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Public Interest Litigation (PIL) and Judicial Activism: Balancing Constitutional Mandates with Executive Policy and Governance

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Abstract

Public interest litigation, or PIL, helps many people of India. It allowed the courts to take in claims on behalf of such people who could not access justice effectively. However, the extension of the jurisdiction to institutional reform and public administration has given rise to a continuing difficulty: the very jurisdiction, which makes rights practically enforceable, may also place judges in permanent control of policy choices. The paper identifies the evolution of representative standing, investigatory process, continuing mandamus and judicial review in economic, public-health and environmental decisions. Activism and restraint alone cannot fulfill the idea of legitimacy. The relevant questions concern what legal duty is being enforced, the robustness and comprehensiveness of the decision-making process, and the efficacy of the violation and the remedy. A duty-process-remedy framework can facilitate sustained access-to-justice function by PIL, with supervision denying inadequate consequential centre-staging. The analysis separates enforceable constitutional duties from broader aspirational objectives of good governance. It sees implementation as a matter that requires evidence, not judicial assertion.

Keywords: *Public Interest Litigation; Judicial Activism; Separation of Powers; Continuing Mandamus; Access to Justice; Public Policy.*

1. Introduction

Public interest litigation occupies a special place in Indian constitutional law. This is a way of removing justice obstacles. And a procedure whereby courts can modify institutions impacting people who never come to court before them. Complimenting any intervention for being a semblance of constitutional vigilance and denouncing any policy-centred order as overreach does not resolve the tension. Administrative action is often required to give effect to constitutional rights, but the mere existence of an administrative consequence cannot take a dispute out of the judicial arena.

2. Standing, representation and the emergence of social-action litigation

A normal standing of typical connects the claimant to a personal legal injury. The Indian PIL relaxed the relationship which prevents the people affected by illegal operation could not effectively approach the court themselves. In *S P Gupta v Union of India*¹, the court stated that a sufficiently interested person must be allowed to seek relief for those who are unable to secure access due to poverty or social disability. Relaxation of standing was therefore linked to an access problem, not to a presumption that everybody can demand judicial management of everybody's public issue.

The *Hussainara Khatoon*² case illustrated how access to procedure illustrates systemic access deprivation of liberty for undertrial prisoners. People's Union for Democratic Rights v Union of India³ case linked the conditions of labour with Article 23 and acknowledged the economic compulsion dimension of the constitution. The cases widened the scope of eligible petitioners. They made litigation responsive to harms that could not be brought before a court through a resource-intensive case.

Upendra Baxi's narrative of social-action litigation⁴ highlights the connection between the judicial process and the suffering of sub-ordinated groups. The view remains useful analytically because the concept public interest otherwise lacks determination. The story told by a well-resourced litigant about public benefit may not be in the interests of the very people they profess to represent. The validity of representative standing, therefore, is somewhat dependent on whether it allows the voices of affected persons to be heard rather than another actor conclusive for that affected person.

Standing basic, substantive entitlement and remedy must remain separate. Just because a petition is

admitted does not mean the allegations are true⁵; even an established violation does not justify every direction sought. If one cannot distinguish between these stages, one procedural shortcut is created from publicity to institutional control. Demanding that disadvantaged claimants fulfil all normal procedural form requirements may have the reverse effect that PIL was meant to address. The challenge to skew procedures without signalling character.

3. Procedural innovation and its due-process limits

The court case of *Bandhua Mukti Morcha v Union of India*⁶ highlights the impact of commissions and fact-finding on issues affecting bonded labourers. The court held that article 32 is not to be construed in such a way as to be confined to a rigid adversary procedure which will make it practically impossible to entertain any such claims. Judicial investigation may be called for where information that is relevant's held by institutions alleged to have failed. However, an investigation is useful does not make it an irrefutable conclusion.

