



# Social Policy From The Bench: The Transformative Role Of PIL In India's Legal Landscape.

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**Abstract:** In the Indian context, persistent legislative and executive inaction has often resulted in critical gaps in the formulation and implementation of social and public policy, particularly in addressing the needs of marginalized and vulnerable populations. In response to this policy vacuum, the judiciary emerged as an active player through the innovative mechanism of Public Interest Litigation (PIL), transforming its traditional role from a passive arbiter to an agent of socio-political reform. The paper investigates the role of PIL as an instrument for social justice and public policy reform and will aim to trace the historical and conceptual development of PIL in India, analyze its effectiveness in prompting policy changes and systemic reforms, and critically examine the limitations and challenges associated with the judiciary's presence in the policymaking process. The paper seeks to explore both the transformative potential and the contested terrain of PIL in India, arguing that despite its limitations, PIL has emerged as a powerful driver of social justice and public policy reform.

**Keywords:** Public Interest Litigation, Social Policy, Judicial Activism, Transformative Constitutionalism, Social Bench.

## INTRODUCTION

'Like old clocks, our judicial institutions need to be oiled, wound up, and set to true time'.<sup>1</sup> The Indian legal landscape has undergone a seismic shift, moving from a rigid, colonial era focus on procedural formalities to a vibrant, value-laden philosophy of Transformative Constitutionalism. At the heart of this evolution lies Public Interest Litigation (PIL), a judicial innovation that effectively converted the bench into a site of social policy making. PIL enabled the judiciary to move beyond simply interpreting laws, to making active social policy, expanding the fundamental rights and becoming the last resort for the oppressed and the marginalized. The concept roots back to 19th-century American judicial review, while in India, it emerged via Public Interest Litigation in the late 1970s. Public Interest Litigation is the

<sup>1</sup> Fali S. Nariman, *You Must Know Your Constitution* (Hay House Publishers India, 2023).

litigation filed in a court of law not necessarily by the aggrieved party, but by any public-spirited individual, organization or the court suo moto on behalf of larger public interest. Unlike conventional litigation, the litigant does not need to be personally affected by the issue. During the 1970s, a majority of Indians suffered from a severe lack of access to justice. Legal fees were prohibitively expensive to the extent that only the few could afford representation.<sup>2</sup> Moreover, the lack of education for many rural Indians meant that most people were unaware of their legal rights, and lawyers working on their behalf were few and far between. The first major shift occurred in the late 1970s and early 1980s, when the Supreme Court began to reinterpret procedural rules in the light of constitutional morality and social justice. Judges V.R. Krishna Iyer and Justice P.N. Bhagwati played a central role in this transformation. They recognized that in a deeply unequal society, insistence on strict standing of locus standi would defeat the very purpose of fundamental rights.<sup>3</sup> As a result, the Court began allowing “public-spirited” individuals and groups to move the Court on behalf of those who were unable to do so themselves. This judicial innovation marked the beginning of Indian PIL, and aligned procedure with substantive justice. The PIL functions on the idea that when the political branches, the legislature and the executive fail to fulfill their constitutional role, the judiciary steps in to protect the fundamental rights of the marginalized. The judiciary modified traditional legal principles to ensure justice is not denied. This dynamic is often described as the expansion of judicial review to fill a governance vacuum.

### Court of Law to Court of Justice

Before the late 1970s, the Indian judiciary operated under a colonial inherited tradition of legal formalism. During this period the judges were passive observers who decided on the cases based only on evidence presented by two competing parties. They followed strict procedure and if a petition didn't follow the exact form required by the handbook, it was thrown out. The court cared more about whether a law was followed rather than the law itself was fair or just. The transformative phase of the judiciary to a pioneering social justice era started by dismantling this procedure based legal formalism.

The foundational milestone of this shift was *Hussainara Khatoon vs. State of Bihar*, widely recognized as the first true Public Interest Litigation in India.<sup>4</sup> Born not from a formal private writ petition, but from a series of investigative newspaper articles, the case exposed the horrific plight of tens of thousands of impoverished undertrial prisoners languishing in Bihar jails for periods far exceeding the maximum sentence for their alleged offenses. Spurred by deep institutional conscience, a bench led by Justice P.N. Bhagwati bypassed strict procedural formalities to declare that the "Right to a Speedy Trial" was an implicit, fundamental guarantee under Article 21, leading to the immediate release of over 40,000 undertrials.

