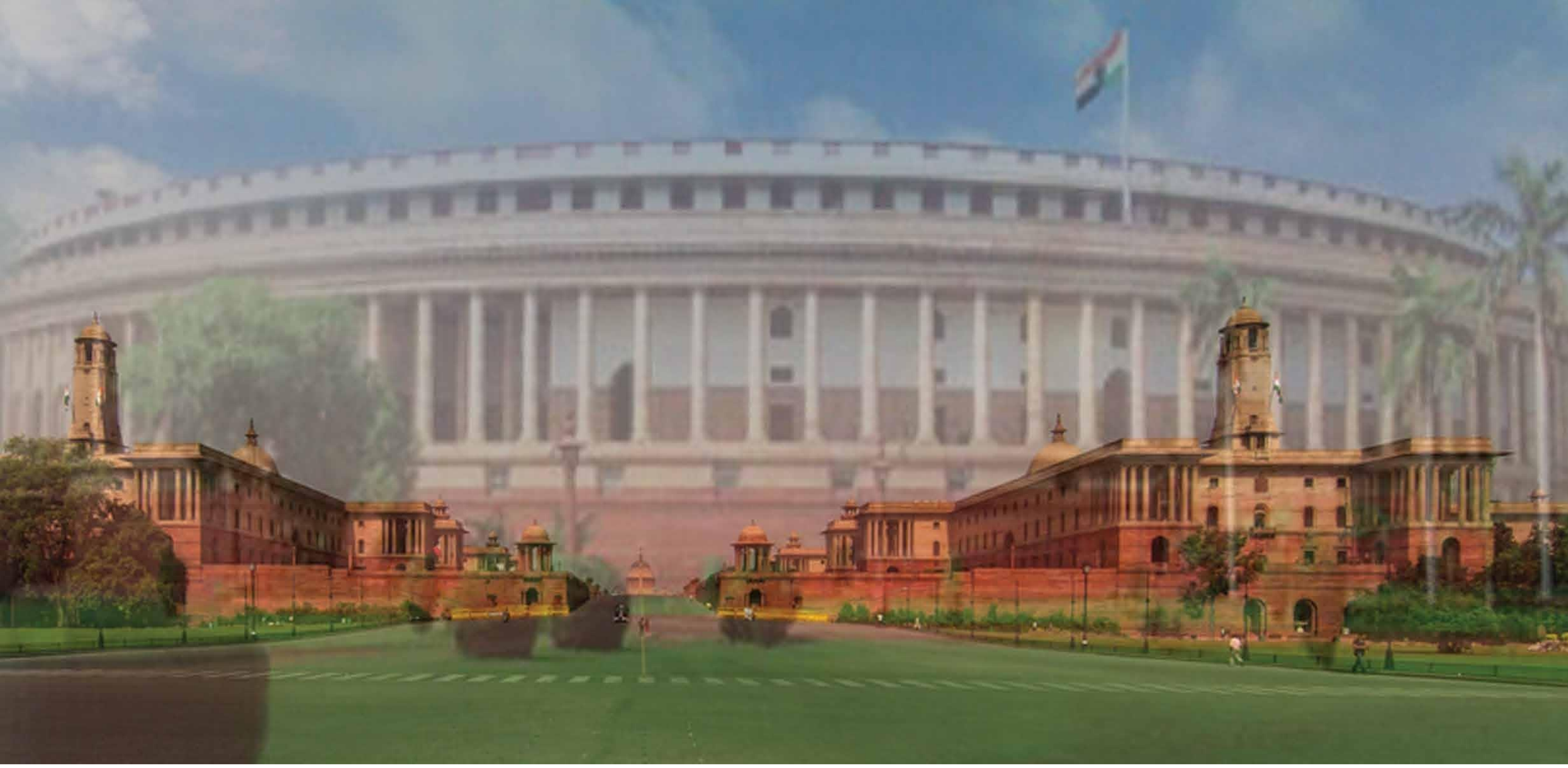

Policies & Perspectives

VIVEKANANDA INTERNATIONAL FOUNDATION

Ending misuse of Public Interest Litigation Mechanism

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On November 24, the Supreme Court said the concept of Public Interest Litigations (PILs) ought to be reviewed. A two-judge Bench of the court was both dismayed and furious at a PIL filed by a politician demanding a probe by an official investigation agency into the 2015 collapse of a dais in Raipur (Chhattisgarh) erected for a public rally to be addressed by Prime Minister Narendra Modi. He claimed that the incident had security implications since the matter involved the country's Prime Minister. The plea had been earlier rejected by the High Court, which was upset enough by the frivolity to impose a fine of Rs 25,000 on the petitioner. Instead of getting the message, the aggrieved party approached the apex court. Not only did the latter reject the plea as being abusive of the spirit of a PIL, but it also enhanced the fine to the petitioner to one lakh rupees.