Disclose reports, explain methods and address serious objections. An institution facing censure from a commission must be afforded a chance to respond⁷ whereas workers affected must not be excluded merely because of their lack of documentation. The dissenting judgments in *Bandhua Mukti Morcha*⁸ show that procedural innovation and judicial accountability need not embrace competing commitments. The goal of the evidentiary exercise is to generate a record that has the reliability necessary for a case. It is not to put confidence in a person appointed by the court instead of scrutinizing the person's findings.

An amicus curiae may be of assistance in relation to legal research and complex evidence but is not entitled to appear on behalf of every affected interest. Specialist knowledge is likewise provided by expert groups⁹ without gaining the authority to dominate constitutional priorities. The court is responsible for explaining which conclusion it accepts and why. When assessments are contested, identifying the assumptions behind competing assessments is often more useful than asserting a report is the neutral voice of science.

Being included becomes even more important when an order may shift burdens. New public service activities, environmental restrictions or the closure of institutions have different effects on workers, residents, consumers and future beneficiaries. Accessible summaries and opportunities for meaningful representation¹⁰ aid in disclosing those

consequences before the finalization of relief. The expectation here is one of impartial adjudication; not that every proceeding be a reproduction of a legislative consultation. The suitable process should be in accordance with the extent and reversibility of the proposal.

4. From enforcing duties to designing institutions

4.1 Gap-filling and its justification

The Supreme Court in *Vishaka v State of Rajasthan*¹¹ linked Articles 14, 15, 19 and 21 with India's international obligations to provide for workplace sexual-harassment safeguards in the absence of a domestic law. The instructions were framed to function until legislation occupied the field. According to them, the legislation was justified by a protection gap threatening enforceable rights, not by a general power to draft rules whenever judges deemed legislation desirable.

At times, judicial policy prescription is considered adequate authority in the case. That reading overlooks its limiting characteristics: a specific constitutional harm, a connection between the safeguards and that harm, and a clearly transitional connection with future legislation. The subsequent statutory framework¹² also changed the legal environment in which protection must be assessed. The ongoing relevance of the judgment does not permit the bypassing of the enacted scheme nor takes away the effect of a judicial direction, permanently treating it as superior to constitutionally valid legislation.

4.2 Continuing mandamus and institutional reform

In the case of *Vineet Narain v Union of India*¹³, continuing supervision was resorted to because of the failure to investigate serious allegations. It gave directions on the independence and functioning of investigative institutions. The retention of a case either by a party or by the court avoids a declaration of duty becoming ineffective due to inaction.

The unique feature of the court's orders is the continuation of the Court's relationship with implementation rather than a final order resolving a completed dispute.

There are also moving parts to continuing jurisdiction. Compliance may be orchestrated around the next hearing rather than the institution's enduring capacity. When officials act on clear judicial orders, their responsibility may become hazy, but they remain

legally accountable for their acts. As such, the remedy should identify the duty-holder, the outcomes required and the information needed¹⁴ to evaluate progress. If these features are absent, repeated hearings may show activity but not proof that some constitutional failure has been remedied.

Nick Robinson¹⁵ notes the rise of an Indian "good governance" court, where judicial expansion is linked to the failings of representatives. The account explains the circumstances in which courts may have to intervene, but it does not establish that every intervention requested is legally warranted. Governance deficit must be translated into justiciable obligation and appropriate relief. Disappointment at institutions cannot provide infinite jurisdiction.

5. Policy is reviewable, but courts do not administer an appeal on merits

In *BALCO Employees' Union v. Union of India*¹⁶, the Court acknowledged the limited scope of interference by Courts in economic policies. A lawful decision is not invalidated by the courts merely because another policy is apparently more preferable or that its wisdom is challenged. This does not offer full immunity for decisions labelled "policy". Judicial review applies to law-making powers, compliance with law, citizen's fundamental rights and relevant procedures.

There are ways to express the distinction. A petitioner asks the court to evaluate competing policy merits, asserting that the economic outcome would vastly differ if disinvestment were done differently. A legal question arises from a petitioning party who shows that a statutory precondition has not been fulfilled¹⁷, even if its determination has economic policy implications. The appeal of the relief sought should follow that distinction. When compliance with the law is legally required, it does not imply selection of transaction, price technology or institution to which must executive prefer.

