for the Court and the judge concerned.”¹⁴

It has not seen, however, as to why should there be any embarrassment to the judge or the Court? The judge could pass on the letter to the registrar for being dealt with according to the normal practice of court; the court could lay down the norms as to how these letters addressed to the particular judges should be dealt with. The difficulty arises only when the concerned judge and the rest of the court start pulling in different directions, to the embarrassment of both. The “lay public” does not read the judgments and therefore, is not likely, to conduct itself according to these observations. If the petitioners are addressing letters directly to a particular judge, it is because the impression has gone round that in that judges they have the champion of their causes.¹⁵

Well known Professor Baxi commented on Tulzapukar critic’s in respect of manner in which letter is treated as writ petition by the Judges of the Supreme Court,¹⁶ that Supreme Court has already taken requisite step to correct that flaw.¹⁷ Further he mentioned that Tulzapukar’s worthy objections are dealt in depth by the Supreme Court in the famous *Bandhua Mukti Morcha*.¹⁸ Even the Supreme Court earlier has considered the Tulzapukar’s objections in *Sudipt Mazumdar v. State of M.P*¹⁹ and thought that these issues should be addressed by larger bench of the Supreme Court. Therefore it referred the matter to constitutional bench. The case dealt with a letter sent to the judges by a journalist along with five of his investigative reports regarding the deaths caused by the

¹⁴ *Ibid.*

¹⁵ S.K. Agrawala *Public Interest Litigation in India A Critique*, (Bombay: N.M. Tripathi Pvt. Ltd., 1985), pp 17-18.

¹⁶ AIR 1983 Journal, ‘Judiciary: Attacks and Survivals’, pp. 9-18.

¹⁷ See, Upendra Baxi: “Judicial Terrorism: some Thoughts on Mr. Justice Tulzapurka’s Pune Speech” (*Mimeographed*).

¹⁸ AIR 1984 SC 802.

¹⁹ (1983) 2 SCC 258.

Para-military force in State of M.P. A preliminary question is raised whether the letter could be treated as a writ petition. The practice of writing letters addressing specific judges is criticized on the ground that the complainant, in such cases, has a judge or forum of his choice. It is clearly subversive of judicial process which enjoins that no litigant can choose his own forum. Professor Baxi, however, gives²⁰ one cogent reason in support of the practice adopted by Justice Bhagwati of placing the letter addressed to him (converted in writ petition) on his board, viz. that the fluctuating Bench structure imposes additional burdens of persuasion on the petitioner, more so because not all judges are as yet equally attracted by social action litigation.²¹

The letters have been converted into writ petitions on the logic that Article 32(1) of the Constitution does not mention that 'who' shall have the right to move the Supreme Court, nor does it mention that by 'what' proceedings. The expression 'appropriate proceedings' is too wide, and so moving the Court through a letter can be appropriate proceedings because it would not be right to expect a person acting *pro bono publico* to incur expenses for having a regular writ petition prepared by a lawyer. It has to be appropriate not in terms of any particular form, but appropriate with reference to the purpose of the proceedings.²²

Pathak, J. observed in *Bandhua Mukti Morcha*²³ that: "It is only comparatively recently that the Court has begun to call for the filing of a regular petition on the letter."²⁴ However, the public is unaware that when this change has in practice has been introduced, whether because of the criticism inside and outside the court or because of

²⁰ *Supra note 17.*

²¹ *Supra note 15*, at p.18.

²² *Supra note 18.*

²³ *Ibid.*

²⁴ *Ibid.*, at p. 840.

decided move by the court as a whole. In *Neerja Chaudhary v. State of M.P.*,²⁵ a regular writ petition was filed in substitution of the letter before notice is issued to the respondent. Pathak J. expressed his apprehensions regarding the practice of treating letters as writ petitions without anything more, from a person whose antecedents and status are unknown or so uncertain that no sense of responsibility can be attached to the communication. Further, he opined that a petition or application filed before the Supreme Court is required to be supported by an affidavit as per the provisions of the *Civil Procedure Code* to prevent the abuse of the process of law – waste of public time and public money is involved, as well as it may, in appropriate cases, involve the issue of summons or notice to the defendant or respondent.²⁶ He considers the requirement of verification of the petition or other communication at the earliest stage and before issuing notice to the respondent, to be necessary. It is all the more where petitions are received by the Court through the post. He does however, recognize the existence of special circumstances which may justify the waiver of the rule, e.g. when *habeas corpus* jurisdiction is involved, or when the authorship of the communication is so impeccable and unquestionable that the authority of its contents may reasonably be accepted *prima facie* until rebutted.

A.N. Sen, J. endorsed the same view generally, but he is a little less specific than Pathak J. in identifying the special circumstances or exceptional cases. He would rather take it to be a matter in the discretion of the Court to be considered in the context of the facts and circumstances of each case. The *Bandhua Mukti Morcha* case falls amongst the exceptions, as Sen J. has specifically observed:²⁷

²⁵ AIR 1984 SC 1099.

²⁶ *Ibid.*

²⁷ *Supra* note 18 at p. 848.

I am sure, it would generally be considered to be a healthy development. It is the decision of the Court having been supported by the majority on the bench. Such a practice is all the more necessary if it is correct that the Supreme Court is now being inundated with such letters.

