CHAPTER V

PIL IN INDIA - A PACE TOWARDS SOCIAL JUSTICE

5.1 PIL—Meaning, Nature and Object

The expression ‘PIL’ indicates ‘Public interest litigation’. It literally means some litigation conducted for the benefit of public or for removal of some public grievances. It may be taken to mean a legal action initiated in a Court of law for the enforcement of the public interest or general interest in which the public or a class of the community have some interest because it will affect their legal rights and liberties. Prof. Upendra Baxi prefers to call it as ‘Social Action Litigation’, because the problems which are brought before the Courts under PIL relate to much wider field of social injustice needing extra-ordinary remedies to undo them. It looks at social problems in a wider spectrum and thus includes social problems like convicted prisoners, women in protective custody, unorganized workers, pavement dwellers and soon.

According to Black’s Law Dictionary (6th Edition), “Public interest is something in which the public, the community at large, has some pecuniary interest or some interest by which their legal rights or liberties are affected. It does not mean anything so narrow as mere curiosity or as the interests of the particular localities, which may be affected by the matters in question”.

In Stroud’s Judicial Dictionary it has been defined as follows:

“A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest or some interest by which their legal rights or liberties are affected”.

The Council for Public Interest Law, set up by the Ford Foundation in U.S.A, defined Public Interest Litigation as under:

“Public Interest Law is the name that has recently been given the efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the
recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalists, consumers, racial ethnic minorities and others”.

Justice Krishna Iyer rightly defined ‘Public Interest Litigation’ as “the product of creative judicial engineering”

Dr. I.P. Massey in his book on ‘Administrative Law’ opined about PIL/SAL as under:

“SAL is a socio-economic movement generated by the judiciary to reach justice especially to the weaker sections of the society for whom even after two and a half decades of independence justice is merely a testing illusion.”

Dr. Massey further states:

“...it is a long term strategy of the judiciary to reach justice to those who due to socio-economic handicap can not reach the doors of the courts”.

Public Interest Litigation is comparatively a recent concept of litigation which occupies an important status in the new regime of public law in different legal systems. By its very nature the concept of PIL is radically different from that of traditional private litigation. PIL is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in case of ordinary litigation, it is intended to prosecute and vindicate public interest which demands that violation of constitutional or legal rights of a large number of people, who are poor, ignorant or socially or economically disadvantaged should not go unnoticed, underdressed, for that would be destructive of rule of law.

Public Interest Litigation aims at providing an effective remedy to the poor, weak and illiterate persons to enforce their rights and interests. The main object underlying behind this concept is to provide social justice or to prevent social injustice. In other words, its object is to bring justice within the reach of the poor masses or deprived and exploited sections of society. It protects and promotes social justice and rule of law in the country.

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5.2 Genesis of PIL

The original concept of PIL has been derived from the *action popularis* of the Roman Jurisprudence which allowed the court access to every citizen in matters of public wrongs.

The term ‘PIL’ comes from the American Jurisprudence where it was designed to provide legal representation to previously unrepresented groups and interests. In United States of America, PIL is considered to be originated from the case of *Gideon v. Wainwright*.

In United Kingdom there have been remarkable developments in the field of PIL largely due to dynamic activism of Lord Denning. The *Mc Whiter case* and three well known *Blackburn cases* clearly established that any member of the public having sufficient interest can maintain an action for enforcing a public duty against a statutory or public authority.

The seed of the concept of PIL was initially sown in India by Justice Krishna Iyer, one of the most prominent and activist judges of the Supreme Court of India in 1976 while deciding *Mumbai Kamgar Sabha v. Abdulbhai*. Although the expression ‘Public Interest Litigation’ was first used by Justice Krishna Iyer and Justice P.N. Bhagawati in the case of *Fertilizer Corporation Kamgar Union v. Union of India*, yet it was well-established by the Apex Court of India in *S.P.Gupta v. Union of India*.

5.3 Reasons for the Growth of PIL in India

One of the basic reasons for the growth of PIL in India is bureaucratic unresponsiveness to public needs. There was no such effective mechanism for the redressal of public grievances against the administration. As a result without having any alternative for the person, aggrieved by the administration, he/she has to take recourse to the court for the redressal of grievances against the administration.

PIL has flourished in India mainly because of the lack of any sense of accountability and responsibility on the part of the Government, if the administration discharges its role faithfully and effectively, there would be no need for the people to

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2. 372 U.S.335.
5. AIR 1976 SC 1455.
7. AIR 1982 SC 149
knock at the doors of the courts to assert their rights and ensure that the administration acts according to law. Many statutes remain on the Statute Books without taking any step by the administration to implement the same. On the other hand, the Courts have played their role in a constructive manner with a view to promote the welfare of the people as well as to strengthen the democratic fabric in the Country.

5.4 PIL— Its Constitutional Conspectus

It is to be noted that in PIL the Court is not exercising any extra-constitutional jurisdiction. Such strategy is firmly rooted in the Preamble, Articles 14 and 21 and Directive Principles of the State Policy etc. of the Constitution of India. From the Preamble of the Constitution it becomes clear that the Constitution emphasizes on equality of status and of opportunity and equal justice to all persons. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It has now been well-established that the aim of both the concepts ‘equality before law’ and ‘equal protection of law’ is the basic pillars of equal justice. The Constitution confers on the citizens various fundamental rights including the right to equality and right to life and personal liberty. The right to life and personal liberty includes the right to free legal aid. Right to life is taken to mean right to live with human dignity free from exploitation.