This was not the first PIL to be rejected nor will it be the last. Only recently, the apex court had outright refused to entertain a litigation by Bharatiya Janata Party (BJP) leader Subramanian Swamy, who had challenged the Union Government's security clearance to certain companies. The court maintained that it would not get into policy decisions of the Government. Back in 2010, a similar stand had been taken by a three-judge Bench headed by the then Chief Justice of India (CJI) SH Kapadia. During the course of hearing a bunch of public interest litigations, the Bench had stated, "The Supreme Court has no power to interfere in policy matters. We can't interfere in governance. The court cannot solve all problems like the need for toilets etc." The Bench added that PILs could not be entertained merely on the basis of news reports. In the first and more recent instance, the Bench had said, "Time has come when the court should revisit the concept of PIL. How can a party have the audacity to approach the court with such a frivolous petition? PIL is not meant for these things." In Swamy's case, a three-judge Bench had observed that the PIL was aimed at "extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard", and not at challenging Government's policy matters. In July this year, the Supreme Court dismissed a PIL that demanded a probe into the killing and exodus of Kashmiri Pandits from the Kashmir Valley on the ground that since the matter involved incidents of nearly three decades ago, material to prosecute would be hard to get. "Almost 27 years have gone by. Where will the evidence come from? Such a plea should have been moved long time ago", the Bench said in its rejection. The petition had been filed by a Non-Government Organisation (NGO), Roots in Kashmir. The court's order was a major blow to the victims who have been waiting for justice and punishment to the perpetrators of the crime — which many commentators have called akin to genocide.

That said, there have been recent instances where some strange PILs did get the apex court's attention. There was a petition by a lawyer seeking a ban on 'Sardar jokes' on the plea that they hurt Sikh sentiments. This was at best a community issue and no larger public interest was involved. There was

certainly no element of the poor or the deprived being unheard, either. And yet, a Supreme Court Bench headed by then then CJI, TS Thakur, entertained the plea and allowed parties such as the Shiromani Gurdwara Prabhandak Committee (SGPC) to join the issue. Another strange PIL had to do with the issue of the Kohinoor diamond's return to India. There is apparently no legal basis for the diamond's restitution to India, and yet the Bench deemed it fit in its wisdom to entertain the petition. Chief Justice Thakur had also, in pursuance to another PIL, actually directed a Government's lawyer to inspect condom packaging and report whether these violated laws on obscenity. The list is long, but one more example should suffice. On the basis of a public interest litigation, the apex court had banned diesel cars of a certain engine power and size to curb air pollution. The problem here was that the order was issued despite there being no adequate scientific evidence of the connection between pollution and high-performance diesel cars.

Such 'digressions' become all the more pronounced given that the courts have rejected PILs which, at least prima facie, seemed worthwhile and in public interest. One such instance is that of a litigant, Dinesh Thakur, who had filed two petitions before the Supreme Court, seeking widespread reforms in the regulation of the country's pharmaceutical sector. The pleas sought directions to the Government to probe certain irregularities in the sale of drugs banned elsewhere in the world, among other things. The petitioner also wanted the Government to reveal the findings of an inquiry conducted against a major drugs company which had been accused of fabricating safety data. But since the petitions were seen by the court as merely raising "academic issues", the litigant withdrew them. At times, though, the apex court has taken the right stand in dismissing PILs on procedural grounds. In August 2015, a Bench declined to entertain a bunch of pleas that demanded a Central Bureau of Investigation (CBI)-monitored probe into an alleged public distribution system (PDS) scam in Chhattisgarh. The petitioner was a former Congress Legislator and a few others, and the plea was clearly designed as a political ploy. The Supreme Court dismissed the petition "as withdrawn" and said the petitioners ought to approach the High Court for the redressal of their grievances.