5.3.1 Cognizance of letter as Writ Petition

For those who live in poverty and destitution and are helpless victims of society and do not have easy access to justice, the courts will not insist upon a regular writ petition. In such cases the court will readily respond even to a letter addressed by an individual acting *pro bono publico*. In such instances, the court will unhesitatingly cast aside the technical rules of procedure and treat the letter of a public minded individual as writ petition and act upon it.²⁸ In many cases the Court has treated letters sent by the affected persons themselves or by any other person or organizations to the Court or any of the Honorable judges of the Court, narrating the plight of the affected person or persons, as petitions and proceeded further in the matter by treating the proceedings as a writ petition, so that the affected person or persons may get relief.²⁹

PIL acquired a new dimension – namely that of ‘epistolary jurisdiction’ with the decision in the *Sunil Batra v. Delhi Administration*.³⁰ It was initiated by a letter that was written by a prisoner lodged in jail to a Judge of the Supreme Court. The prisoner complained of a brutal assault committed by a Head Warder on another prisoner. The Court treated that letter as a writ petition, and, while issuing various directions, opined that: “...technicalities and legal niceties are no impediment to the Court entertaining even an informal communication as a proceeding for *habeas corpus* if the basic facts are

²⁸ Halsbury’s Laws of India, Vol. 22, *Registration and Statistics Public Interest Litigation*, (New Delhi: LexisNexis Butterworths, 2005), p.245.039.

²⁹ G.L. Pareek, and Parreek Sakeet, *Supreme Court on Public Interest Litigation*, 1st edn. (Jaipur: Unique Traders, 2010), p. 136.

³⁰ (1978) 4 SCC 494.

found”. This practice was endorsed by Bhagwati J., in *Kadra Pahadiya*.³¹ That the letters have been converted into writ petitions on the logic that Article 32(1) of the Constitution does not specify ‘who’ shall have the right to move the Supreme Court, nor does it specify by ‘what’ proceedings. The expression ‘appropriate proceedings’ is too wide and so moving the Court through a letter can be appropriate proceedings because it would not be right to expect a person acting *pro bono publico* to incur expenses for having a regular writ petition prepared by a lawyer. In the *Judges*,³² Bhagwati J., has observed; “It is true that there are rules made by the Supreme Court prescribing the procedure for moving it for relief under Article 32 and they require various formalities to be done through a person seeking to approach it. But, it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it”.

In *Upendra Baxi v. State of U.P.*³³, a letter by two Professors of Delhi University seeking enforcement of the constitutional rights of the inmates of Protective Home in Agra living in inhuman and degrading conditions in violation of Article 21 was treated as a writ petition and accordingly a direction was issued to the concerned authority. Likewise in *People’s Union for Democratic Rights v. Union of India*,³⁴ the Court has opined that, “where a person or class of persons to whom legal injury is caused or legal

³¹ *Kadra Pahadiya v. State of Bihar*, AIR 1982 SC 1167.

³² *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

³³ (1983) 2 SCC 308.

³⁴ AIR 1982 SC 1473.

wrong is done is by reason of poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting bona fide and not out of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the Court.”

In *Veena Sethi*³⁵ the Supreme Court further reiterated the earlier principle of initiating writ jurisdiction on letter as public interest litigation. The Apex Court has responded to the criticisms that it is wrong to accept letter as writ petition and held that:

“There are some people who are critical of the practice adopted by this Court of taking judicial action on letters addressed by the public spirited individuals and organizations for enforcement of the basic human rights of the weaker sections of the community. This criticism is based on a highly elastic approach and proceeds from a blind obsession with the rites and rituals sanctioned by an outmoded Anglo-Saxon Jurisprudence. The most complete refutation of this criticism is provided by the action taken by the Court in this case. It was a letter dated 15th January, 1982 addressed by the Free Legal Aid Committee, to one of us (Bhagwati, J.) which set the judicial process in motion and but for this letter which drew the attention of the Court to the atrociously illegal detention of certain prisoners in the Hazaribagh Central Jail for almost two or three decades without any justification whatsoever, these forgotten specimens of humanity languishing in jail for years behind stone walls and iron bars, deprived of freedom and liberty which are the inalienable rights of human being, would have continued to remain in jail without any hope or ever walking out of its forbidding environment and breathing the fresh air or freedom.”

In, *State of H.P. v. A Parent of a Student of Medical College*,³⁶ the Apex Court has expanded the scope of letter writ petition. It has accepted even the letter written by student to his guardian which has been forwarded to the High Court by Guardian along with his letter. This gesture of Court makes inference that the Apex Court is much

³⁵ *Veena Sethi v. State of Bihar*, AIR 1983 SC 339.