The guarantee of equality or equal justice or the Fundamental Rights conferred on the citizens would be meaningless if they can not be enforced by poor, illiterate or weak persons. The Directive Principles of the State Policy contained in Articles 38 and 39 A have also been taken into account in allowing the development of Public Interest Litigation. According to Article 38 the State shall strive to promote the welfare of the people securing and protecting as effectively as it may, a social order in which justice— social, economic and political, shall inform all the institutions of the national life. It also provides that the State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

According to Art.39A the State shall secure that operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular provide free

legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities\(^9\).

The rule of law which permeates the entire fabrics of the Constitution of India and forms one of its basic structures, requires that poor or illiterate person should be assisted in enforcing their rights. If the poor persons can not enforce the rights given to them by law because of poverty, there will be no rule of law in real sense.

On account of all these reasons the \textit{locus standi} concept has been relaxed and any public spirited person or group or organization is allowed to file Public Interest Litigation in good faith for vindicating and effectuating the public interest by preventing the violation of the right of the poors, illiterates etc. In PIL proceedings are initiated under Articles 32 and 226 of the Constitution of India.

5.5 PIL-Its \textit{locus standi} Perspective

\textit{Locus standi} is a Latin phrase. The common meaning of \textit{locus standi} is the rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. According to the traditional rule it was only a person who suffered legal injury by reason of violation of his right, a legally protected interest can file a suit for the redress of his grievance. But with the emerging patterns of public law rights and remedies, the Supreme Court of India has liberalized the rule of \textit{locus standi} in order to enforce constitutional and other legal rights and provide benefits to the have-nots of the present day society and to bring socio-economic justice within the reach of ordinary man by saying that in an appropriate case it may become necessary in changing awareness of the legal rights and social obligations to take a broader view of \textit{locus} to initiate proceedings, be it under Art. 226 or Art.32 of the Constitution of India\(^10\).

The \textit{locus standi} rule has been relaxed mainly to provide down-trodden, oppressed and exploited sections of society easy excess to justice. The philosophy underlying behind this relaxed \textit{locus standi} principle is that where a legal wrong or legal injury is caused to a person or a determinate class of persons by reason of violation of their fundamental rights or legal rights and such person or class is not able to approach the Court for relief due to poverty or socially and economically


disadvantaged position, any public spirited person or social activist or social action organization may file petition or application for writ, order or direction in the High Court under Art.226 and in case of violation of the fundamental right of such person or group may file petition or application in the Supreme Court under Art.32.

Earlier the object of PIL was to relax the *locus standi* principle mainly when the petition was filed by the social activist on behalf of the person or class of persons who were not able to approach the Court for enforcement of their right because of being poor and down-trodden or in socially and economically disadvantaged position. It was therefore, named as Social Action Litigation. However, very soon its scope was enlarged and petition for such litigation was allowed not only in case of down-trodden or socially or economically backward person or persons but also in other cases where the writ or petition was filed to protect the public interest or common interest.

In *Bandhua Mukti Morcha*\(^\text{11}\), an organization dedicated to the cause of bonded labourer gave a letter to the Supreme Court and thereby informed the Court about the existence of the bonded labourers in Faridabad District of State of Haryana and prayed for the issue of writ for release of bonded labourer and for proper implementation of the various provisions of the Constitution and statutes with a view to end suffering and helplessness of such labourers. The Court treated the letter as writ petition and entertained. Further, the Court appointed a Commission to make inquiries and report to the Court about the existence of bonded labourers in the said area. The Court expressed the view that Public Interest Litigation should not be taken to be in the nature of adversary litigation. It is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable section of the community and to assure them social and economic justice which is the rigid tune of the Constitution. Even a letter given by the public spirited individuals or social action group is treated as writ petition by the Court and the Court readily responds to it\(^\text{12}\).

In *S.P. Gupta v. Union of India*\(^\text{13}\), the phrase *locus standi* has been liberally interpreted in the field of PIL to allow *standi* to any *pro bono publico* and this case can be regarded as the precursor of Public Interest Litigation in India. Herein this case, Justice Bagawati laid down the judicial norm of liberalized *locus standi* by

\(^{11}\) *supra* note 8.

\(^{12}\) *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

\(^{13}\) *ibid*, also known as *Judges Transfer Case I*. 
observing that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty or observance of such constitutional or legal provision”.

Further, in *Asiad’s Case*14, Justice P.N. Bhagawati stated that the thus interpreted rule of *locus standi* has been made broad-based and people-oriented to allow access to justice through ‘class action’, ‘representative action’ and ‘Public or Social Action Litigation’ so that justice lowly be available to the lowly and lost.

The scope of *locus standi* is no more combined to private injury but it has been extended to public injury. Standing is allowed to public spirited individuals and social activists to initiate proceedings in the Court of law on behalf of those who on account of their poverty, illiteracy and ignorance can not come to the Court and thus continue to suffer injustice and deprivation.

### 5.6 PIL under Writ Jurisdiction

In the Field of PIL the writ Jurisdiction of the Supreme Court of India and High Courts of the States under Articles 32 and 226 of the Constitution respectively plays an important role. The PIL petitions are usually filed by making a prayer to the Courts to issue suitable writ.

Arts.32 and 226 empower the Supreme Court and High Courts to issue writs of following natures which may be discussed as under:

#### 5.6.1 Habeas Corpus

*Habeas corpus* means ‘bring the body’. The writ of *habeas corpus* is issued as an order calling upon the person who has detained another person to produce detenu before the Court to examine the legality of his detention. If the detenu is produced before the Court and the Court finds the detention illegal, it will order that the person so detained should be released immediately. The object of this writ is to secure the release of the person detained illegally whether in prison or in private custody. It provides quick remedy to the person detained illegally. Ordinaril, the person whose fundamental right has been infringed is entitled to apply for relief under Art. 32 and whose fundamental right or other legal right has been infringed may apply for relief under Art.226. The application for writ of *habeas corpus* may be made by the detenu.

