Conciliation Act, 1996 to resolve the disputes out of the traditional Courts and also brought amendments in Section 89 of the Civil Procedure Code, 1908 (CPC), in the year 1999. In this section specifically various modes of ADR have been adopted. It laid down resolution of disputes out of the Courts by mutual consent of the parties and the circumstances when parties to the dispute may adopt it during the course of litigation in the traditional Courts.

These above two efforts of parliament of India are entitled to appreciation but both proved ineffective for the poor and common men in this modern era where globalization and consumerism are prevailing.

The Government is required to bring necessary alterations and changes in the existing laws of the land and also adopts alternatives various methods for resolving disputes and conflicts of family matters, traders and commercial associations, labour and industrial disputes and compensation matters. A unique institution at village and city level should be opened, where the petty matters can be brought & resolved, and which is free from any formal procedure. There should be no need of representation though lawyers. The decision rendered by these institutions must be binding and no scope of further appeal should be made. It should charge a very nominal or minimal fee that is must to run the institution and it should not charge even this nominal fee from the poor who are openly incapable to give it. The era of Alternate Dispute Resolution has dawned on our societies, and encouragement of newer forms of Alternate Dispute resolution like MEDOLA, Mini Trial & other such initiatives would be in the best interests of our society.

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PUBLIC INTEREST LITIGATION AND PROBLEMS IN INDIA

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The words 'Public Interest' mean "the common well being also public welfare (Oxford English Dictionary 2nd Edn. Vol.Xll) and the word 'Litigation' means "a legal action including all proceedings therein, initiated in a Court of law with the purpose of enforcing a right or seeking a remedy." Thus, the expression 'Public Interest Litigation' means "some litigation conducted for the benefit of public or for removal of some public grievance." In simple words, public interest litigation means any public spirited citizen can approach the Court for the public cause (or public interest or public welfare) by filing a petition in the Supreme Court under Article 32 of the Constitution or in the High Court under Article 226 of the Constitution or before the Court of Magistrate under Section 133 of the Code of Criminal Procedure, 1973.

The seeds of the concept of public interest litigation were initially sown in India by *Krishna Iyer* J., in 1976 in *Mumbai Kamagar*

Sabha v. Abdul Thai[1]. *Krishna Iyer* J., enunciated the reasons for liberalization of the rule of *Locus Standi* in *Fertilizer Corporation Kamgar v. Union of India*[2] and the ideal of 'Public Interest Litigation' was blossomed in *S.P. Gupta and others v. Union of India*[3].

Genesis of Procedure: At the time of independence, Court procedure was drawn from the Anglo-Saxon system of jurisprudence. The bulk of citizens were unacquainted of their legal rights and much less in a position to state them. And as a result, there was barely any link between the rights guaranteed by the Constitution of Indian Union and the laws made by the Legislature on the one hand and the vast majority of illiterate citizens on the other.

However, this situation gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of *locus standi* and of party aggrieved. Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not knock the doors of justice as a proxy for the victim or the aggrieved party. Public Interest Litigation as it has developed in recent years marks a significant departure from traditional judicial proceedings. The Court is now seen as an institution not only reaching out to provide relief to citizens but even venturing into formulation policy which the State must follow. The splendid efforts of Justice *P.N. Bhagwati* and Justice *V.R. Krishna Iyer* were instrumental of this juristic revolution of eighties to convert the apex Court of India into a Supreme Court for all Indians.

Public Interest Litigation (PIL) has been an invaluable innovative judicial remedy. It has translated the rhetoric of fundamental rights into living reality for at least some segments of our exploited and downtrodden humanity. Under trial prisoners languishing in jails for inordinately long periods, inmates of asylums and care-homes are living in sub-human conditions, children working in hazardous occupations and similar disadvantaged sections. But the expansion of Public Interest Litigation (PIL) in the country has very recently uncovered its own pitfalls and drawbacks.