³⁶ AIR 1985 SC 910.

interested in delivering justice even in informal method. It is now well settled law that the Supreme Court under Article 32 of the Constitution and the High Court's under Article 226 of the Constitution can treat a letter as a Writ Petition and take action upon it. However, the judiciary has cautioned that it is not every letter which may be treated as a Writ Petition. It is only that letter which is addressed by an aggrieved person or by a public spirited individual or a social action group for enforcement of the constitutional or legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress. Under such circumstance the Supreme Court or the High Court would be justified, nay bound, to treat the letter as a Writ Petition. Earlier the PIL was entertained for the cause of class of peoples or section of the society. However judiciary gradually admitted that there may also be cases where even letter addressed for redressal of a wrong done to an individual may be treated as a Writ Petition where the Supreme Court or the High Court considers it expedient to do so in the interest of justice. This is a welcome step. This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economic entitlements. It is a highly effective, weapon in the armory of the law for reaching social justice to the common man.

In the following cases also the cognizance of the petition is taken by the Honorable Supreme Court on letter petitions has taken cognizance in the cases of

Mrs. Nilima Priyadarshani v. State of Bihar,³⁷ *Neeraja Choudhary v. State of M.P.*³⁸, *Bhola Nath Tripathi v. State of U.P.*³⁹, *Tusar Arun Gandhi v. State of Orissa*⁴⁰, *Citizens for Democracy v. State of Assam*⁴¹, *D.K. Basu v. State of W.B.*,⁴² and *Disabled Rights Group v. Chief Election Commissioner*⁴³.

Public spirited person who files PIL faces the risk because he has to take on mighty politician, executive and some time there is nexus between mafia, executive and politician. Therefore, there is every possibility that anonymous letter may be written to judges of the Supreme Court. Obviously, the Court would be under dilemma to entertain or reject such letter. In *Devine Retreat Centre v. State of Kerala and Others*⁴⁴, Court responded to the anonymous letter in the following manner:

“The question that falls for our consideration is whether the anonymous letter sent in the name of a Judge can be entertained as Public Interest Litigation. It is well settled that a PIL can be entertained by the Constitutional Courts only at the instance of a bona fide litigant. The author of the letter in this case is anonymous, there is no way to verify his bona fides and in fact no effort was made by the Court to verify about the authenticity, truth or otherwise of the contents of the petition.”

The Court opined that the person who files PIL must disclose his identify because the Court has to verify the credentials, character or standing of the informant otherwise the PIL is likely to be abused or misused. The Court opined “In our view, the public interest litigant must disclose his identity so as to enable the Court to decide that the informant is not a wayfarer or officious intervener without any interest or concern.”

³⁷ AIR 1987 SC 2021.

³⁸ AIR 1984 SC 1099.

³⁹ 1990 SUPP SCC 151.

⁴⁰ 1997 (1) SCC 1.

⁴¹ AIR 1996 SC 2193.

⁴² AIR 1997 SC 610.

⁴³ AIR 2004 SC 4539.

⁴⁴ 2008 (3) SCC 542.

However, this trend is not healthy sign for the delivering the justice through the process of PIL. When the anonymous letter brings out the violation of human rights or corruptions at the higher level with credible evidences which are verifiable, obviously rationality suggests that such letters should have been accepted as PIL. Therefore, it is wrong on the part of the judiciary to dismiss every anonymous letter without looking into the contents of letter and any credible evidence furnished along with the letter. This line of thought is likely to encourage injustice to the people. There is huge demand for the protection of whistle blower and keeping his identify confidential in the contemporary society which is very essential. Therefore, judiciary is needed to re-think about its stand.

On December 1, 1988, the Supreme Court, on its administrative side, issued a notification on what matters could be entertained as PIL.⁴⁵ Under this notification, letter petitions falling under certain categories alone would be ordinarily entertained. These included matters concerning bonded labour, neglected children, petitions from prisoners, petitions against the police, petitions against atrocities against women, children, and schedule castes and schedule tribes. Petitions pertaining to environmental matters, adulteration of drugs and food, maintenance of heritage and culture, and other matters of public importance could also be entertained. The notification set out matters that ordinarily were not to be entertained as PIL, such as landlord-tenant disputes, service matters, and admissions to medical and other educational institutions. The notification also laid down the procedure: the petition would be first screened in the PIL Cell and thereafter it would be placed before a judge to be nominated by the Honorable Chief

⁴⁵ The full text of this notification is set out in Sangeeta Ahuja, *People, Law and Justice: Cases and Materials on PIL* Orient Longman, Delhi, 1996, Vol. II, 860.

Justice of India for directions.⁴⁶ The practice of letters being addressed to individual judges had received criticism from various quarters. Letter petitions have now become rare and the Court has taken recourse to appointing lawyer as *amicus curiae* and asking them to draft a regular petition on the lines of the letter and insisted on the drafting of a regular petition. Letters to individual judges also became rare.⁴⁷

5.4 Discrete Crossing of Separation Doctrine

Unlike the United States (herein after referred to as US), the doctrine of separation of powers propounded by Montesquieu in its strict sense is not found in the Indian Constitution. In the US, the doctrine of Separation of Powers is implicit in the Constitution. It emphasizes the mutual exclusiveness of the three organs of the State. According to this doctrine, the Legislature cannot exercise Executive or Judicial power; the Executive cannot exercise Legislative or Judicial power; and the Judiciary cannot exercise the other two powers. The form of Government in the US characterized as the Presidential is based on the theory that there should be separation between the Executive and the Legislature. This is different from the system prevailing in Britain or India where the Parliamentary form of Government operates and which is based on co-ordination of the Executive and the Legislature.