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himself or if he is not in a position to do so, then by any other person on his behalf\textsuperscript{15}. The application for the writ of \textit{habeas corpus} may be made even by a social worker\textsuperscript{16}. For example, if a child detained illegally and he has no guardian or his guardian is not capable to apply or does not apply, an application for the issue of the writ of habeas corpus may be made by his relative or friend. When the application for the writ of habeas corpus is made by a person other than detenu, the person making such application is required to give reasons as to why the person so detained could not make the affidavit himself. In the case of application for the writ of habeas corpus, the strict rules of pleading are not followed. Even a post-card written by the detenu from the prison will be sufficient to move the Court into examining the legality of his detention\textsuperscript{17}. In this case, the Supreme Court has made it clear that it is for the detaining authority to prove that the detention is in accordance with the procedure established by law.

In \textit{A.D.M., Jabalpur v. Shivakant Shukla}\textsuperscript{18} the Supreme Court held that in case of the order of the president under Art. 359 (1) no petition under Art. 226 is maintainable to enforce any of the Fundamental rights specified in that order. In such a situation no person has \textit{locus standi} to move any writ petition under Art.226 before a High Court for \textit{habeas corpus} or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by \textit{mala-fide} factual or legal or is based on extraneous consideration. Further, the Court held that in case of suspension of Art. 21 by the order of the President under Art.359 the detenu loses the \textit{locus standi} to regain his liberty on any ground and the Supreme Court or High Court loses its jurisdiction to grant him relief for this purpose on any ground, e.g., \textit{mala fide} or \textit{ultra virus} or abuse of power etc. After the Constitution (44\textsuperscript{th} Amendment) Act, 1978 where a proclamation of emergency is in operation the President may, by order, declare that the right to move any court for the enforcement of such right conferred by part III of the Constitution except Articles 20 and 21, as may be mentioned in the order shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the order.

\textsuperscript{15} \textit{Sheela Barse v. Union of India}, AIR 1983 SC 378.
\textsuperscript{16} \textit{Kamaladevi v. State of Punjab},(1985) 1SCC 41.
\textsuperscript{17} \textit{Icchu Devi v. Union of India}, AIR 1980 SC 1983.
\textsuperscript{18} Popluarly known as \textit{habeas corpus case}, AIR 1976 SC 1207
A petition for *habeas corpus* is not maintainable against the private person who has illegally detained the petitioner. If the petitioner has been illegally detained by the State as defined under Art. 12, the petition for the issue of the writ of *habeas corpus* is maintainable against any detentu whether a private person or the State.

The writ of *habeas corpus* is issued if the detention is *prima-facie* illegal. The detention is illegal if there is no law supporting the detention or if the detention is under the law which is unconstitutional or the detention is under a valid law but procedure established by the law has not been followed, i.e., the detention is in violation of the procedure established by the law. The detention in contravention with the provisions of Art.22 is treated as illegal detention and in such a situation, the petition for *habeas corpus* is maintainable. Thus, the detention will be illegal if the person arrested is not produced before the Magistrate within 24 hours of his detention and in such condition the *habeas corpus* petition will be maintainable.

For the issue of writ of *habeas corpus* the illegal detention must continue at the time of the issue of the writ. If a petition for the issue of this writ is filed and the detenu is released during the pendency of the proceeding, the petition may be dismissed on the ground of its having become infructuous or fruitless.

In the case of petition for *habeas corpus*, the rule of *res judicata* does not apply and thus, the petition for *habeas corpus* is an exception to the rule of *res judicata*19. If the petition for *habeas corpus* under Art. 226 is dismissed by the High Court, the petitioner may file petition for *habeas corpus* in the Supreme Court under Art 3220.

In *Kanu Sanyal v. D.M. Darjeeling*21, the Supreme Court has made it clear that the production of the body of the detenu before the Court is not necessary for hearing and disposing of the petition by the Court.

A person can not plead that the writ of *habeas corpus* should not be issued as the criminal proceedings have already been started against him. For example, if a father snatched away his child from lawful custody of the child’s mother and a criminal proceeding is started against him and during the pendency of the proceeding the mother files a petition for the issue of the writ of *habeas corpus*, the Court may

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issue the writ and the father can not plead that the criminal proceeding has already been started against him and therefore the writ may not be issued\(^\text{22}\).

### 5.6.2 Mandamus

The writ of *mandamus* is, in form, a command issued by the Superior Court (the Supreme Court or High Court) to the Government, inferior court, tribunal, public authority, corporation or any other person having public duty to perform asking such Government, inferior court, tribunal, public authority, corporation, person to perform the public duty or to refrain from doing illegal act. “*Mandamus* is a command issued to direct any person, corporation, inferior court or Government requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of public duty”\(^\text{23}\). In *Shenoy & Co. v. C.T.O*\(^\text{24}\), the Supreme Court held that it should be taken to mean a command issued by the Court competent to do so, to a public servant, amongst others to perform a duty attaching to the office, failure to perform of which leads to the invitation of action. For example, if the order of the tribunal is not implemented by the Government, the *mandamus* may be issued by the Court directing the Government to do its legal duty by implementing the order\(^\text{25}\). The *mandamus* may be issued to a corporation to carry out duties placed on it by the statute creating it. However, a company which is incorporated under the Indian Companies Act and has neither statutory duty nor public duty to perform, the mandamus can not lie\(^\text{26}\). The main object of this writ is to compel the performance of public duties prescribed by the statute and to keep the subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It is issued to secure the performance of a public duty, in the performance of which the applicant has a substantial legal interest.

