CHAPTER 3

JUDICIAL ACTIVISM

3.1 INTRODUCTION

The term 'Judicial Activism' cannot be defined in few words or sentences because 'Judicial Activism' is understood by persons differently. To some it means positive and assertive role by the judiciary in enforcing the Constitutional Rights, more particularly the Fundamental Rights guaranteed to the citizens; to others it means disciplining and, if need be, dressing down the Executive and the Parliament; to some others it signifies performance by judiciary of some functions which do not strictly fall in the domain and jurisdiction of the judiciary and which ought to have been performed by the other wings of the State. For some it is an innovative measure initiated by the Supreme Court towards attaining constitutionally ordained objectives in the form of Public Interest Litigation. To some others still, it may mean doing justice to the oppressed, depressed, suppressed and helpless silent majority who cannot approach the Court.

The 'Judicial Restraint' and 'Judicial Activism' describes how a judge judges, that is, how he applies the law to facts in the cases put before him. The difference is that Restrained judges take the law as it is and Activist judges make up the law as they go along.¹

Restrained judges respect the political process whether they agree with its results or not, until it clearly crosses a clear constitutional line. Activist judge feel free to rewrite the statutes or the Constitution to use extra legal factors in their decisions, to ignore limits on their power in the search for desirable results.²
Former United States of America senator Sam Ervin says "A Judicial Activist is a judge who interprets the Constitution to mean what it would have said if he instead of the Founding Fathers had written it".3

The expression ‘activism’ dictionary meaning ‘being active’ ‘doing things with decision’ and the expression activist should mean one who favors ‘intensified activities’ and in that sense every judge is an activist. Justice D.P. Madan has said that judicial activism has been in existence throughout the centuries and in many different legal systems. It forms an important instrument for developing law to make its broad and general rules applicable to an ever changing society to deduce from old precedents an analogous reasons to resolve different types of conflicts arising out of altered circumstances and technological advances. He has also pointed out that, to deny judicial activism to the Court is to nullify the judicial process and to negate justice. A judge who denies to himself judicial activism denies to himself the role of a The Judge.4 Justice V.R. Krishna Iyer observed in his own inimitable fashion "every judge is an activist either on the forward gear or on the reverse gear". Prof. Upendra Baxi described this gradual take over of the direction of administration in a particular arena from the executive as 'creeping jurisdiction'.

3.2 ASPECTS OF JUDICIAL ACTIVISM

The term "Judicial Activism" has various aspects within itself. It is more a relative term. The active role of the Court depends upon the person who is evaluating the role of the Court, his interests, ideologies etc. In the words of Prof.Upendra Baxi it is an ascriptive term e.g. today according to some politicians the judiciary, by practicing the activist philosophy is overstepping its brief, but for a common man who gets justice because of such acts of the Court, it is the normal function of the Court and he will not find any activism in it. According to Justice Bhagwati it is the active use of judicial power for getting willed results. He used to call it a new form of constitutionalism which means the Constitution itself is a source for such activist approach of the Court.
While drafting any legislation it is just not possible to cover all situations and circumstances, so it becomes inevitable to interpret the law, and while interpreting the law the Judge has to mould the law to meet the pressing need of the time. Therefore by moulding and reforming the law, the Judge participates in the law making process. Then, law making by the Judge, which is well accepted, is also activism. Finding new interpretation also can be called as Activism. But these aspects are much treated as normal functions of the judiciary. Then, this activism can be in forward gear or in reverse gear as Justice V.R. Krishna Iyer has pointed out for example in A.K. Gopalan's case\(^5\) activism was in reverse gear as compared to activism in Maneka Gandhi's case\(^6\) where it was in forward gear. Therefore, by this standard every judge can be termed an activist. It may be active use of the judicial power or it may be making new interpretations or evolving innovative ways of dispensing justice, whatever way it is called one thing is clear that it has become an integral part of the judiciary in India and now it has been almost institutionalized.