The case of *SP Gupta vs Union of India* (1981), referred to as the First Judges Transfer Case made way to the structure of Public Interest Litigation in India.<sup>5</sup> While the core dispute of the case centered on the independence of the judiciary and the transfer of High Court judges, its true historic legacy lies in how it fundamentally revolutionized the doctrine of locus standi, which dictated that only the individual or aggrieved party who has suffered direct legal injury had the right to approach the court. The Court ruled that when a legal injury or a public wrong is inflicted upon a person or a determinate class of persons

<sup>2</sup> Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," *THIRD WORLD LEGAL STUDIES*, n.d.

<sup>3</sup> Sampat Jain, *Public Interest Litigation* (Deep & Deep Publications, 2023).

<sup>4</sup> *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar, ... on 9 March, 1979*, 1979.

<sup>5</sup> "S.P. Gupta vs Union Of India & Anr on 30 December, 1981," accessed May 22, 2026,

<https://indiankanoon.org/doc/112850760/>.

who comes from poverty, helplessness, or a socially disadvantaged position, and are unable to approach the court for relief, any public-spirited member of the public acting bona-fide (in good faith) can maintain an action for judicial redress under Article 32 or Article 226. By converting the individualistic "right to sue" into a collective "constitutional duty to protect", SP Gupta fundamentally transformed the Supreme Court from a passive legal umpire into a proactive, value-driven arena for social engineering, paving the way for specialized NGOs, lawyers, and academics to advocate for the structural rights of the impoverished.

To make this newly opened door accessible to the most marginalized sections of society, the Court simultaneously pioneered 'Epistolary Jurisdiction'.<sup>6</sup> This procedural innovation completely democratized legal remedies by allowing the courts to treat simple postcards, letters, or telegrams addressed to individual judges as formal writ petitions under Article 32 and 226.<sup>7</sup> By stripping away the financial and bureaucratic burdens of expensive court fees, legal representation, and complex drafting, the post-Emergency bench effectively converted the legal system less restrictive. While Hussianara Khatoon opened the doors of the Court, it was a series of subsequent cases that formalized the 'epistolary' mechanism.

The PIL *Sunil Batra v. Delhi Administration* (1978&1980) is the classic example of epistolary jurisdiction.<sup>8</sup> A prisoner named Sunil Batra wrote a letter on a scrap paper to Justice V.R. Krishna Iyer, alleging that a fellow prisoner was being brutally tortured by a jail warden for extortion of money. Justice Iyer accepted this letter as a Habeas Corpus petition. The Court noted that technicalities must not stand in the way of a prisoner's cry for justice, ultimately leading to major prison reforms across India.

In *Bandhua Mukti Morcha v. Union of India* (1984), The NGO Bandhua Mukti Morcha sent a letter to the Supreme Court highlighting the miserable, sub-human conditions of bonded laborers working in stone quarries in Faridabad, Haryana.<sup>9</sup> The workers were denied basic necessities like clean drinking water, medical facilities and clean drinking water. The NGO argued that these conditions violated Article 21(Right to Life and Personal Liberty) and Article 23(Right against Exploitation/Against Forced Labour). The Court treated the letter as a writ petition and Chief Justice P.N. Bhagwati vigorously defended the practice against government objections, stating that the Court could not wrap itself in "procedural technicalities" when fundamental rights were being openly violated.

### **Expanding the Horizon of Article 21**

The expansion of Article 21 of the Indian Constitution by the Supreme Court via Public Interest Litigation represents one of the most remarkable exercises in judicial activism and socio-legal engineering in the Indian constitutional landscape. Article 21, which provides that 'no person shall be deprived of his life or personal liberty except according to procedure established by law', was originally interpreted by a conservative post-independence Bench as a negative guarantee against arbitrary executive arrest, as held in *A.K Gopalan v. State of Madras*(1950).<sup>10</sup> However, the post Emergency constitutional amendments shattered this narrow textual formalism. Beginning with the significant ruling in *Maneka Gandhi v. Union of India* (1978), the Court imported the principles of substantive due process,

<sup>6</sup> Dr N. Sathish Gowda, *EPISTOLARY JURISDICTION: A TOOL TO ENSURE HUMAN RIGHTS OF HAVE-NOTS*, n.d.