1. Irresponsibility of PIL Activists: The genuine causes and cases of public interest have in fact receded to the background and irresponsible PIL activists all over the country have started to play a major but not a constructive role in the arena of litigation. In a recent case the Court while dismissing an ostensible PIL against the sale of a plot of land through public auction, held that the matter had not been raised in public interest at all, but to ventilate a private grievance. Of late, many of the PIL activists in the country have found the PIL as a handy tool of harassment since frivolous cases could be filed without investment of heavy Court fees as required in private civil litigation and deals could then be negotiated with the victims of stay orders obtained in the so-called PILs. Just as a weapon meant for defense can be used equally effectively for offence, the lowering of the *locus standi* requirement has permitted privately motivated interests to pose as public interests.

The abuse of PIL has become more rampant than its use and genuine causes either receded to the background or began to be viewed with the suspicion generated by spurious causes mooted by privately motivated interests in the disguise of the so-called public interests. Every matter of public interest cannot be the basis of a PIL, *e.g.*, increase in the price of onions or in railway fares or the dilapidated condition of railway stations or the Red Fort or trains not running on time. Over the years, PIL has degenerated

1. AIR 1976 SC 1455 = (1976) 3 SCC 832
2. AIR 1981 SC 149 = 1981 (2) SCR 52
3. AIR 1982 SC 149

into Private Interest Litigation, Political Interest Litigation, and above all, Publicity Interest Litigation. Weakness for publicity affects judges, lawyers and litigants alike.

***2. Lack Strict Doctrine of Separation of Powers*:** The framers of Indian constitution did not incorporate a strict doctrine of separation of powers but envisaged a system of checks and balances. Policy making and implementation of policy are conventionally regarding as the exclusive domain of the executive and the Legislature. The power of judicial review cannot be used by the Court to usurp or abdicate the powers of other organs. PIL in practice, however, tends to narrow the divide between the roles of the various organs of Government and has invited controversy principally for this reason. The Court has sometime even obliterated the distinction between law and policy. The approach of the Court in policy matters is to ask whether the implementation or non-implementation of the policy result in a violation of fundamental rights. In *M.N. Mehta v. Union of India*, the Court explained how despite the enactment of Environment (protection) Act, 1986, there had been a considerable decline in the quality of environment. Any further delay in the performance of duty by the central Government cannot, therefore, be permitted. The Court, however, required the central Government to indicate what steps it had taken thus far and also place before it the national policy for the protection of environment. The law and policy divide was obliterated in *Vishaka v. State of Rajasthan*[4], which was a PIL concerning sexual harassment of women at work place. A significant feature of this decision was the Courts readiness to step in where the Legislature had not. The Court declared that till the legislature enacted a law consistent with the convention on the Elimination of All Forms of Discrimination against Women which India was a signatory, the guidelines set out by the Court would be enforceable. However, in the *Delhi Science Forum v. Union of India*[5] where the Government of India telecommunication policy was challenged by a PIL the Court refused to interfere with the matter on the ground that it concerned a question of policy. PILs that have sought prohibition on sale of liquor or recognition of a particular language as the national language or the introduction of a uniform civil code have been rejected on the basis that these were matters of policy. The Court may refuse to entertain a PIL if it finds that the issues raised are not within the judicial ambit or capacity. Thus, a petition seeking directions to the central Government to preserve and protect the Gyanvapi Masjid and the Vsihwanath Temple at Varanasi as well as the Krishna Temple and Idgah at Mathura was rejected. Despite such observations the Court has not adopted a uniform and consistent approach in dealing with its emerging role as policy maker. While in some cases, the Court has expressed its reluctance to step into the legislative field, in others it has laid down detailed guidelines and explicitly formulated policy.

3. The Flexible Procedure: The flexibility of procedure that is a character of PIL has given rise to another set of problems. It gives an opportunity to opposite parties to ascertain the precise allegation and respond specific issues. The PIL relating to depletion of forest cover is a case in pint. The petition, as originally drafted and presented, pertained to the arbitrary felling of Khair trees in Jammu and Kashmir. The PIL has now been enlarged by the Court to encompass all forests throughout India. Individual States, therefore, will not be able to respond to the original pleading as such, since it may not concern them at all. The reports given by Court appointed commissioners raise problems regarding their evidentiary value. No Court can found its decision on facts

4. (1997) 6 SCC 241 = AIR 1997 SC 3011

5. 112 (2004) DLT 944

unless they are proved according to law. This implies the right of an adversary to test them by cross-examination or atleast counter-affidavits. In such instances the affected parties may have misgivings about the role of the Court.