3.3 NEED FOR JUDICIAL ACTIVISM

Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity, our Constitution makers meticulously defined and demarked the functions of the various organs of the State. Still a welfare state and developing country like ours with the existing socio-economic and political conditions, it is highly impossible for the judiciary to confine itself only to interpret the laws. It has to read the laws to extend its jurisdiction in the field of law making or with an intention of promoting the statute to reach and benefit for the people it is meant for and for the cause of social justice. It is also impossible for the legislature to foresee all the eventualities and future contingencies and enact any law. It is the duty of the judiciary to scrutinise and fill up the gaps. When the executive fails to discharge his obligation it becomes a primordial duty of the judiciary to compel the executive to perform the lawful functions.
3.4 NECESSITY OF JUDICIAL ACTIVISM IN THE PRESENT SITUATION

An independent, impartial and fearless judiciary is "Our Constitutional Creed" that was the reason the founding fathers of our Constitution tried to insulate the judiciary from outside influences. As an institution, the basic purpose of judiciary is to lay down the law and redress grievances within the parameters of law enacted by the legislature. Therefore to understand judicial activism in its correct perspective, what must be understood are the circumstances which have forced and Courts into an active role.

At times when corruption crept into every organ of the society started corroding the democracy, more confrontation and less consensus among the political parties, callous attitude of the executive, uncertainty in the political scenario, criminalisation of politics, declining morals and decaying institutions of democracy, ignorant parliament and fractured mandate, at this juncture the judiciary cannot afford to be idle or silent spectator. It becomes imperative on the judges to bring back discipline. It is the Constitutional obligation to maintain the 'Rule of Law', uphold and protect the basic structure of the Constitution. It is the duty of the judiciary to lift the veil from misdeeds of the ruling elite and power brokers. Failing to act by expanding their prudence and valor in an area in which they were reluctant to step in the earlier occasions may lead to the down fall of democracy. Judiciary is the only refuge for justice, fair play, equity and security of life when legislative arbitrariness or executive abuses or against unjust and unreasonable laws. Prof. Upendra Baxi says "Judicial activism arises only in conditions where power seeks to configure its own law and 'jurisprudence' above and beyond the law and the Constitution which in the very constitution of power confers upon the title of legitimacy, otherwise 'Judicial Activism' is a response to the lawlessness of the State".7
3.5 POWER AND JURISDICTION OF THE SUPREME COURT OF INDIA

The Indian Constitution guarantees 'Right to Equality' to all the citizens and this right encompasses all dimensions of citizens' personality. The Right to Equality concept, the backbone of democracy has its genesis in the Roman law "Be however high you are, law is above you" To safeguard the Rule of Law, the foundation on which the superstructure of democratic rule rests judicial intervention is absolutely essential and it is the need of the hour.

The High Courts and Supreme Court while exercising their appellate jurisdiction have to interpret and enforce the law made by legislature and in that they have to restrict within the frame of law under which the 'lis' is brought before them. However the role of the Supreme Court in the age of possible government and welfare state, form an active participant in the government and assisting in furthering the 'democratic ideal' with a 'national conscience'.

The ambit of the jurisdiction of the Supreme Court to adjudicate on matters brought before it has assumed a wide significance now a days. It has become very difficult to predicate what exactly is the jurisdiction of the Supreme Court and its nature. There are two types of jurisdictions. One that is conferred by the statute and the other is the plenary and inherent jurisdiction. The first is definable and the later is indefinable. The extent and ambit of it is beyond one's comprehension.
The jurisdiction of the Supreme Court of India under:

Article 132 - Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.

Article 133 - Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

Article 134 - Appellate jurisdiction of Supreme Court in regard to criminal matters.

Article 135 - Jurisdiction and powers of the Federal Court under existing law to be exercisable by Supreme Court.

Article 136 - Confers the Right of granting Special Leave to appeal from any judgement, decrees, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in India.

Article 137 - Review of judgements or orders by the Supreme Court.

Article 138 - Enlargement of jurisdiction of the Supreme Court.

Article 139 - Conferment on the Supreme Court of powers to issue certain writs.

Article 144 - Civil and judicial authorities to act in aid of the Supreme Court.
Apart from the appellate jurisdiction, the Constitution vests extraordinary powers on the Supreme Court under Article 32 to issue directions, orders and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo warranto and Certiorari for the enforcement of fundamental rights.