In US also, the doctrine of separation of powers does not apply rigorously there are some exceptions thereto are recognised in the Constitution itself. For instance, a bill passed by the Congress may be vetoed by the President, and to this extent, the President may be said to be exercising legislative functions. Again, certain appointments of high

⁴⁶Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potential and Problems", in, *Supreme But Not Infallible*, kirpal, B.N., *et al.*, (ed.), (New Delhi: Oxford University Press, Seventh impression 2011), p.165.

⁴⁷ S.P. Sathe, *Judicial Activism in India*, First Published, (New Delhi: Oxford University Press 2002), pp.206-07.

officials are to be approved by the Senate, and also the treaties made by the President do not take effect until they are approved by the Senate; to this extent, the Senate may be said to be exercising executive functions. This exercise of some functions of one organ by the other organ is justified on the basis of checks and balances, i.e. the functioning of one organ is to be checked in some measure by the other⁴⁸.

The United Kingdom (herein after referred as U.K.) does not adopt separation of powers in its strict sense, but unlike the United States it is informal. Black Stones Theory of “Mixed Government” with checks and balances is more relevant to the U.K. Separation of Powers is not an absolute or predominant feature of the U.K. Constitution. The three branches are not formally separated and continue to have significant overlap. The U.K. is becoming increasingly concerned with the Separation of Powers, particularly with Article 6 of the European Convention on Human Rights⁴⁹ which protects the right to fair trial. *The Constitutional Reforms Act, 2005*⁵⁰ reforms the office of Lord Chancellor and the Law Lords will stop being in the legislature. Section 23 of the *Constitutional Reforms Act*, provides for the establishment of Supreme Court for United Kingdom. The Supreme Court whose powers have been separated from the powers of the Parliament has become functional since October, 2009. However, a full Separation of Powers is very unlikely as that would require an executive completely separate from the legislature and a new way of electing a Prime Minister.⁵¹

In India under the Constitution the Doctrine of Separation of Powers has no place in the strict sense. But the functions of the different organs of the have been clearly

⁴⁸ M.P. Jain & S.N. Jain, *Principles of Administrative Law*, 6th edn. (Nagpur: LexisNexis Butterworths Wadhwa, 2010), p. 22.

⁴⁹ Rome, 4.XI. 1950.

⁵⁰ Act No. 2005 c 4.

⁵¹ *Supra* note 48, at p. 25.

earmarked, so that one organ of the government does not usurp the functions of another. In *re Delhi Laws Act*⁵² Honorable Chief Justice, Kania observed that although in the Constitution of India, there is no express separation of powers, it is clear that a legislature is created by the Constitution and detailed provisions are made for making that legislature pass laws. Is it then too much to say that under the Constitution duty to make laws, the duty to exercise its own wisdom, judgment and patriotism in making law is primarily cast on the legislature? Does it not imply that unless it can be gathered from other provisions of the Constitution, other bodies executive or judicial are not intended to discharge legislative functions?

The Indian Constitution has not intended to recognize the doctrine of separation of powers in absolute rigidity but the functions of the different braches of the government have been sufficiently differentiated and consequently it can very well be said that Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.⁵³ Subsequently, in *Ramkrishna Dalmia*⁵⁴ the Supreme Court observed that in the absence of a specific provision for separation of powers in the Constitution such as there is under the American Constitution, some such division of powers of legislative, executive and judicial, is nevertheless implicit in Indian Constitution. In the celebrated case of *Kesavananda Bharti v. State of Kerala*⁵⁵ it is observed, that the Separation of powers between the legislature, executive and the judiciary is a part of the basic structure of the Constitution; this structure cannot be

⁵² *In re The Delhi Laws Act, 1912, The Ajmer- Mervara Extension v. The Part C States (Laws) Act, 1950*, AIR 1951 SC 332, at pp. 346-47.

⁵³ *Rai Saheb Ram Jawaya v. State of Punjab*, AIR 1955 SC 549 at p. 556.

⁵⁴ *Ramkrishna Dalmia v. Justice Tendolkar*, AIR 1958 SC 538. Also see *Jayati Lal Amrit Lal v. S.N. Rana*, AIR 1964 SC 648, at p.649.

⁵⁵ AIR 1973 SC 1461.

destroyed by any form of amendment. Thus, even though doctrine of separation of power is not explicitly mentioned in the Constitution of India it is read in by Supreme Court through the judicial interpretation of the Constitution.

Doctrine of separation of powers is the basic tenet of democracy where check and balance are maintained. Separation of power distributes power among three organs of the state which prevents any organs to become more powerful and abuse of power. Further one organ watches and supervises the functions of another organ. Moreover, division of work leads to efficiency in the functions of State. But where executive failed to discharge their function which leads to injustice, obviously the people looks towards judiciary for justice. Under such circumstances the judiciary cannot abdicate its responsibility by sticking to doctrine of separation of power. Therefore, it becomes inevitable to judiciary to transgress the domain of executive and issue appropriate directions to the executive to meet the needs of the people. Further, non-feasance on the part of executive may leads to contempt of the court. Therefore, this methodology certainly makes the executive more active and accountable.