Separation of powers is often understood as the constitutional allocation of functions to various constituencies (or institutions). To safeguard rights, courts may have to pass orders with financial or administrative impact. However, these types of consequences call for a reasoned account of necessity, available alternatives and institutional competence. The power enshrined in Article 142¹⁸ to do complete justice does not turn the Court into a law-less agency.

The appropriate standard of restraint is therefore contextual. A decision regarding an explicit

constitutional prohibition may afford little deference. A technically complex choice made among lawful alternatives may warrant considerable space for administrative judgement¹⁹. What matters is whether the court identifies the legal standard and the level of scrutiny, rather than whether it uses “policy” or “fundamental rights” as a term of art that ends the analysis.

6. Public health and environmental litigation as tests of method

6.1 Pandemic review and justificatory dialogue

The Supreme Court, in the case regarding essential supplies and services during the pandemic, examined vaccination arrangements and asked for information while discussing the separation of powers. The operation of the order 31 May 2021²⁰ fitted constitutional scrutiny into a means of asking for justification and not an automatic assumption of any executive function. It shows that a court can demand an answer to the question of why one choice rather than another was made without itself becoming the procurer.

The lesson is methodological. Arguments and evidence may quickly change in uncertain conditions. An order can identify an apparent rights problem, require a response and assess the explanation before prescribing a final remedy. This approach respects expertise²¹ without creating immunity from constitutional scrutiny. It further refrains from asserting a later policy change was caused solely by litigation when the existing record is incapable of showing that causation.

6.2 Environmental protection and revisable remedies

The Great Indian Bustard and the threats from power-transmission structures was the subject-matter of M K Ranjitsinh litigation. In March 2024, the Court repeated its earlier broad directions²² and set up an expert committee and connected the harm wrought by climate change with Articles 14 and 21. The case sought to place in the same legal frame differential environmental purposes: saving of species and infrastructure involved with renewable-energy development could not simply be put as unrelated interests.

The judgment issued in December 2025²³ took into account the committee’s recommendations and objections and determined geographically and technically differentiated measures. The order is

important for PIL process. A remedy may need modification if new evidence demonstrates that an earlier formulation is too lenient. Changing something does not mean giving in, but it could mean laying it aside in order to do what is right in response to what you have seen or learned. That a committee was involved does not in itself establish that all affected interests participated equally or that implementation has succeeded.

Thus, a justifiable assessment distinguishes the constitutional principle, the means of action chosen and the evidence of results²⁴. Just because there’s an environmental right, it doesn’t mean every transmission project is unlawful. Similarly, being approved, a mitigation design doesn’t become effective ecologically. Upholding these distinctions allows for continuing scrutiny, without transforming every scientific spat into yet another constitutional right.

7. A duty-process-remedy framework for constitutional balance

The first question is the duty. A High Court dealing with a Public Interest Litigation (PIL) petition must identify the constitutional or statutory obligation allegedly breached²⁵, the institution that is the subject of the breach, and the legal basis for intervention. An extensive community issue may warrant worries but does not, without further discussion, entail a duty which can be enforced. If a right gives rise to positive obligations, the court should explain the connection. This necessity was to maintain the distinctness between rights adjudication and general administrative supervision.

What do you mean by ‘process’ As the extent of the remedy widens, the significance of reliable evidence, adequate representation and an opportunity to answer adverse material also increases. The judgement for State of Uttaranchal v Balwant Singh Chaufal²⁶ directs that the petitioners credentials must be looked into; correctness of their allegations, and public injury to the public must be bona fide. What is also important to verify is that there was no personal gain. In this respect security is misused but it must not become a demand that every authenticated claimant needs to possess.