Article 141 confers, the law declared by the Supreme Court shall be binding on all courts within the territory of India.

Article 142 (1) confers, the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for ‘doing complete justice’ in any cause or matters pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

3.6 PATHWAY OF JUDICIAL ACTIVISM IN THE INDEPENDENT INDIA

From the year 1950 to 1966 in the post independence period - there was an excessive deference towards legislature and executive wings of the Government.

In the A.K. Gopalan case in the year 1950 the Supreme Court said that it will not enquire into the reasonableness or the wisdom of the ‘procedure’ in the Article 21. Article 21 says "No person shall be deprived of his life or personal liberty except according to procedure established by law". It was argued that the term 'Procedure established by law' under Article 21 of the Constitution should be interpreted as only proper, reasonable and fair procedure as it is the position in the United States of America.
The first Chief Justice of Supreme Court of India Justice Harilal J. Kania rejected the argument and gave an interpretation to the term procedure established by law. The Supreme Court by a majority vote held that procedure established by law means any procedure which has been laid down by a competent legislature whether proper or improper. The Supreme Court will not enquire into the reasonableness or the wisdom of the procedure. Such was the deference for the legislative arm of the Government in the 50's.

The Supreme Court in the year 1966 in the Golak Nath case\textsuperscript{9} said that even Parliament does not have any power to abridge or take away any of the fundamental rights of the people. When the question arose as to what will happen to the laws already passed in violation of fundamental rights since 1950, the Supreme Court suggested the solution of prospective overruling meaning thereby that the decision of the Supreme Court will apply from the date of decision in future only and in future Parliament will have no power to amend or take away the Fundamental Rights to the disadvantage of the citizen. Such was the attitude of the Supreme Court towards other wings of the government. Thus the Supreme Court acted as most zealous protector of fundamental rights.

In the early 70s the Supreme Court in the Keshavanand Bharathi case\textsuperscript{10} decided that though Parliament has vast power of amending any parts of the Constitution, it cannot take away or abridge the Basic Structure or Features of the Constitution. So in this landmark judgement the Supreme Court intervened more deeply and pervasively than United States of America's Federal Court ever imagined to. Thus the Supreme Court protected the fundamental values of the Constitution. It was the most glaring example of judicial activism in Indian contexts.
In the mid 70's in **Indira Nehru Gandhi vs. Raj Narain** case when Smt.Gandhi's election as Member of Parliament was declared invalid by the Allahabad High Court and the appeal was pending before the Supreme Court, an Amendment to the Constitution had been passed providing that the elections of the Prime Minister and the Speaker of the Lok Sabha will not be open to be questioned in any Court of law. When the validity of this amendment came up for consideration, Supreme Court struck down the impugned amendment as violative of the Basic Structure of the Constitution. This is a glorious example of judicial activism to save Indian democracy.

During the period of emergency 1975-77 the Supreme Court was not active and remained very passive as it is needless to say the period of National Emergency.

In the post emergency period there was liberal interpretation of fundamental rights and relaxation of the traditional standards of locus standi. In **Maneka Gandhi vs. Union of India and others** the Supreme Court gave a liberal interpretation to the term 'liberty' and "procedure established by law" under Article 21 of the Constitution. Rejecting the earlier narrow interpretation of A.K.Gopalan ruling, Justice P.N. Bhagvati observed that the term 'liberty' used in Article 21 of the Constitution is of the widest amplitude. It was further held that the term 'procedure established by law' will be interpreted as reasonable, fair and just procedure and not mere any procedure passed by competent legislature.

In the present case, the passport of Menaka Gandhi was impounded by passport authorities without providing any reasonable opportunity of hearing. When she demanded as to why her passport was impounded the passport authority replied that it was done in 'public interest'. When she further insisted that what was the compelling public interest to impound her passport, the government replied that even the ground for impounding the passport could not be disclosed in 'public interest'. So she challenged the
decision of the passport authority. The Supreme Court gave a liberal interpretation to Article 21 of the Constitution which provided that nobody could be deprived of his life or personal liberty except according to the procedure established by law. The Supreme Court held that only by a reasonable, just and fair procedure, the fundamental rights of a citizen could be curtailed. The above liberal interpretation of the Supreme Court was followed in other cases.