5.5 Creeping Jurisdiction of the Supreme Court

The Supreme Court of India is at long last becoming, after thirty two years of the Republic, the Supreme Court for Indians.⁵⁶ For too long, the apex constitutional court had become “an arena of legal quibbling for men with long purses”.⁵⁷ Now, increasingly,⁵⁸ the Court is being identified by justices as well as people as the “last resort for the

⁵⁶ Upendra Baxi, (1985) “Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India,” *Third World Legal Studies*: Vol. 4, Article 6, p. 107.

⁵⁷ (1973) 4 SCC 225 at 947.

⁵⁸ *Supra* note 56.

oppressed and the bewildered”.⁵⁹ The transition from a traditional captive agency with a low social visibility into a liberated agency with a high socio-political visibility is a remarkable development in the career of the Indian judiciary.⁶⁰

People have realized that the Court is exercising the effective constitutional power of intervention, which can be invoked to ameliorate their miseries arising from repression, governmental lawlessness and administrative deviance. People like convicted prisoners, women in protective custody, children in juvenile institutions, bonded and migrant laborers, unorganized laborers, untouchables and scheduled tribes, landless agricultural laborers, women who are bought and sold, slum-dwellers and pavement dwellers, kin of victims of extra judicial executions come with unusual problems, never before were so directly confronted by the Supreme Court seeking justice.⁶¹ They seek extraordinary remedies, transcending the received notions of separation of powers and the inherited distinctions between adjudication and legislation on the one hand and administration and adjudication on the other. They bring, too, a new kind of lawyering and a novel kind of judging. They add a poignant twist to the docket explosion⁶² which was so far merely a routine product of the Bar committed only to justice according to the fees. They also bring a new kind of dialogue on the judicial role in a traumatically changeful society.⁶³ There have been fruitful innovative methods adopted by the Court in legal doctrines and techniques (e.g. liberalization of *locus standi*, growth of techniques of

⁵⁹ *State of Rajasthan v. Union of India*, (1997) 3 SCC 634 at 670.

⁶⁰ *Supra* note 56.

⁶¹ *Ibid.*, at p. 108.

⁶² R. Dhavan, “The Supreme Court Under Strain: The Challenge of Arrears”, (1977); U. Baxi, *The Crisis of the Indian Legal System* 58-83 (1982).

⁶³ U Baxi. “On How Not Judge the Judges...” (Mimeo: paper presented at a Seminar on Judicial Process and Social Change, Indian Law Institute and Andhra Pradesh University, (1980); Reddy, *Judicial Process and Social Change*, 56 *Sup. CT. J. I.* (1981) 8.

judicial review over administrative action and regulatory agencies and occasional institutionalization of PIL advocacy).

Like the technique of epistolary jurisdiction for its initiation, to the development of public interest litigation also requires “creeping” jurisdiction for its progress. Creeping jurisdiction means the judiciary venturing into the domain of administrative and legislative functions which is against the basic principle of separation of powers that is the basic foundation of democracy. The fundamental issue of how the Court should make the State and its agencies fully liable for deprivations or denials of fundamental rights still remains to be authoritatively answered. It is the task of the PIL entrepreneurs to ensure that these issues are ultimately reached with desired results. But, in the mean time, the Court rules through interim directions and orders.⁶⁴ This kind of creeping jurisdiction typically consists in taking over the direction of administration in a particular arena from the executive. It is pointed out that in issuing directions in matters which the court does not possess the requisite administrative expertise and proficiency it has over-stepped its limits.⁶⁵ In Bhagalpur, the police had committed atrocity on under trial prisoners and put acid on eyes of the inmates who lost their eye sight which has been brought to the notice of Supreme Court by way of PIL.⁶⁶ The Supreme Court issued so many directions in respect of inmate’s health, treatment, place of treatment, stay of their relative and compensation which are the nature of administrative. Further, the Court does not have expertise or skilled manual power to supervise these things. Therefore, judiciary had taken too much burden on itself and over stepped its limit which had affect the efficient

⁶⁴ *Supra* note 56, at p. 122.

⁶⁵ H.R. Khanna, ‘Judicial Encroachment on Legislative and Executive Spheres: Myth or Reality’, in *Issues Before the Nation*, (Delhi: B.R. Publishing Corporation, 1988), pp. 7-8.

⁶⁶ *Khatari v. State of Uttar Pradesh*, 2 SCALE 536 (1981).

functioning of judiciary. This case shows that the Courts are undertaking those very administrative decisions which the state should have taken in the first place itself.⁶⁷

In the meantime, the ultimate constitutional issues patiently await their turn. Doing something about these questions is comparatively far more difficult than compelling the state to do this or that under the creeping jurisdiction. It is difficult because it involves viable momentous normative innovations in the lawyer's law.⁶⁸ Some of these have already been attained: for example, liberalization of rule of *locus standi*. All this is noteworthy only so long as the underlying constitutional issues of citizen's rights against the state for violation of fundamental rights are faced and resolved. These issues in the final analysis relate to exposing the State to liability for wide-ranging compensatory arrangements for violations of fundamental rights of the people.⁶⁹ The Court has already, rightly rejected the facetious argument of the Attorney General of India in the Bhagalpur blinding case that when police torture prisoners they do so outside the authority of the law and, therefore, the state may not even at threshold be considered liable for the manifest unlawful actions of its agents.⁷⁰ Well begun is indeed half done? And yet the challenge of devising appropriate compensatory arrangement for such violations is very daunting.