*Mandamus* can be issued to any authority exercising public functionings. Thus, it can be issued to any authority whether it exercises administrative, legislative, judicial or quasi-judicial functioning. The court can not issue *mandamus* to the legislature to make law retrospectively. For the issue of this writ the following conditions are required to be fulfilled—


\(^{24}\) AIR 1985 SC 881.

\(^{25}\) Sharif v. R.T.O, Meerut, AIR 1978 SC 209

\(^{26}\) Praga Tools Corporation v. Imanual, AIR 1969 SC 1306
(i) The person or authority against whom this writ is sought to be issued must have public duties to perform and there must have been failure on his part in performance of his duties. The duty will be public duty if it is created by a statute or rule of common law.

(ii) The performance of the duties by the person or the authority must be imperative or mandatory and not discretionary. If the duty is merely discretionary, the writ of mandamus can not be issued to enforce it. However, in *Supreme Court Advocates on Record Association v. Union of India*\(^{27}\), the Supreme Court held that even if the duty is discretionary a limited *mandamus* can be issued directing the public authority to exercise the discretion with a reasonable time in accordance with law.

(iii) The petitioner should have legal right to compel the authority or the person against whom he seeks the issue of the writ of *mandamus* to perform his public duty. He has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the *mandamus* is sought and such right must be subsisting on the date of the petition\(^{28}\).

(iv) That, the petitioner has called upon the authority concerned to perform its public duty and the authority concerned has refused to do so\(^ {29}\).

Any person who is affected by the violation of the statutory duty or the abuse of statutory power may apply for the issue of the writ of *mandamus*.

### 5.6.3 Certiorari

The writ of *certiorari* is the writ which is issued by the Superior Court (i.e., the High court or the Supreme Court) to the inferior court or tribunal or body exercising judicial or quasi-judicial functions to remove the proceedings from such court, tribunal or body for examining the legality of the proceedings. If the order passed by the inferior court or tribunal or body exercising judicial or quasi-judicial functions is found to be illegal the Superior Court may demolish it. Whenever any body of persons having legal authority to determine questions affecting rights of subject having the duty to act judicially and acts in excess of their legal authority, *certiorari* may lie to quash a decision that goes beyond jurisdiction.

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\(^{27}\) AIR 1994 SC 268.

\(^{28}\) *Director of Settlement, A.P. v. M.R Apparao*, AIR 2002 SC 1598.

The object of the writ of certiorari is to keep the inferior courts or tribunals or bodies exercising judicial or quasi-judicial functions within the limits of the jurisdiction assigned to them by law and to prevent from acting in excess of their jurisdiction.

These writs are issued by the Superior Court in exercise of its supervisory function and not in exercise of its appellate function. In the exercise of the writ jurisdiction the Superior Court cannot convert itself into a Court of appeal and cannot interfere with the finding of fact unless it is proved that it is wholly unsupported by evidence. By means of certiorari the Superior Court can demolish the order of the inferior court or tribunal or body exercising judicial or quasi-judicial functions if it finds the order illegal but it cannot substitute its own views for those of the said inferior court or tribunal or body. It cannot be issued to quash an Act or Ordinance on the ground that it is constitutionally invalid. It cannot be issued to correct a mere error of law except where the error is error apparent to the face of record. It is available against judicial or quasi-judicial authority.

In *Surya Dev Rai v. Ram Chandra Rai*, the Supreme Court has held that certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted –

(i) without jurisdiction by assuming jurisdiction where there exists none; or,

(ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction; or,

(iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

Generally, the person whose legal right has been invaded may apply for certiorari. Thus, the person aggrieved by the impugned order may apply for certiorari. However, if the matter to be reviewed is one which affects the people generally, an individual citizen may ordinarily invoke the remedy of certiorari as may such private citizen who suffers peculiar injury by reason of a judgment or order in excess of jurisdiction. Any member of the public, who has not disentitled himself by his conduct, may draw the attention of a Superior Court to an order passed by

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subordinate tribunal being manifestly illegal or ultra virus, for it is the duty of the Superior Court to quash such order. The real test is whether the petitioner has been aggrieved by the order complained of. If the test is satisfied even a firm or a non-statutory body such as the Managing Committee of a school may apply for certiorari.

The writ of certiorari can be issued to any constitutional, statutory and non-statutory body, authority or person who exercise judicial, quasi-judicial or administrative function affecting right of any person. This can be issued in case of violation of the principles of natural justice. The writ of certiorari is not issued duly to quash an order or action but it can be issued to reinstate. However, it has been held in Prabodh v. State of U.P.\(^2\), that certiorari can not be issued to call for the record or papers and proceedings of an Act or Ordinance.

The grounds or conditions for the issue of this writ may be summed up as follows—

(i) That, the inferior court or tribunal or body exercising judicial or quasi-judicial function acts without jurisdiction or acts in excess of the jurisdiction or has abused its jurisdiction or has failed to exercise its jurisdiction;

(ii) That, there is error of law apparent on the face of record;

(iii) That, a judicial or quasi-judicial authority acts in violation of the principles of natural justice.

5.6.4 Prohibition

The writ of prohibition is issued by a Superior Court to an inferior court or tribunal or body from usurping jurisdiction which is not legally vested therein or from acting in violation of the principles of natural justice or from acting under the unconstitutional law. Prohibition is a writ issuing out of the High Court of Justice and directed to an inferior court which forbids such court to continue proceedings therein in excess of its jurisdiction or in contravention of law of the land\(^3\).