With the passage of time the judiciary realized that many cases of the infraction and infringement of the Constitutional rights go unredressed and unremedied because the affected persons are not able to knock the doors of justice due to their limitations such as poverty, illiteracy, social backwardness, lack of information and other resources. The Court, therefore, vastly modified principle of locus standi, so that the under-privileged, the downtrodden, the silent and the meek can air their grievances. This was the first but perhaps the most crucial step by the judiciary in taking justice to the doorstep of the poor.

Liberalization of locus standi gave rise to the plethora of public interest litigation cases. What we are experiencing and witnessing today the Public Interest Litigation cases were all due to the Judicial Activism of the Supreme Court of India.

In the 80s the Supreme Court started asserting its self importance and started widening the scope and ambit of Article 21 'Right to life'. The Indian judiciary took big strides when it consciously broadened the Fundamental Right to Life holding it to be the most Fundamental of the Fundamental Rights and read into it various facets of life holding that right to shelter, right to basic education, right to pollution free air and water, etc. fall within the expression 'life'.
The right of prisoners to be treated with human dignity was recognized in *Charles Sobraj vs. Superintendent, Central Jail, Tihar.*

The right to free legal assistance was recognized in *Khatri vs. State of Bihar.*

The principle of equal pay for equal work though not a fundamental right, is certainly a constitutional goal and therefore capable of enforcement through Article 32 as in the case *Randhir Singh vs. Union of India.*

In the case *People's Union for Democratic Rights and others vs. Union of India and others* the Supreme Court expanded the ambit of Article 21, that non payment of minimum wages to the workers employed in Asiad Projects in Delhi was amounting to their denial of Right to live with basic human dignity and violation of Article 21 of the Constitution.

The right to live with human dignity free from exploitation was recognized in *Bhandhua Mukti Morcha vs. Union of India and others.*

In *Olga Tellis vs. Bombay Municipal Corporation* the Supreme Court further expanded the scope of Article 21 and stated that

"...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 deprive him of his means of livelihood. In view of the fact that Articles 39-A and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life".
The right to education has been considered to flow from the right to life in **Unnikrishnan vs. State of Andhra Pradesh**\(^{20}\) case.

In the case **Mohamed Ahmed Khan vs. Shah Bano Begum**\(^{21}\) the Supreme Court started introducing reforms in the Personal Laws of Muslims (Shariat).

In the mid 90s Supreme Court started intervening in political matters where there was the possibility of abuse of power by the Union Government.

This is very much reflected in the **S.R. Bommai vs. Union of India**\(^{22}\). The BJP Governments in several states were dismissed by the Congress led Central Government on the ground that the demolition of Babri Masjid in a BJP run Uttar Pradesh State Government amounted to failure of the State Government to run it as per the provisions of the Constitution. Not only the U.P. Government but also the State Governments of other States where BJP was in power were also dissolved and President rule was imposed.

The validity of the same was challenged before the Supreme Court. The Supreme Court struck down the order of Presidential Rule in some States as arbitrary use of power by Central Government.

It clearly indicates that the Indian Supreme Court has attained a state to intervene in political matters where there was the possibility of abuse of power by the Central Government.

Supreme Court did not hesitate to strike down the allotment of Petrol bunks\(^{23}\) by Petroleum Ministry and allotment of Houses\(^{24}\) to government servants on the basis of discretionary quota of the Housing Minister etc.
Likewise, under the crusading spirit of Justice Kuldip Singh Supreme Court ordered the closure of more than 300 industries to save the environment.25

The Supreme Court attained sufficient self confidence to correct the mistakes of executive and legislative wings of the Government and acted as protector of Fundamental Values of Indian Society.

3.7 JUDICIAL ACTIVISM IN THE FIELD OF ENVIRONMENT

Though specific provisions for the protection of environment available in the Directive Principles of State Policy26 the judiciary interpreted the Right to live in a healthy environment into various provisions of Part III Fundamental Rights and provided an impetus to human rights approach for the protection of environment.