The framers of the Indian Constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy-making and implementation of policy are conventionally regarded as the exclusive domain of the

⁶⁷ *Dr. Upendra Baxi v. State of Uttar Pradesh*, (1981) 3 SCALE 1136; *Khatri v. State of Bihar*, (1981) 3 SCALE 26.

⁶⁸ The types of innovations required in combating governmental lawlessness and repression require a high degree of collective and sustained judicial activism.

⁶⁹ *Supra* note 56, at p.123.

⁷⁰ Bhagwati J., held that to accept this argument would be to "make a mockery of Article 21 and reduce it to nullity, a mere rope of sand..." See, *Khatri v. State of Uttar Pradesh*, 2 SCALE 536 (1981).

executive and the legislature, with judiciary enforcing the law.⁷¹ the Supreme Court has itself recognized that ‘the Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that Indian Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another’.⁷²

In the development of writ jurisdiction, India derived from the English Common Law and the principles of judicial review, the Court is primarily concerned with the decision-making process and not the decision itself. The Court had reiterated that matters of policy would be a bar to the Court’s interference. PIL in practice, however, tends to narrow the divide between the roles of the various organs of government, and has invited controversy principally for this reason. The Court has sometimes even obliterated the distinction between law and policy. The approach of the Court in policy matters is to ask whether the implementation or non implementation of the policy results in a violation of fundamental rights. Where it does, the Court may interdict the violation, and issue orders accordingly.⁷³

In *M.C. Mehta v. Union of India*,⁷⁴ the Court explained how, despite the enactment of the *Environment (Protection) Act*, 1986,⁷⁵ there had been a considerable decline in the quality of the environment. The Court noted that despite several PILs ‘the required attention does not appear to have been paid by the authorities concerned to take the steps necessary for the discharge of duty imposed on State... Any further delay in the

⁷¹ *Supra* note 46, at p. 176.

⁷² *Ram Jawaya Kapur v. State of Punjab*, (1955) 2 SCR 225 at 235-36.

⁷³ *Supra* note 46, at p. 177.

⁷⁴ (1998) 9 SCC 589.

⁷⁵ Act No. 29 of 1986.

performance of duty by the Central Government cannot, therefore, be permitted. Suitable directions by the Court to require performance of its duty by the Central Government are mandated by the law and have, therefore, now to be given.⁷⁶

In *T.N. Godavarman*,⁷⁷ the Court constituted an expert committee to examine the issue of depletion of forest cover, and to consider questions such as who could be permitted to use forest produce and in what circumstances this is permissible. The Court imposed restrictions on the felling of trees and sale of timber. In an exercise of ‘continuing mandamus’ it closely monitored the implementation of its orders.⁷⁸ The provisions of Motor Vehicles Act, 1988 makes mandatory that school bus must install the speed control device to control the speed with object to safe guard the lives of children. But that provision is never implemented by the executive. This has led to tragic incident of school bus plunged into Yamuna River where number of children lost their lives. Thereafter, *M.C.Mehta* approached the Supreme Court by way of PIL.⁷⁹ Thus, Court justified its directions to the government to prescribe speed limits and mandate the installation of speed control devices.

The law and policy divide was obliterated in *Vishaka*⁸⁰ which was concerned with sexual harassment of women at the workplace. A significant feature of this decision is the Court’s readiness to step in where the legislature had not. The Court declared that till the legislature enacted a law⁸¹ consistent with the Convention on the Elimination of All Forms of Discrimination against Women, which India is obliged to do as a signatory, the

⁷⁶ *Supra* note 74, at p. 590.

⁷⁷ *T.N. Godavarman Thirumulpad v. Union India*, (1997) 3 SCC 312.

⁷⁸ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

⁷⁹ *M.C. Mehta v. Union of India*, (1997) 8 SCC 770.

⁸⁰ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁸¹ Government of India enacted *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, 2013 which came into force on December 9, 2013.

guidelines set out by the Court in this case adopting the Convention, would be enforceable.

However, in some cases the Court refuses to interfere with other organs of the Constitution, in the *State of H.P. v. A Parent of a Student of Medical College*,⁸² the Honorable Court has held, “It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation, any member of the legislature can also introduce legislation but the Court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the Court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. If the executive is not carrying out any duty laid upon it by the Constitution or the law, the Court can certainly require the executive to carry out such duty and this is precisely what the Court does when it entertains public interest litigation. Similarly in *Delhi Science Forum*⁸³, where the Government of India’s telecommunication policy was challenged in a PIL, the Court refused to interfere with the matter on the ground that it concerned a question of policy. Likewise, PILs that have sought prohibition of the sale of liquor,⁸⁴ or recognition of a particular language as a national language,⁸⁵ or introduction of a uniform civil code⁸⁶ have been rejected on the ground that they were the matters of policy to be

⁸² AIR 1985 SC 910.

⁸³ *Delhi Science Forum v. Union of India*, (1996) 2 SCC 405.

⁸⁴ *Krishna Bhat v. Union of India*, (1990) 3 SCC 65.