4. Poltical Obstacles: In the political arena too, the debate over the limits of judicial activism, particularly in the field of PIL, has been vigorous. The attempt by the judiciary through PILs to enter the area of policy making and policy implementation has caused concern in political circles. A private members bill, entitled Public Interest Litigation (Regulation) Bill, 1996 was tabled in Rajya Sabha. According to it the PIL was being grossly misused. Moreover, PIL cases were being given priority over other cases, which had remained pending in the Court for years. It was urged that if a PIL petition failed or was shown to be *mala fide* the petitioner should be put behind bars and pay the damages. Although the bill lapsed, the debate in Parliament revealed some of the criticism and suspicion that PIL had begun to attract.

5. The Credibility of PIL Process: The credibility of PIL process is now adversely affected by the criticism that the judiciary is overstepping the boundaries of its jurisdiction and that it is unable to supervise the effective implementation of its orders. It has also been increasingly felt that PIL is being misused by the people agitating for private grievance in the garb of public interest and seeking publicity rather than espousing public cause. The judiciary has itself recognized and articulated these concerns periodically. A further concern is that as the judiciary enters into the policy making arena it will have to fashion new remedies and mechanisms for ensuring effective compliance with its orders. A judicial system can suffer no greater lack of credibility than a perception that its order can be flouted with impunity. This Court must refrain from passing orders that cannot be enforced, whatever the fundamental right may be and however good the cause. It serves no purpose to issue some high profile *mandamus* or declaration that can remain only on paper. Although usually the Supreme Court immediately passes interim orders for relief, rarely is a final verdict given, and in most of the cases, the follow-up is poor.

To regulate the abuse of PIL the apex Court itself has framed certain guidelines (to govern the management and disposal of PILs.) The Court must be careful to see that the petitioner who approaches it is acting *bona fide* and not for personal gain, private profit or political or other oblique considerations. The Court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain political objectives. At present, the Court can treat a letter as a writ petition and take action upon it. But, it is not every letter which may be treated as a writ petition by the Court. The Court would be justified in treating the letter as a writ petition only in the following cases-

(i) It is only where the letter is addressed by an aggrieved person or

(ii) A public spirited individual or

(iii) A social action group for enforcement of the constitutional or the legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the Court for redress. Even though it is very much essential to curb the misuse and abuse of PIL, any move by the Government to regulate the PIL results in widespread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights.

In his recent write up, Mr. *Soli Sorabji*, the former Attorney General while applauding the liberalization of the rule of *locus standi* by

the Supreme Court of India, made the following suggestions:

1. Reject dubious PIL at the threshold, and in appropriate case with exemplary costs,

2. In cases where important projects or socio-economic regulations are challenged after gross delay, such petitions should be thrown out at the very threshold on the ground of latches. Just because a petition is termed as PIL does not mean that ordinary principles applicable to litigation will not apply. Latches are one of them.

Public Interest Litigants fear that implementation of these suggestions will sound the death-knell of the people friendly concept of PIL. However, it cannot be denied that PIL activists should be responsible and accountable. It is also notable here that even the Consumers Protection Act, 1986 has been amended to provide compensation to opposite parties in cases of frivolous complaints made by consumers. PIL requires rethinking and restructuring. Overuse and abuse of PIL will make it ineffective. PIL has translated the rhetoric of fundamental rights into living reality for at least some segments of our exploited and downtrodden humanity. Under trial prisoners languishing in jails for inordinately long periods, inmates of asylums and care-homes living in sub-human conditions, children working in hazardous occupations and similar disadvantaged sections. Hence, any change to improve it further should be encouraged and welcomed.

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PRESUMPTION OF EXISTENCE OF LEGALLY ENFORCEABLE DEBT/ LIABILITY IN CASES OF DISHONOUR OF CHEQUE

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Introduction:

Proper and smooth functioning of all business transactions, particularly of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that cheques were