In the year 1995 Justice Kuldip Singh developed an innovative and somewhat controversial procedure for dealing environmental matters. On each Friday he invited citizens and government officials alike to bring environmental problems to the attention of the Court. On this day he relaxed procedural and evidentiary rules and operated the Court room in an informal style. Arguments were presented and decisions were made rapidly. The rigors of Court procedure and statutory requirements were diluted in favor of a summary result oriented process. These Friday sessions have resulted in many significant environmental rulings dealing mainly with pollution of the Ganga water.

The Supreme Court played very active role in different cases by way of, liberalizing the locus standi where public interest was very much involved, enforcing public duties, evolving new principles and doctrines like Sustainable Development, Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine, Absolute Liability, Intergenerational Equity etc.,
reversing the onus of proof, epistolary jurisprudence of treating letters as writ petition, issuing ‘Continuing Mandamus’, appointing socio-legal commissions of inquiry, monitoring laws and judicial orders, amplifying the scope and ambit of Article 21 ‘Right to life’ includes Right to a clean and healthy environment, suggesting Alternative Dispute Resolution Mechanisms, suggesting setting up of environmental Courts for the speedy disposal of cases, awarding compensation in writs, directing for proper rehabilitation of workers and project affected people and so on.

The doctrine of latches was often relaxed in environmental actions brought in the public interest. The Court was usually indulgent, being aware of the financial constraints and obstacles that environmentalists face in obtaining authentic information and documentation.

In People United for Better Living in Calcutta and another vs. State of West Bengal and others\textsuperscript{27} in order to ascertain the facts the Judges themselves made a visit to the proposed area for development and surrounding wetlands to come out with their observation.

In M.C. Mehta vs. Union of India and others\textsuperscript{28} the Supreme Court directed the Central Government to direct the educational institutions throughout the country to teach at least for one hour in a week, lessons relating to Environmental Protection in the first ten classes.

The Court expressed the desirability of organizing ‘Keep city / village clean’ programme weekly once to create national environment awareness. During the week all the citizens including the members of executives, Members of Parliament, Members of Legislative Assembly, members of the judiciary were all requested to co-operate and take part in the awareness campaign.
The activist approach of the Supreme Court made the government, statutory authorities to act in favor of the environment. The Court imposed morality on such institutions in environmental matters.

While delivering justice the Court always took into consideration the Human Rights and Right to Development along with the environmental rights.

Finally the Court enunciated the principle of ‘Good governance’ through directive and suggestive techniques and sensitized the legislature and executives.

3.8 PUBLIC INTEREST LITIGATION - A NEW JURISTIC HORIZON

The concept of class action is embodied in the Code of Civil Procedure, 1908. It says where several persons have common interest one or more of such person can file a suit. Code of Civil Procedure, O 1, r 8 is an amplification of the concept of class action with the permission of the Court. When a representative suit is filed, notice by personal service or by advertisement is to be given. Then Court has discretion to allow impleading a party. The decree will be binding to all parties on whose behalf or for whose benefit the suit is instituted. It is enough that the persons who sue need have the same interest in the suit. It is not necessary to establish that such persons have the same cause of action as the persons on whose behalf or for whose benefit they sue. If a study is made how far this particular clause has been used for public purpose, to our surprise the clause has been used very limited for obvious reasons.

Judicial activism was made possible in India, thanks to Public Interest Litigation. Generally speaking before the Court takes up a matter for adjudication, it must be satisfied that the person who approaches it has
sufficient interest in the matter. Stated differently, the test is whether the petitioner has locus standi to maintain the action? This is intended to avoid unnecessary litigation. The legal doctrine ‘Jus tertii’ implying that no one except the affected person can approach a Court for a legal remedy was holding the field both in respect of private and public law adjudications until it was overthrown by the Public Interest Litigation wave.

In the early 80s the role of higher judiciary in India underwent a radical transformation. There was an emergence of new jurisprudence namely ‘Jurisprudence of Masses’ in the Indian legal scene, which altered radically the litigation landscape. This post emergency phenomenon characterized by ‘Judicial Populism’. The legal doctrine ‘Jus tertii’ was overthrown by P.I.L. Article 39-A was added by the 42nd Constitutional Amendment in the year 1976 to the Directive Principles of State Policy Part IV of the Constitution to ensure equal justice promised to all citizens by the Preamble with a view to aid the organs of the State more particularly the judiciary to protect and promote social justice through the instrumentality of law. This was intended for new egalitarian social order and to free the Indian masses from the clutches of the age old passivity.