<sup>7</sup> Videh Upadhyay, *Public Interest Litigation in India: Concepts, Cases, Concerns* (LexisNexis Butterworths, 2007).

<sup>8</sup> Rachit Garg, "Case Analysis on *Sunil Batra v. Delhi Administration & Others*, 1978," *iPleaders*, January 29, 2021, <https://blog.ipleaders.in/case-analysis-sunil-batra-v-delhi-administration-others-1978/>.

<sup>9</sup> "*Bandhua Mukti Morcha v. Union of India & Ors.* (1997) 10 SCC 549," *ESCR-Net*, n.d., accessed May 28, 2026, <https://www.escr-net.org/caselaw/2015/bandhua-mukti-morcha-v-union-india-ors-1997-10-scc-549/>.

<sup>10</sup> Khushi Malviya, "*A.K Gopalan v State of Madras: Personal Liberty under Article 21*," *CLATalogue*, March 13, 2026, <https://www.lawctopus.com/clatalogue/clat-ug/a-k-gopalan-v-state-of-madras/>.

mandating that any procedure depriving a person of life or liberty must be "just, fair, and reasonable."<sup>11</sup> Armed with this new interpretative vigor and the procedural tool of PIL, successive benches transformed Article 21 from a mere shield against state lawlessness into a vibrant reservoir of positive, enforceable socio-economic rights, effectively manufacturing social policy directly from the Bench. In the case of legislative silence and executive inertia, the Court utilized PILs to make traditionally non-enforceable Directive Principles of State Policy (Part IV) into the enforceable Fundamental Rights (Part III) via Article 21. This synthesis established a constitutional mandate that, if the State fails to provide basic healthcare, primary education, clean water, or a pollution-free environment, it is no longer viewed merely as a failure of a political welfare program, but as a direct, actionable violation of the fundamental right to survive.

### Article 21 Policy Transformations

- Right to Emergency Healthcare – Pt. Parmanand Katara vs Union of India and Ors, 1989.

The doctrine articulated in this case was that the absolute preservation of human life is paramount and procedural and medico-legal technicalities cannot override immediate clinical intervention. The Supreme Court delivered a sweeping policy directive that the preservation of human life is of paramount importance. The Court mandated that every doctor whether in a public or private hospital has a total, unconditional obligation to provide immediate medical aid to an injured citizen. The Court also insulated doctors from procedural harassment, ordering that criminal law procedures cannot stall emergency medical intervention.<sup>12</sup> This single PIL effectively drafted India's modern emergency medical response protocol from the bench.

- Right to Education- Mohini Jain vs State of Karnataka, 1992 and Unnikrishnan, J.P and Ors vs State of Andhra Pradesh, 1993.

In Mohini Jain vs State of Karnataka, the PIL challenged the extortionate capitation fees charged by private medical colleges. In this landmark case, the Supreme Court declared that the Right to Education is an integral part of the Right to Life under Article 21, as human dignity is impossible to achieve without literacy. A five-judge Constitution Bench in Unnikrishnan vs State of Andhra Pradesh, 1993 refined this doctrine into a pragmatic, enforceable social policy. The Court structured a clear administrative formula, ruling that every child has a fundamental right to free and compulsory education until they complete the age of 14 years.<sup>13</sup> This judicial directive established an institutional dialogue with Parliament, directly compelling the legislature to pass the 86th Constitutional Amendment, which formally inserted Article 21A into the Constitution, and subsequently laid the bedrock for the historic Right to Education Act of 2009.

- Right to Clean Environment- MC Mehta vs Union of India, 1986.

Public interest lawyer M.C. Mehta filed a series of systemic PILs that turned the Supreme Court into India's environmental regulator. The Court utilized Article 21 to introduce three massive global

<sup>11</sup> Zia Mody, *10 Judgements That Changed India*, 1. publ (Shobhaa Dé Books, 2013).

<sup>12</sup> Oishika Banerji, "How Medical Aid Was Interpreted under Article 21: Parmanand Katara v UOI," *iPleaders*, July 20, 2021, <https://blog.iplayers.in/medical-aid-interpreted-article-21-parmanand-katara-v-uoi/>.