The object of the prohibition is to restrain the inferior courts or tribunals or bodies exercising judicial or quasi-judicial functions from exceeding their jurisdiction and thus, to keep them within the limit of their jurisdiction.

Prohibition and certiorari are similar in many respects. Both are issued by the Superior Court to inferior court or tribunal or body exercising judicial or quasi-

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\(^2\) AIR 1985 SC 167.

\(^3\) East India Commercial Co. v. Collector of Customs, AIR 1962 SC 1895.
judicial functions. Both are issued on the similar grounds. The object of both the writs is to restrain the inferior courts or tribunals or bodies exercising judicial and quasi-judicial functions from exceeding their jurisdiction. However, the main difference between prohibition and certiorari is that prohibition is issued before the proceedings are completed while certiorari is issued after the decision is given by the inferior court or tribunal. If the proceedings before the inferior court or tribunal are not completed, the aggrieved person may move the Superior Court for prohibition and the Superior Court may issue prohibition to forbid the inferior court or tribunal from continuing the proceedings but if the inferior court or tribunal has heard the matter and given a decision and thus the proceedings are completed, the aggrieved person may move the Superior Court to issue certiorari so as to quash the decision given by the inferior court or tribunal.

The writ of prohibition lies in cases where the inferior court or tribunal or body exercising judicial or quasi-judicial functions are without jurisdiction or in excess of jurisdiction or under a law which itself is ultra vires or unconstitutional or in violation of the principles of natural justice or in contravention of the fundamental rights.

5.6.5 Quo- Warranto

The literal meaning of quo-warranto is ‘by what authority’. By this writ a person who occupies or usurps an independent substantive office is asked to show by what authority he claims it. According to Halsbury “An information in the nature of quo-warranto took the place of the obsolete writ of quo-warranto which lay against a person who claimed or usurped an office, franchise or liberty to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined”.

The procedure of quo-warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of appointment to public office against the relevant statutory provision. By this writ the Court protects a citizen from being deprived of a public office to which he is legally entitled to hold. With respect to the writ of quo-warranto the Supreme Court has made it clear that the person not entitled to the post can be ousted and the person entitled to the post can be allowed to occupy it.

For the issue of quo-warranto the following conditions are required to be fulfilled—
that, the office in question must be a public office of substantive character. In the case of *University of Mysore v. Govind Rao*\(^{34}\), the Supreme Court has held that for this purpose substantive office should be taken to mean an office independent in title. The office may be one in respect of which nomination or appointment is made or it may be elective office. The office is required to be an office of public character and also of substantive character. It can not be issued if the office in question is an office of a private character. It can not be issued against the members of the Managing Committee of a private school or of a working Committee of a private religious institution as they do not hold the office of public nature. The expression ‘public office’ for this purpose has not been defined in the Constitution. However, the office is regarded as public office if the duties of the office are public in nature or public have an interest in the office or created by the Constitution or by statute; and

(ii) that, the office must be held by a person without legal authority. For the purpose of issue of this writ the public office of substantive character is required to be held by a person who is not legally qualified to hold the office or some statutory provisions must have been violated in making the appointment of the person to the office which makes his title of the office invalid.

In case of *quo-warranto* there is an exception to the general rule that only a person who is individually aggrieved can apply for the issue of the writ of *quo-warranto*. For the issue of *quo-warranto* the petitioner does not necessarily seek to enforce his own right but challenges the right of the respondent to hold the public office. A stranger whose motive is not improper may apply for the issue of *quo-warranto*. Thus, any person whether or not any fundamental or other legal right of such person has been violated may apply *bona-fide* for the issue of *quo-warranto*.

### 5.7 Seminal Trend of the Judiciary in PIL and Public Welfare

In India the seeds of Public Interest Litigation were sown in 1976. The case of *Ratlam Municipality v. Vardichand*\(^{35}\); *Akhil Bharatiya Shoshit Karmachari Sangha (Rly) v. Union of India*\(^{36}\); *The Fertilizer Corporation Kamgar Union v. Union of India*\(^{37}\).
India\textsuperscript{37} may be mentioned as instances of Public Interest Litigation. In Akhil Bharatiya Shoshit Karmachari Sangha (Rly), Justice Krisha Iyer used the term Public Interest Litigation. The Akhil Bharatiya Shoshit Karmachari Sangha which was an unregistered society was allowed to file a Public Interest Litigation.

PIL has today become a by-word for judicial involvement for the protection of human rights and preservation of rule of law. Ideologically, the PIL activism addresses and confronts the domination formations in civil society and seeks public discourse on practices of power.

In Lawyers’ Initiative through R.S. Bains and Others v. State of Punjab through its Chief Secretary and Others\textsuperscript{38}, the Punjab and Haryana High Court has made it clear that the Court would allow litigation in public interest if it is found ---

(i) That, the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India (i.e., the Fundamental Rights guaranteed by Part III of the Constitution of India) and relief is sought for its enforcement;

(ii) That, the action complained of is palpably illegal or \textit{mala-fide} and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That, the person or a group of persons is approaching the Court in public interest for redressal of public inquiry arising from the breach of public duty or from violation of some provisions of the constitutional law;

(iv) That, such person or a group of persons is not a busy body of meddlesome interloper and has not approached with \textit{mala-fide} intention of vindicating their personal vengeance or grievances;

(v) That, the process of public interest litigation is not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justifiable in such litigation;

(vi) That, the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That, the State action was being tried to be covered under carpet and intended to be thrown out on technicalities;

\textsuperscript{37} AIR 1981 SC 344
\textsuperscript{38} AIR 1996 P & H1
(viii) That, Public Interest Litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court is of such a nature which required examination;

(ix) That, the person approaching the Court has come with clean hands, clean heart and clean objective;

(x) That, before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with *mala-fide* objective of either for vindication of their personal grievances or by resorting to blackmailing or consideration extraneous to public interest.