The ‘Social Justice’ contained in the Preamble of the Constitution mean Justice to the deprived masses of our country. Dispensation of social justice is a constitutional and social imperative. For nearly three decades our masses could not able to approach the higher judiciary so easily as poverty and illiteracy on one hand and concept of ‘locus standi’ and ‘cause of action’ based on Anglo Saxon jurisprudence on the other hand and the traditional adversary system were the major barriers in the matter of ‘access to courts’. The indifference in the attitude of the executives inspite of several socio-economic legislation to realize the goals of social justice made the higher judiciary to use moral and social criteria while exercising their wide jurisdiction to render social justice. The old rules on ‘locus standi’ and ‘cause of action’ have been liberalized in the back drop of socio-economic changes.
contemplated through various social welfare legislations. The Courts have shown a readiness to abandon the concept of ‘honfeldian plaintiff’ in favor of the ‘ideological plaintiff’. The Court itself shaped the juridical effort to solve the much agitated problem of ‘access to justice’ which is keystone of democracy.

P.I.L. is a manifestation of Judicial Activism. It has introduced a new dimension in the Judiciary’s involvement in public administration. The sanctity of locus standi and the procedural complexities were totally side tracked in the cases brought before the Courts through P.I.L. In the beginning, the application of P.I.L. was confined only to improving the lot of the disadvantaged sections of the society who by reason of their poverty and ignorance were not in a position to seek justice from the Courts and, therefore, any member of the public was permitted to maintain an application for appropriate directions.

The Court heard the grievances of the prisoners, bonded laborers, pavement dwellers, Bhagalpur blinded prisoners etc. It was through P.I.L. the problems of the poor, illiterates and under privileged masses came to the forefront and the theatre of law. Even the letters addressed by the individuals as well as individuals acting pro bono publico to the Court, to the Judges, Judges by designation or even by name were all treated as writ petitions under Article 32 or 226, otherwise the Court evolved a new jurisdiction namely epistolary jurisdiction and thereby provided a great relief to the weaker sections of the society.

The P.I.L. action by various groups has brought a general awakening amongst various depressed, oppressed and suppressed sections of the society, giving a ray of hope in the improvement of their lot through the Court process.
Justice V.R.Krishna Iyer in the Akhil Bhartiya Soshit Karamcheri Sangh (Railways) case\textsuperscript{31} said that our current processual jurisprudence is not individualistic Anglo Saxon moulded but it is broad based and people oriented and envisions access to justice through 'class action' 'public interest litigation' and 'representative proceedings'.

This mode of seeking redressal gained momentum in the last two decades.

In Fertilizer Corporation, Kamgar Union vs. Union of India and others\textsuperscript{32} the Apex Court through Justice V.R.Krishna Iyer observed:

"Law, as I conceived it is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and waste their time and money and the time of the Court through false and frivolous cases. In a society where freedom suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi".

In Transfer of Judges cases\textsuperscript{33} the seven-judge Bench adopted the liberal approach. Justice P.N.Bhagwati observed:

"What is sufficient interest to give standi to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any straight-jacket formula for the purpose of defining or delimiting 'sufficient interest'. It has necessarily to be left to the discretion of the Court. The reason is that in
a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable sections of the people by creating new social, collective 'diffuse' rights and interests and imposing new public duties on the state and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wavelength as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the court in a particular cases has sufficient interest to initiate the action”.

The Apex Court in the case of Dr. Upendra Baxi and others vs. State of Uttar Pradesh and others held that the public interest litigation involves a collaboration and co-operative efforts by the State Government and its officers, the lawyers appearing in the case and the Bench for the purpose of making Human Rights meaningful for the weaker sections of the community in ensuring the socio-economic justice to the deprived and the vulnerable sections of the humanity in the country.