⁸⁵ *Kanhya Lal Sethia v. Union of India*, (1997) 6 SCC 573.

⁸⁶ *Ahmedabad Women’s Action Group v. Union of India*, (1997) 3 SCC 573. See also *Maharishi Avdesh v. Union of India*, (1994), Supp 1 SCC 713 to the same effect. However, a voluntary organization providing succor to women in distress was successful in persuading the Supreme Court to hold in a PIL that a Hindu husband married under Hindu law cannot by converting to Islam solemnize a second marriage. Although in this case the Court directed the central government to file an affidavit to indicate the steps it has taken to enact a uniform civil code, it later clarified that this direction was not mandatory: *Sarala Mudgal v. Union of India* (1994) 3 SCC 635.

decided by the government. In *Vema China Koteswara Rao v. District Collector*⁸⁷ the Honorable Court has observed, “It is well settled that there must be judicial restraint regarding administrative decisions.” Subsequently in *Divisional Manager, Arawali Golf Club & Another v. Chander Hass & Another*,⁸⁸ the Supreme Court clearly explained the frontiers of the powers of the judiciary, legislature and executive as under:

“... We would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where Judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State.”⁸⁹

The Court may refuse to entertain a PIL if it finds that the issues raised are not within the judicial ambit or capacity. Thus, a petition seeking directions to the Central Government to preserve and protect the Gyanvapi Masjid and the Vishwanath temple at Varanasi as well as the Krishna temple and Idgah at Mathura was rejected. The Court said: “the matter is eminently one for appropriate evaluation and action by the executive, and may not have an adjudicative disposition or judicially manageable standards as the pleadings now stand.”⁹⁰

In the *Tehri Bandh Virodhi Sangarsh Samiti*⁹¹ the Court stated that it did not possess the requisite expertise to render any final opinion on the rival contentions of the experts. In our opinion the Court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed by the petitioners and applied its mind to the safety of the dam. We have already given facts in

⁸⁷ AIR 2007 SC 2368.

⁸⁸ AIR 2008 SCW 406; 2008 (1) SCC 683.

⁸⁹ *Ibid.*

⁹⁰ *Mohd. Aslum v. Union of India*, (1995) 3 SCC 635.

⁹¹ *Tehri Bandh Virodhi Sangarsh Samiti v. State of U.P.* (1992) Supp 1 SCC 44. See also *Sachidanand Pandey v. State of West Bengal*, (1987) 2 SCC 295 at 331.

detail, which show that the Government has considered the question on several occasions in the light of the opinions expressed by the experts. The Government was satisfied with the report of the experts and only thereafter clearance has been given to the project.

Despite such observations, the Court has not adopted a uniform and consistent approach in dealing with its emerging role as a policy-maker. While in some cases, the Court has expressed its reluctance to step into the legislative field, in others it has laid down detailed guidelines and explicitly formulated policy. The more recent trend, however, is for the Court to assert its new role as policy-maker, as the decision in *Vishaka*⁹² demonstrates. In the case of adoption of children by foreign nationals⁹³ and custodial torture,⁹⁴ similar guidelines were laid down. In a case dealing with vehicular pollution too, the Court stipulated the time-frame for enforcement of international pollution norms.⁹⁵ In the *Hawala*,⁹⁶ the Court concerned itself with establishing a mechanism for the supervision of the CBI and the grant of statutory status to the office of the Central Vigilance Commissioner.

On 2 February 2012 the Supreme Court of India in *Centre for Public Interest Litigation & Ors. v. Union of India & Ors.*⁹⁷ ruled on a public interest litigation case related to the 2G spectrum scam. The court declared the allotment of spectrum "unconstitutional and arbitrary" cancelling 122 licenses issued in 2008. The Apex Court observed that, when it comes to alienation of scarce natural resources like spectrum etc., it is the burden of the State to ensure that a non-discriminatory method is adopted for

⁹² *Supra* note 80.

⁹³ *Lakshmi Kant Pandey v. Union of India*, (1985) Supp SCC 701.

⁹⁴ *D.K. Basu v. Union of India*, (1997) 1 SCC 416.

⁹⁵ *M.C. Mehta v. Union of India*, (1999) (3) SCALE 6,166, 501, in this case the Court set guidelines for car manufactures to switch over to Euro I and II standards.

⁹⁶ *Vineet Narain v. Union of India*, (1998) 2 SCC 199.

⁹⁷ (2012) 3 SCC 1.

distribution and alienation, which would necessarily result in protection of national public interest. In our view, a duly publicized auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

In the words of Justice A.M. Ahmadi, former Chief Justice of India, PIL 'is a case of citizens finding new ways of expressing of their concern for events occurring at the national level and exerting their involvement in the democratic process.'⁹⁸ However, the credibility of the PIL process is now adversely affected by the criticism that the judiciary is overstepping and transgressing its jurisdiction and that it is unable to supervise the effective implementation of its orders. Because, of these reasons judges have recognized that they have to act with circumspection. The concern was voiced by Pathak J., as follows:⁹⁹

Where the Court embarks upon affirmative action in the attempt to remedy a constitutional imbalance within the social order, few critics will find fault with it so long as it confines itself to the scope of its legitimate authority. But there is always the possibility, in public interest litigation, of succumbing to the temptation of crossing into territory which properly pertains to the Legislature or to the executive Government... In the process of correcting executive error or removing legislative omission the Court can so easily find itself involved in policy making of a quality and to a degree characteristic of political authority, and indeed run the risk of being mistaken for one.