The Supreme Court of India has been made the guardian and protector of the Constitution. The Constitution has assigned it the role to ensure rule of law including the supremacy of law in the country. For this purpose it has been conferred wide power of judicial review.

Judicial activism may be taken to mean the movements of the judiciary to probe into the inner functioning of the other organs of the Government (i.e., the Executive and Legislature). The judicial activism is, no doubt, the result of inactiveness on the part of the Executive and Legislature. It is the function of the legislature to make law and of the Executive to implement the law. But, both the organs have failed to discharge their functions satisfactorily. In such circumstances, it is not the power but the duty of the Court to uphold the Constitution and compel the other organs of the Government to discharge their functions properly. The Supreme Court being the guardian of the Constitution can not remain silent. It can direct the Legislature and Executive to discharge the functions assigned to them by the Constitution. Although the doctrine of separation of powers says that each organ of the Government should perform its own functions and should not interfere with the functioning of other organs or should not usurp the functions or powers of the other organs, yet at the same time the judiciary, in addition to its judicial functions, have been assigned the function to see that the Constitution is not violated by any person, body or authority including the Legislature and Executive. If the Executive and Legislature do not perform the functions assigned to them by the Constitution, the Court may direct them to discharge the said functions. On several occasions, the Court has directed the Executive or Legislature to discharge their duties or functions.
The main object of judicial activism is to maintain the rule of law in the country. The rule of law requires each organ of the Government has to perform the functions assigned to it by the Constitution. If the Legislature does not make required laws and the Executive does not execute the law, does not arrest the law breakers and does not collect evidence against them, there will be complete death of the rule of law. The Court can not be and should not be a party to it as it is the guardian of the Constitution and protector of the rule of law in the Country. It has rightly been said that to safeguard the rule of law, on the foundation of which the superstructure of democratic rule rests, judicial activism becomes the need of the hour.

The conceptual base of judicial activism was evolved since the day of Greek Philosophers. The great Greek Philosopher Aristotle said that rule of law is preferable to that of any individual. In England, Magna Carta, 1215 and its subsequent confirmation by the Petition of Rights, 1628 and the Bill of Rights, 1688 promoted this theory in urging to prevent the enactment of arbitrary tyrannous laws. But in true sense this theory has acquired its place in the field of jurisprudence after the historic American judgment by Chief Justice Marshall in *Marbury v. Madison*\(^\text{39}\). The twin concepts of judicial review and judicial activism are said to be born from this historic judgment of Chief Justice Marshall.

The Constitution of independent India widened the scope of judicial review to include the laws and executive orders involving Fundamental Rights. The founding fathers of our Constitution placed enormous powers in the hands of the judiciary. Dr. B.R.Ambedkar, Chairperson of the Drafting Committee defend the provisions of judicial review as being abridgement of fundamental rights of the people. The basis of judicial review is far more secured under our sacrosanct Constitution than the U.S. Supreme Court. Although the term judicial review is nowhere used in the Constitution of India and no direct or explicit authority has been conferred on the higher judiciaries of the country for that purpose, yet the higher judiciaries of India have been exercising the power of judicial review based on several provisions of the Constitution such as Articles 13(2), 32, 131 to 136, 141 to 143 and 226 respectively. Unlike the U.S. Constitution, the Constitution of India, not explicitly but implicitly establishes the doctrine of judicial review in terms of these provisions of the Constitution.

\(^{39}\) Cranch (5US) 137 (1803).
Judicial review is a significant derivative from rule of law and it is an essential part thereof. It involves not only of the constitutionality of the law but also of the validity of administrative action. The actions of the State public authorities and bureaucracy are all subject to judicial review.

Judicial review is very much essential in a country like India where checks and balance between different organs of the government is necessary to protect the rule of law and constitutionalism which were the philosophy of the Constitution-makers. The Supreme Court of India has observed this doctrine as basic feature in different judgments starting from Keshavananda\textsuperscript{40} to L. Chandra Kumar\textsuperscript{41}. In I.R.Coelho\textsuperscript{42}, a nine judges bench of the Supreme Court of India consisting of Y.K. Sabharwal, C.J., Ashok Bhan, Dr. Arijit Pasayat, B.P. Singh, S.H. Kapadia, C.K. Thakker, P.K. Balasubramanyan, Altamas Kabir and D. K.Jain, JJ., observed that the power of judicial review conferred upon the Supreme Court under Art.32 of the Constitution of India forms an integral part of the basic structures of the Constitution which can not be abrogated by any Article. The doctrine of judicial review has been ordained in our Constitution, it has been playing its role effectively and shall be continued for greater interest of the nation.

After two/three decades of the operation of the doctrine of judicial review in post-independence, judicial review is began to be considered inadequate not only by the Superior Courts or the Constitutional Courts interpreting the Constitution, but also in some cases even by the political beneficiaries who are impatient for instant justice although that has not been sanctioned by our written Constitution. Thus, during the second half of the 20\textsuperscript{th} century the doctrine of judicial review assumed a new aspect which is known as judicial activism. In early fifties, activism was manifested in striking down of most of the Land Reform Legislations by the Supreme Court of India on the ground of being unconstitutional and volative of the fundamental right to property guaranteed by Art. 31 of the Constitution. In late 1960’s the Supreme Court of India by its decision in Golak Nath’s case\textsuperscript{43} has evolved as an activist Court. Herein this case, the decision was an assertion by the Court of its role as the protector and preserver of the Constitution.