<sup>13</sup> Rachit Garg, "Miss Mohini Jain vs. State of Karnataka and Ors. (1992)," *iPleaders*, May 5, 2024, <https://blog.iplayers.in/miss-mohini-jain-vs-state-of-karnataka-and-ors-1992/>.

environmental policies into municipal Indian law.<sup>14</sup> The Polluter Pays Principle were the absolute liability for environmental damage extends to compensating the victims and restoring the degraded environment., The Precautionary Principle were the State must anticipate and prevent environmental degradation and a lack of scientific certainty cannot be used as an excuse to postpone measures, The Public Trust Doctrine, which holds that the natural resources like air, rivers, and forests are held by the government in trust for the general public and cannot be sold off to private commercial interests. Through these PILs, the Court ordered the closure of hundreds of tanneries along the Ganga, created the ‘Taj Trapezium Zone’ to protect the monument, and famously mandated that the entire public transport fleet of Delhi (buses and auto-rickshaws) switch from diesel to Clean Natural Gas (CNG).

By using PILs to expand Article 21, the Indian Supreme Court essentially redrew the boundaries of governance. This expansion proved that in a developing welfare democracy, a court cannot remain a detached legal body, but an active shield against administrative apathy.<sup>15</sup>

### Landmark Cases of Bench-Led Policy

When the Legislature or the Executive fails to act on pressing systemic crises, the Indian Supreme Court has frequently stepped directly into the legislative vacuum through the mechanism of PIL. The Court has drafted comprehensive regulatory frameworks that operate with the full force of law until formal legislation is enacted. This proactive judicial intervention is anchored in the doctrine of transformative constitutionalism, which empowers the judiciary to actively eradicate institutional and social inequities rather than passively awaiting legislative consensus.

In *Vishaka vs State of Rajasthan*, 1997, the PIL fought against the legislature vacuum of the total absence of workplace law against sexual harassment of women, rendering Article 14, 19 and 21 futile.<sup>16</sup> Drawing upon the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the United Nations, the Court formulated the extensive ‘Vishaka Guidelines’ defining harassment, establishing workplace grievance mechanisms, and shifting the burden of safety onto employers. The guidelines operated as the undisputed law of the land for 16 years, directly providing the conceptual and statutory blueprint for the Prevention of Sexual Harassment (POSH) Act, 2013.

In *Peoples Union for Civil Liberties (PUCL) vs Union of India*, 2001, the PIL fought against the massive food grain surpluses that rotted in state owned warehouses while structural famines and malnutrition plagued impoverished communities. The Court transformed executive welfare schemes into justiciable legal entitlements, ordering all state governments to provide cooked mid-day meals in all government and government assisted primary schools.<sup>17</sup> The Supreme Court ruled that Right to Life under Article 21 inherently guarantees the Right to be free from Starvation. This PIL also served as the institutional architecture for the National Food Security Act, 2013.

The PIL *Navtej Singh Johar vs Union of India*, 2018, fought against the colonial era law of Section 377 of the IPC, which criminalized consensual same-sex relationships as ‘against order of nature’ and

<sup>14</sup> Rachit Garg, “MC Mehta vs. Union of India (1986) : Case Analysis,” *iPleaders*, October 3, 2022, <https://blog.ipleaders.in/mc-mehta-vs-union-of-india-1986-case-analysis/>.

<sup>15</sup> Satyaranjan P. Sathe, *Judicial Activism in India*, 2., ed.4. impr, Oxford India Paperbacks (Oxford Univ. Press, 2007).

<sup>16</sup> Diva Rai, “Vishaka & Ors. vs. State of Rajasthan & Ors. (1997),” *iPleaders*, September 16, 2024, <https://blog.ipleaders.in/vishaka-ors-vs-state-of-rajasthan-ors-1997/>.

<sup>17</sup> “Right to Food Campaign - PUCL Vs UoI, a PIL on Right to Food,” accessed May 28, 2026, <http://www.internationalhumanrightsexicon.org/hrdoc/docs/pucl.html>.

institutionalized social exclusion. The five-judge bench of the Supreme Court unanimously held that Section 377 of IPC in so far applied to consensual sexual conduct in private is unconstitutional.<sup>18</sup> The Court struck down the penal provision by applying the principles of Constitutional Morality and the Right to Intimacy, declaring that the majoritarian moral code could not override individual identity, and are fundamental rights protected under Article 14(equality), 15(non-discrimination), 19(freedom of expression) and 21(right to privacy).