A court can tell whether the suit is not malicious or for publicity purpose²⁷. When a claim is not formally sophisticated, clarifying targeted fact finding, legal assistance or limited preliminary fact find elsewhere might be appropriate. In contrast, exemplary costs

need to be dealt with with care as indiscriminate financial threats can deter valid claims. The goal of screening is to safeguard public-interest jurisdiction, not to restore barriers that created this necessity.

The third question is remedial fit. The response provided in the order should, through least institutionally intrusive measure, secure effective compliance for the proven violation²⁸. Weak remedy does not have to always mean that. A failure of the reliable breach of a clear duty may mean the act requires close supervision, while an emerging concern which is not yet fully backed by evidence may require disclosure and reconsideration. The level of intervention should follow the necessity, evidence and the impact of leaving the violation uncorrected.

Implementation also should have identifiable standards. Orders may identify officials, verifiable milestones, and a procedure to report obstacles²⁹. Compliance should be assessed by the rights-related outcome and not merely the number of affidavits filed. Public reporting should be aggregated and protective when confidentiality or vulnerable persons are affected. These arrangements allow for institutional accountability without the judge having to decide everything.

An important point which should also be exit principle³⁰. Consistent mandamus ought to cease, narrow or transfer to the appropriate monitoring institution, when the defined purpose for which it is framed is achieved or when the task can be performed with the help of another lawful mechanism. If a judge merely retains jurisdiction with no explanation indefinitely, then by definition, the judicial management will become routine. Ending oversight early can likewise leave the original breach intact. A rational assessment of the ongoing necessity tackles both threats without assuming that duration equates to either success or overreach.

It is especially challenging to represent when what is requested is in favour of one vulnerable group but against another. A plea for environmental protection may also hurt people dependent on the regulated activity for their livelihood. This fictional conflict doesn't deny either interest. It indicates why a court should designate affected groups prior to finalising a blanket remedy and afford a suitable procedure to hear them³¹. An organization's good intentions cannot prove it represents every individual who will be affected by the order.

This awareness allows a difference between urgency and permanence. In cases where there is a delay resulting in a serious and irreversible risk, interim protection may be warranted despite an incomplete record. A permanent institutional arrangement typically requires a broader evidence base and consideration of alternatives³². Reasons must explain how the interim threshold is satisfied and what further material will be needed. Otherwise, a ruling authority will become a permanent policy just because it stays on docket and is not subjected to a further examination appropriate for this expanded role.

Being transparent doesn't mean everything must be public. Medical records, accounts of sexual violence, and identifying information³³ about children may be protected where the litigation concerns a public authority. A court may order a responsible authority to give access to relevant operational information and restrict access to intimate personal material. This distinction preserves the public nature of accountability without imposing the burden of paying for constitutional enforcement on an already vulnerable person through avoidable exposure.

In the end, the proposed framework does not presume that executive expertise is consistently dependable or that judicial oversight is always effective. The evidence is required for both claims. The inquiry is to be organised so that institutional competence becomes a question about the task, information and safeguards³⁴ in issue, rather than a categorical preference for one branch. The framework allows for a firm enforcement of established rights. However, it requires the courts to give an explanation when it moves from identifying a breach to prescribing the detailed means of administration.

8. Conclusion

The constitutional contribution of PILs is that they facilitate remedies where traditional litigation is insufficient. The extension of this into governance creates problems because access-oriented processes can result in orders impacting entities and people beyond the dispute. The answer is neither to abandon judicial innovations nor accept an unmanageable good-governance jurisdiction.

The duty-process-remedy framework establishes a better balance. It is the duty of the courts to create the obligation, fabricate an inclusive and reliable process, and choose a remedy that is justified by the violation and the evidence. The various elements of Bandhua Mukti Morcha, Vishaka, BALCO, the pandemic

proceedings and M K Ranjitsinh represent India's distances. PIL, if disciplined properly, can ensure constitutional accountability leaving the lawful choices to the institutions entrusted with them. The validity of "constitutional responsibility" claims cannot hinge on whether lawyers brand it activism or restraint. What matters is the nature of the legal and evidentiary explanation that connects the intervention to the fulfilment of constitutional duty.

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