\textsuperscript{40} Keshavananda Bharati v. State of Kerela, AIR 1973 SC 1461.
\textsuperscript{41} L. Chandrakumar v. Union of India, (1997)3 SCC 261.
\textsuperscript{42} I.R. Coelho (Dead) by L. Rs. v. State of Tamil Nadu, AIR 2007, SCC 861, para 40.
\textsuperscript{43} Golak Nath v. State of Punjab, AIR 1967 SC 1643.
In the landmark judgment of *Maneka Gandhi*\(^{44}\), the Supreme Court moved forward with speed in protecting and upholding human rights which incorporated many more rights such as right to livelihood, right against inhuman treatment, right of prisoners, right to bail and speedy trial etc.

In the sphere of economic and social rights, the activist judges of the Supreme Court of India have evolved a new Indian jurisprudence which is described as judicial law making. In this manner, by judicial creativity to suit the Indian conditions, the current trend of judicial activism has advanced the cause of justice in accordance with the constitutional scheme and thereby has ensured the interpretation of rule of law. The task of interpreting the Constitution is a highly creative judicial function. A democratic society lives and swears by certain values such as individual liberty, human dignity, rule of law, constitutionalism, limited Government etc. It is the ultimate task of the Apex Court of the land to so interpret the Constitution and the law as to inculcate constantly these values on which democracy thrives. Judicial review is the cornerstone of constitutionalism.

Recently, the Supreme Court of India is playing a very significant role as a law creating organ by exercising the power of judicial review. Since the commencement of the Constitution, this august judicial institution of the country has been rendering a number of decisions expounding various provisions of the Constitution. At the present set up, the Apex Court of India is the ultimate and most powerful organ for scrutinizing the legislative process. During the last three/four decades the Supreme Court of India has been playing a very creative role in administration of justice which is a departure from the committed judiciary of the past to the activist judiciary today. It becomes possible only for the creative role played by some prominent judges of the Supreme Court of India like Justice Krishna Iyer, Justice P.N. Bhagawati, who through their various pronouncements turn the role of the Court into an activist one. They believe in law creating role of the Supreme Court. The society is changing, therefore law should not be static. It should change with the changing needs of the society. Law must respond to the demands of the present. In *Gujrat Steel Tubes*\(^{45}\) Justice Krishna Iyer held that the Court can create law for the welfare of the society. Justice P.N. Bhagawati also felt that by following the creative

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interpretation, without violating law, in terms of creative and imaginative interpretation which is sensitive to the cause of the deprived and weaker sections of society, a judge can effectively serve the objective of social justice. After all Justice Krishna Iyer and Justice. P.N. Bhagawati championed the cause of judicial activism to promote social justice by liberalizing the rule of *locus standi* in PIL cases which can be termed as a revolution in the history of judicial activism in India.

Development of public interest litigation has also provided significant assistance in making the judicial activism meaningful. Now the Court entertains public interest litigation from any public spirited citizen or organization acting *bona fide* for the enforcement of fundamental right of a person in custody or of a class or group of persons who by reason of poverty or disability or socially or economically disadvantaged position find it difficult to approach the Court for redress. By dint of these public interest litigations the Court has found opportunity to give directions and orders relating to environment protection, labour welfare, investigation by C.B.I. or police, human rights etc. for the sake of greater interest of the public.

The public interest litigation cases have revealed the plight of the labour classes and inactiveness on the part of the Government in implementing the labour laws and have provided opportunity to the Court in rendering appropriate relief thereto. In *Bandhua Mukti Morcha* 46, the Supreme Court of India has made it clear that the right to life guaranteed by Article 21 should be taken to mean right to life with human dignity free from exploitation. In this case, the Supreme Court was informed through a letter that bonded labour was in existence in stone-quarries in Faridabad. The Court appointed a Commission to visit the said stone quarries and make inquiries and submit its report to the Court. In *People’s Union for Democratic Rights v. Union of India* 47, the Supreme Court held that non-enforcement of the provisions of labour laws i.e., Minimum Wages Act, 1948 etc. by the State is violative of the workers right to live with human dignity as enshrined in Art. 21 of the Constitution.

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46. supra note 8.
47. supra note 14
In *Neerja Chaudhary v. State of M.P.*\(^{48}\), the Supreme Court has made it clear that the bonded labours should not only be identified and released but also rehabilitated after release.

In *Sheela Barse (I) v. Union of India*\(^{49}\), the petitioner Sheela Barse, a journalist as well as social worker filed a PIL for the welfare of the children. She brought the attention of the Court towards the unsatisfactory implementation of children laws by several States. The Court was requested to issue direction for the production of complete information about the children in prison and also information about the juvenile courts, observation homes and schools for children. The Court was also requested to issue directions to all the District Judges in the country to visit jails under their jurisdiction to ensure that the children were properly looked after while they were in custody. The Court admired the effort made by the petitioner through public interest litigation for the welfare of the children and also for her plan to visit different prisons in the country to collect necessary informations about the children in jails and juvenile courts etc. The Court directed the Central Government to pay Rs. 10,000/- to the petitioner for the expenses and provide her necessary assistance in collecting the said information. The Court directed all the District Judges to visit the jails to investigate and submit report to the Supreme Court within ten weeks about the condition of the children in jails, existence of juvenile courts and observation homes within their jurisdiction. The Court expressed regret that the Children’s Act have not been enforced in most of the States. The Court directed that the Children’s Act enacted by the State must be brought in force and their provisions be implemented vigorously.