⁹⁸ Justice A.M. Ahmadi, Dr Zakir Hussain Memorial Lecture, (1996) 2 *SCC (journal)* 1 at 11.

⁹⁹ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 at 232.

Justice, Dr A.S. Anand, the former Chief Justice, has cautioned against what he termed as ‘judicial adventurism’.¹⁰⁰

With a view to see that judicial activism does not become ‘judicial adventurism’ and lead a Judge going in pursuit of his own notions of justice and beauty, ignoring the limits of law, the bounds of his jurisdiction and the binding precedents, it is necessary and essential that ‘public interest litigation’ which is taken recourse to for reaching justice to those who are for a variety of reasons unable to approach the Court to protect their fundamental rights should develop on a consistent and firm path. The Courts must be careful to see that by their overzealousness they do not cause any uncertainty or confusion either through their observations during the hearing of a case or through their written verdicts... The Courts have the duty of implementing the constitutional safeguards that protect individual rights but they cannot push back the limits of the Constitution to accommodate the challenged violation. All it means is that Judges are expected to be circumspect and self-disciplined in the discharge of their judicial functions.

Even though separation of powers is essential ingredients of democracy but framer’s of Indian Constitution has not explicitly provided in the Constitution. Nevertheless, the Supreme Court has stated that doctrine of separation of powers is embodied in the Constitution impliedly. However, Supreme Court while deciding the PIL matter related to poor and disadvantaged people to provide justice, it has ventured into the domain of legislation and executive. Further, Court has reiterated that it has constitutional mandate to do all the possible things to deliver justice even though it may be inevitable to offend the separation of powers. Thus, it can be inferred that in Indian legal system there is separation of functions but not separation of powers. To appreciate the role of the Court in proper perspective, one should turn to “New Tripartism of State functions”, suggested by Karl Lowenstein, based on the distinction between policy determination, policy execution, and policy control.¹⁰¹

¹⁰⁰ Justice A.S. Anand, “Protection of Human Rights-Judicial Obligation or Judicial Activism”. Krishna Rao Memorial Lecture, (1997) 7 SCC (Journal) 11 at 23.

¹⁰¹ Karl Lowenstein, *Political Power and the Governmental Process*, (Chicago: University of Chicago Press 1975), p. 42.

5.6 Conclusion

Judiciary has adopted the innovative methods like epistolary and creeping jurisdiction in the PILs to make justice available at the doors of the disadvantaged people. Vibrant, courageous, adventurous judiciary always justifies its trespass into the domain of legislative and administrative as inevitable otherwise the justice would be a casualty. It is non-feasance and mal-feasance of legislature and administration that has made the people to look at the judiciary for the justice. Under such circumstances the judiciary cannot fold its hands on the ground that it would amount to violation of separation of powers, otherwise judiciary abdicates its constitutional obligation of being the guardian of human rights and justice. Especially PIL has emerged as a powerful tool capable of fulfilling the promises that the Constitution held out. That is because of general perception that the legislature is unwilling to take prompt remedial measures and executive is unwilling even to enforce the existing law.

Equally the PIL has certain inherent flaws. The active judges in PIL cases are likely to be treated as heroes or celebrities which may instigate to admit a number of PIL cases even in undeserved matters. Further this may give scope for stepping into the domain of legislative and administrative functions. There is also another danger that already the judiciary is overburdened with lots pending case, under such circumstances admitting the PIL with responsibility of discharging the legislative and Administrative functions and supervising such work may become difficult for judiciary which has not trained for it. Further, it has not required strength of staff and expertise which may lead to crumbling of judiciary like other organs of the states. One more weakness of PIL is that judiciary is independent which is not accountable to the people for its actions in PIL. The

executive is accountable to the legislature and in turn the legislature is accountable to the people. It should be appreciated that the judges are also fallible while discharging their functions. They are not accountable to any other organ established by the Constitution. Therefore, judiciary has to balance between the expectation of people to look for judiciary for every solution; and the legitimate expectation of executive and legislature that judiciary should not usurp their functions. Thus, the PIL should be admitted in genuine and bona-fide cases and judiciary has to show restraint in transcending other functions of government unless its inaction promotes greater injustice.

The Supreme Court in PIL cases has adopted innovative methods of non-adversary procedure to provide justice. However that non-adversary method cannot overlook the procedural due process. Indeed the Supreme Court has stick to that procedural due process. Whenever, PIL is filled before the Court, the Court used to issue notice to other party with sufficient time. Further, Court has given opportunity to other stake holders who wish to become part of the proceedings. Even it has appointed various expert commissions and committees to find out the truth to provide level play field to poor and disadvantaged people. And the copy of committees report is given to other party to respond to the same. Some time the expert committee report is published in the official gazette to draw the attention of affected persons. If these procedures are not observed, it would amounts to denial of justice to those poor persons because they are not economically sound to afford all these expenses. Thus, the Supreme Court has balanced the interest of both parties which is nothing but due process.