In Vincent Panikuriangera case the Court pointed out that the statutory bodies and the Government are bound to respond and join the proceedings pending before the Court. They do not have the choice of keeping away from the Court like private parties in ordinary litigation option to go ex-parte. The Court held that Public Interest Litigation is not a normal litigation with adversaries pitted against one another. As the matter involved health of the public, the Court ensured co-operation of all the parties and suo moto extended that opportunity of hearing and inviting the named statutory authorities to assist the Court.
In M.C. Mehta & another vs. Union of India and others\textsuperscript{36} the Constitution Bench considered the scope of PIL to grant compensation to the victims of hazardous or dangerous activities when death or injuries were caused to them on account of the accident during the operation of such activities. The Court held that the law should keep pace with changing socio-economic norms. Where a law of the past does not fit in the present context, the Court should evolve a new law in a public interest litigation. The Court held that its power was very wide to devise appropriate procedure and to issue directions, orders or rules. The Court is competent to grant a remedial assistance by way of compensation in exceptional cases. The Court has incidental and ancillary power in exercise of which it can devise new methods and strategy in securing enforcement of fundamental rights particularly in public interest litigation or social action cases. Directions accordingly issued.

The Courts shed off the laissez faire approach in the judicial process particularly where it involves a question of enforcement of the fundamental rights and forged new tools, devised new methods and adopted new strategies for the purpose of making fundamental rights meaningful for the large masses of the people.

3.9 P.I.L. AN INSTRUMENT FOR SOCIAL JUSTICE

Public Interest Litigation is different from traditional litigation in eight different ways as enumerated by Chayes\textsuperscript{37} and many of them apply equally to the Indian version of Public Interest Litigation.

- The scope of the lawsuit is not exogenously given but is shaped primarily by the Court and parties.

- The party structure is not rigidly bilateral but sprawling and amorphous
❖ The fact inquiry is not historical and adjudicative but predictive and legislative.

❖ Relief is not conceived as compensation for past wrong in a form logically derived from the substantive liability and confined in its impact to the immediate parties; instead, it is forward looking fashioned ad hoc on flexible and broadly remedial lines often having important consequences for many persons including absentees.

❖ The remedy is not imposed but negotiated.

❖ The decree does not terminate judicial involvement in the affair: its administration requires the continuing participation of the Court.

❖ The Judge is not passive, his function limited to analysis and statement of governing legal rules; he is active, with responsibility not only for credible fact evaluation but for organizing and shaping the litigation to ensure a just and viable outcome.

❖ The subject matter of the lawsuit is not a dispute between private individuals about private rights but a grievance about the operation of public policy.

The Indian Supreme Court has used this wide scope of PIL.

The P.I.L. in the backdrop of socio-economic changes contemplated through various social welfare legislation created more and more new categories of Rights in favor of masses and a corresponding new categories of duties on the public authorities. A striking feature of P.I.L. is that it is primarily judge led and even judge induced.
The liberal approach in expanding the rule of ‘locus standi’ become very much apparent in the following judicial pronouncements.

In Bar Council of India vs. M.V. Dabholkar\(^{38}\) the Supreme Court permitted the Bar Council of Maharashtra to initiate proceedings against an advocate for professional misconduct by holding that Bar is a public institution and represented the collective conscience of the standard of professional misconduct.

In Maharaja Singh vs. State of Uttar Pradesh\(^{39}\) the Supreme Court observed:

"Where a wrong against community interest is one ‘no locus standi’ will not always be a plea to non suit and interested public body challenging the wrong doer in the Court .... locus standi has a large ambit in current legal semantic than the accepted individualist jurisprudence of old".\(^{40}\)

The P.I.L. has developed its institutional roots by the judgement of the Supreme Court in Judges Transfer case\(^{41}\) which held:

"... any member of the public can maintain an application for an appropriate direction, order or writ seeking judicial redress for the legal wrong or injury caused to such person or determined class of persons where the weaker and underprivileged sections of the community are concerned."\(^{42}\)

The Supreme Court modified the traditional rule of ‘standing’ by over riding the procedural obstacles and technicalities and permitted ‘Representative standing’ to expand the classical standing to enforce rights of the underprivileged.
Representative standing cases in the Apex Court have helped

- to secure the release of bonded laborers\(^43\)
- to obtain pension for retired government employees\(^44\),
- to obtain release of under trials\(^45\)
- to improve the living conditions of inmates at a protection home for women\(^46\)
- to obtain statutory minimum wages for exploited workers\(^47\),
- combating inhumane prison conditions\(^48\),
- right to a speedy trial\(^49\),
- right to livelihood\(^50\)
- right to human dignity\(^51\)
- right against pollution\(^52\)
- right to be protected from industrial hazards\(^53\) and
- vindication of an ecomalady of a village\(^54\).