In *Sheela Barse (II) v. Union of India*\(^{50}\), on the basis of the petition filed by Sheela Barse for the welfare of children should not be kept in jails even if they were accused of offences. The State should set up juvenile courts and observation homes for such children because in a civilized society jails are not the place where the children should be kept. The Court suggested for the enactment of a central legislation on children so as to ensure uniformity in legislation.

\(^{48}\) AIR 1982 SC 1099.
\(^{49}\) *supra note* 15
\(^{50}\) (1986) 3 SCC 632. .
Thus, the Supreme Court appears to be very active for the child welfare. The public interest litigation has provided it opportunity to compel the State to enforce the laws enacted for child welfare.

*Olga Tellis v. Bombay Municipal Corporation*\(^{51}\) may be regarded as one of the remarkable public interest litigations, filed for the protection of the pavement dwellers. Forcible eviction and demolition of pavement and slum dwellings were ordered by the Bombay Municipal Corporation. The petitioners challenged this order. Some Sections of the Bombay Municipal Corporation Act, 1949 i.e., Sections 313, 313A, 314 and 497, empowering the said Corporation to remove the pavement and slum dwellers huts were challenged on the ground that Article 21 of the Constitution of India includes right to livelihood and these sections of the enactment are against Art.21 as they are in violation of the right to livelihood. The Court held that although the right to life under Art. 21 includes the right to livelihood, yet this right is not absolute. It may be curtailed by following the just, reasonable and fair procedure. The aforesaid Sections of the Bombay Municipal Corporation Act were held to be valid as they impose reasonable restrictions in public interest. Pavement or public foot path are not meant for carrying on trade or business thereon.

The Court further directed for framing a scheme for demarcating hawking and non-hawking zones and thereafter licenses for selling goods in hawking zones should be given. For refusal of license in hawking zones there must be good reasons. The Court held that right to livelihood is one of the facets of right to life because no one can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 of the Constitution require the State to secure the citizens an adequate means of livelihood and the right to work, it would be sheer pendentary to exclude the right to livelihood from the contents of the right to life.

The writ jurisdiction of the higher judiciaries of India (i.e., the jurisdiction of the Supreme Court under Art.32 and the High Courts under Art. 226) plays an important role in the public interest litigation. The PIL petitions are usually filed with a prayer/prayers to issue suitable writ by the Court to the authority concerned.

\(^{51}\) AIR 1986 SC 180
In Bhopal Gas Disaster case\textsuperscript{52}, in order to provide immediate relief to the victims of the Bhopal Gas tragedy, on a PIL petition the Supreme Court of India held the validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985.

\textit{Dr. Upendra Baxi v. State of Uttar Pradesh}\textsuperscript{53} is one of the most important PIL cases where two Professors of Law from Delhi University were allowed to initiate proceedings for investigation into the functioning of a women’s protective home in Agra, although neither of these Professors nor any of their friends and relatives were affected by the sub-humane conditions of the homes.

In \textit{M.C. Mahta v. Union of India}\textsuperscript{54}, the Supreme Court held that the direction to convert all buses operating in Delhi to CNG fuel mode has been given for safeguarding the health of the people and their right to it provided and protected by Art.21.

In another case of \textit{M.C. Mehta}\textsuperscript{55}, the Supreme Court of India held that the right to life guaranteed by Art.21 of the Constitution includes the right to enjoyment of pollution free water and air for full enjoyment of life.

\textit{Narmada Bachao Andolan v. Union of India}\textsuperscript{56} is one of the remarkable PIL cases where the PIL petition was moved by Medha Patkar, a social activist and environmentalist. Herein this case, the Supreme Court of India cleared the proposal of Narmada Project permitting the dam to be made up to an additional height of five meters but with a condition to adequate rehabilitation and alternative arrangement for the lacs of victims which are to be evacuated from the dam side.

In \textit{Sarbananda Sonowal v. Union of India}\textsuperscript{57}, responding to the PIL petition filed by Sarbananda Sonowal, MLA (Assam), the Supreme Court held that illegal migration of foreigners to Assam amounts to external aggression and internal disturbance as enjoined under Art. 355 of the Constitution of India. It was indeed a bold decision on a vital question of national importance with political overtones. In this case, Illegal Migrants (Determination by Tribunals) Act, 1983 was held as

\textsuperscript{52}. Also Known as \textit{Charanlal Sahu v. Union of India}, AIR 1990 SC 1480.
\textsuperscript{53}. AIR 1987 SC 191.
\textsuperscript{54}. AIR 2001 SC 1948
\textsuperscript{55}. \textit{M.C. Mehta v. Union of India}, AIR 2004 SCW 4033.
\textsuperscript{56}. AIR 2000 SC 3751.
\textsuperscript{57}. (2005) 5 SCC 665.
unconstitutional as having disastrous effect of giving shelter and protection to foreign nationals who have illegally transgressed India.

Recently, in the PIL case of *Abhishek Goenka v. Union of India and Anr.*\(^5\)\(^8\), the Supreme Court of India has delivered the judgment whereby a prohibition has been imposed on pasting the black film or any other material on the wind screens and side glasses of a vehicle with a view to reduce the rate of crimes from the society.

In the wake of the new judicial activism in terms of PIL, the Supreme Court of India has presently converted to the Supreme Court of Indians. Indian Judiciary has been an effective and useful check on the lapses and omissions of the Executive and therefore judicial activism has transformed the Courts from legal forums into the instruments of social justice. Presently, a PIL Cell is established in the Supreme Court of India with a view to provide independent status to PIL and also for the proper processing of the letter petitions relating to PIL.

\(^5\)\(^8\)  (2012) 5 SCC 321.