### **Balancing Judicial Activism and Judicial Overreach**

The rise of Public Interest Litigation and the subsequent expansion of Article 21 democratized access to justice in India. This transition placed the Supreme Court at the apex of a critical constitutional debate regarding the boundaries of judicial execution and its power.<sup>19</sup> The principle of transformative constitutionalism aids the Court to act as a catalyst for social transformation, but its frequent foray into administrative and legislative sections of the government has had critical concerns. An assertive judiciary can risk the crossing of the fine line between judicial review and judicial overreach and can disrupt the equilibrium of separation of powers embedded in the constitution.<sup>20</sup>

Judicial Activism happens when the judiciary carefully interprets constitutional text to protect fundamental rights from executive or legislative silence. It is a defensive and corrective function, were laws are often made adopting international laws, when there is domestic absence of laws.<sup>21</sup> Judicial Overreach happens when the bench transitions from declaring ‘what the law is’ to dictating ‘how public resources and other functions be managed’. When the judiciary issues top-down commands on budgeting, structural engineering, or localized administration, it enters an arena where it lacks both technical expertise and electoral accountability. The Judiciary should be able to stick to its legitimate activism like filling statutory vacuum and not policy or fiscal usurpation.

### **Critique of Bench-Led Policy**

Unlike many other governmental systems, the Indian Constitution does not provide for a strict separation of powers of the branches of the government, but follow a system of checks and balances. But, however when the judiciary or the ‘social bench’ transforms into continuous administration and supervising state system, undermining the other branches, the judiciary risks the institutional autonomy and legitimacy of other branches. Another critique is the inability of the judiciary to solve polycentric problems. According to scholar Lon Fuller, the judiciary is unsuited to solve polycentric problems that affects the State, that is, pulling the string of one social issue causes tension in the entire web.<sup>22</sup> When the judiciary orders the immediate conversion of an entire city’s public transport to CNG or mandates specific caloric metrics for school meals, it is making policies with fiscal implications. Unlike the legislature, the Court cannot call upon civil service experts or hold budgetary hearings to study about the viability of the policies made.

<sup>18</sup> “Navtej Singh Johar v. Union of India,” *Global Freedom of Expression*, n.d., accessed May 28, 2026, <https://cgfoetestsite.mystagingwebsite.com/cases/navtej-singh-johar-v-union-india/>.

<sup>19</sup> Holladay, “Public Interest Litigation in India as a Paradigm for Developing Nations,” *Indiana Journal of Global Legal Studies* 19, no. 2 (2012): 555, <https://doi.org/10.2979/indjglolegstu.19.2.555>.

<sup>20</sup> Pratap Bhanu Mehta, “India’s Unlikely Democracy: The Rise of Judicial Sovereignty,” *Journal of Democracy*, n.d., accessed May 22, 2026, <https://www.journalofdemocracy.org/articles/indias-unlikely-democracy-the-rise-of-judicial-sovereignty/>.

<sup>21</sup> Sathe, *Judicial Activism in India*.

<sup>22</sup> “The Bridge: Legal Process: Lon Fuller,” accessed May 25, 2026, <https://cyber.harvard.edu/bridge/LegalProcess/fuller2.htm>.

Consequently, well-intentioned judicial decrees can result in unforeseen economic disruptions or logistical failures on the ground.<sup>23</sup>

## CONCLUSION

The evolution of Public Interest Litigation in India, from strict procedural standings to the expansive, rights affirming judiciary speaks large volume of the contemporary social bench and the profound capacity of a living Constitution to drive social transformation. By diluting the principles of locus standi and epistolary jurisdiction, the judicial system got a new identity of a value driven guardian of substantive justice. This shift brought a new life into Article 21, turning a basic guarantee against arbitrary arrest into a vibrant umbrella right that protects human dignity, emergency healthcare, primary education, environmental safety and much more. The judiciary stepped into legislative and executive vacuum to create social policies, yet the delicate line between legitimate judicial activism and subjective judicial overreach remains a site of friction. When the judiciary takes up the role as a primary policymaker, it faces challenges regarding separation of powers, and its lack of direct electoral accountability. Ultimately, the history of the Indian PIL movement reveals that these power tensions are not structural failures, but the natural undercurrents of a developing welfare democracy. Through proper balance, the judiciary does not usurp democratic governance, it deepens it. By turning the suffering of the country's most vulnerable into binding constitutional mandates, the judiciary ensures that the promise of the Indian Constitution remains an expanding, living reality for all of its citizens.

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