Citizen standing enabled individuals to check abuse of public office by governmental machineries\(^55\) to challenge governmental policies\(^56\) inaction that threatened to undermine the judiciary to test the legality of a fiscal policy that favored tax dodgers\(^57\).

Thus P.I.L. is the golden key to unlock the doors of the justice to a public spirited person to get justice and it is a legitimate weapon in the hands of the public as long as the legislature becomes more responsive and executive more responsible.

3.10 P.I.L IN THE ENVIRONMENT RELATED CASES

The Indian Supreme Court has used the wide scope of P.I.L for preserving the ecology and environment based on the principles of sustainable development to reconcile conflicting interests of development with the preservation of healthy environment which has been recognized as enforceable fundamental right.
A survey of the Environmental related cases admitted by the Higher judiciary in the last 15 years reveal that more than 50 percent of the cases were in the form of Public Interest Litigations only. It has a very wide spectrum. It ranges from

3.10.1 Establishing the privileges of tribal people and fishermen

★ Fatesang Gimba Vasava vs. State of Gujarat and others

★ Nagarahole Budakattu Hakku Sthapna Samithi and others vs. State of Karnataka and others

★ Pradeep Krishen vs. Union of India and others

★ Suresh Lohiya vs. State of Maharashtra and others

★ Animal and Environment Legal Defence Fund vs. Union of India and others

★ Samatha vs. State of Andhra Pradesh and others

3.10.2 Saving the ecology of Himalayas and Forests

★ Banwasi Seva Ashram vs. State of Uttar Pradesh and others

★ Rural Litigation & Entitlement Kendra, Dehradun and others vs. State of Uttar Pradesh and others

3.10.3 Promoting Ecotourism and Protection of forests

★ Niyamavedi and etc., vs. State of Kerala and others

★ M.C. Mehta vs. Kamal Nath and others
3.10.4 Regulating the land use patterns

★ V. Lakshmipathy and others vs. State of Karnataka and others68

★ Bangalore Medical Trust (Appellant) vs. B.S.Muddappa and others (Respondents)69

3.10.5 Invasion of 'Right to Life' of villagers due to pollution caused by private companies otherwise vindication of an ecomalady of a village

★ Indian Council for Enviro-Legal Action, etc., vs. Union of India and others etc.70

3.10.6 Other Environment related cases

★ L.K. Koolwal vs. State of Rajasthan and others71

★ The Goa Foundation and another vs. The Konkan Railway Corporation and others72

★ Sathyavani vs. Andhra Pradesh State Pollution Control Board73

★ Executive Engineer, Attappady Valley Irrigation Project, Agali P.O., Mannarkad and others (Appellants) vs. Environmental and Ecological Protection Samithy, Agali and another (Respondents)74

★ Goa Foundation and another vs. The Conservator of Forests, Forest Department, Panaji, Goa and others75
★ The Dahanu Talukha Environment Protection Group and another vs. Bombay Suburban Electricity Supply Company Ltd. and others.

And

Bombay Environment Action Group and another vs. The State of Maharashtra and others.

★ Consumer Education and Research Centre and others vs. Union of India and others.

★ Almitra H. Patel and others vs. Union of India and others.

★ M.C. Mehta vs. Union of India and others.

In the P.I.L. the Supreme Court even admitted letters addressed to the Court, Newspaper reports and treated them as writ petitions under Article 32 of the Constitution.

3.11 CONCLUSION

Thus, this Judicially Developed Weapon has done yeoman service to the suffering of millions and gone a long way in safeguarding individual liberty and fulfilling the social philosophy and other aims and objectives enshrined in our great Constitution.