Not just politics, but even business and other interests (including personal in nature) could drive the filing of PILs. In Kalyaneshwari versus Union of India (2011), the court had referred to the misuse of such petitions business-related matters. A writ petition had been filed in the Gujarat High Court seeking the closure of some industrial units on the ground that the product (asbestos) being manufactured, was harmful to human beings. The High Court rejected the plea on the ground that the petition had been driven by ulterior motives of rival manufacturers. The matter went to the Supreme Court. The apex court too rejected the PIL and imposed costs on the petitioner. The court said, "The petition lacks bona fide and in fact was instituted at the behest of a rival industrial group..." But the court has been careful when it comes to PILs that deal with judicial functioning. Earlier this year, the apex court had refused to consider the Centre's plea that litigations on judicial reforms should not be heard on the "judicial side" and must be rejected. The Union Government was clearly vexed that issues such the appointment of judges etc. often got bogged down by petitions that sought to introduce an element of uncertainty and delay in the process. But a Bench headed by the then Chief Justice of India JS Khehar remarked, "It is our cause. How can we run

away from our own cause?"

Hollow public interest litigations have troubled many Governments. In September 2008, then Prime Minister Manmohan Singh had expressed concern over the growing trend of casual PILs. He said, "Many would argue that like so many things in public life, in PILs too we may have gone too far. Perhaps a corrective was required and we have had some balance restored in recent times." His Law Ministry had even initiated steps to regulate the flow of PILs, with the help of legal brains. But nothing much came out of the exercise. Meanwhile, with his Government falling on bad times with a bunch of corruption scams hitting its credibility, any further attempt to regulate public interest litigations would have boomeranged on its already failing image. The Supreme Court's record on public interest petitions, therefore, has been a mixed one. But there cannot be any dispute with its contention that the PIL route has been corrupted over the decades and needs to be urgently recast. This can happen if the courts demonstrate consistent severity in flushing down frivolous pleas that are filed as PILs. At the same time, the courts have to also be more open in entertaining genuine petitions. Perhaps a clearer definition of what constitutes a public interest litigation will help both potential litigants and the judiciary. The bedrock of this definition has to be, naturally, the term, 'public interest'. Such public interest can be served through either a PIL filed by an outside body or by the courts themselves suo moto.

The concept of PILs (which also brought into vogue the meaning of judicial activism) came into India forcefully in the 1980s with PN Bhagwati as CJI. As the CJI and even as a serving judge of the apex court before he was elevated, he was credited with evolving a new jurisprudence which gave increased space to what came to be popularly known as public interest litigations. Individual and collective rights of those who were marginalised and denied access to justice on a variety of grounds got a boost during his tenure with the active involvement of the courts. The 'legal aid' concept too owes its origin to him. It was said in 1985-86, the period when Bhagwati was the CJI that an ordinary citizen could mail him his grievance on a 25-paise postcard and expect action provided his plea was genuine and required judicial intervention. Justice Bhagwati believed that PILs could transform the country's legal landscape and demonstrate that the law cared for the needy poor too, and was not a weapon to be exploited only by the rich who had the means to twist and turn the wheels of justice. But at a much later stage, during Manmohan Singh's prime ministership, he too believed that the PIL juggernaut was getting out of hand and needed to be regulated. (As an aside, with his PIL activism, Justice Bhagwati perhaps somewhat embellished his image which had suffered a dent when he had infamously, in the ADM Jabalpur case — also known as the habeas corpus case — held that fundamental rights of citizens could be suspended during a state of Emergency.)

Another Supreme Court judge, the high-profile Krishna Iyer, too was a strong advocate of public interest litigations. A book, 'Justice at Heart: Life Journey of VR Krishna Iyer', quotes a lawyer as saying that "PILs flourished during the time of Justice Krishna Iyer as he listened to the voices of the poor and the underprivileged and all those who sought justice in his court". The book also quotes Justice Iyer: "Litigants

are legal patients suffering from injustices seeking healing for their wounds. Would you tell a sufferer in hospital that because he disclosed a certain symptom very late, therefore, he would be discharged without treatment for the sin of the delayed disclosure?" This remark, incidentally, is most telling in the case of the apex court's rejection of a probe into the Kashmir Pandits' killing and exodus merely because the PIL had come too late in the day! But even he acknowledged that "public interest litigation cannot run riot with aberrant objectives and oblique motivations".

In sum, it makes no sense to throw the baby out with the bathwater. PILs are needed and are here to stay. PILs are in consonance with the Preamble to the Constitution of India which, inter alia, talks of justice, "social, economic and political". It also refers to "fraternity assuring the dignity of the individual...". Genuine PILs can serve the cause of social justice and dignity of the individual. Motivated PILs on the other hand are counter-productive to these ideals. The threat to positive judicial activism comes from negative public interest litigations. It's indeed, thus, time, as Justices AK Sikri and Ashok Bhushan said while dismissing the plea for a probe into the collapse of the dais in 2015 from where the Prime Minister was to deliver a speech, to end the "utter abuse" of PILs.

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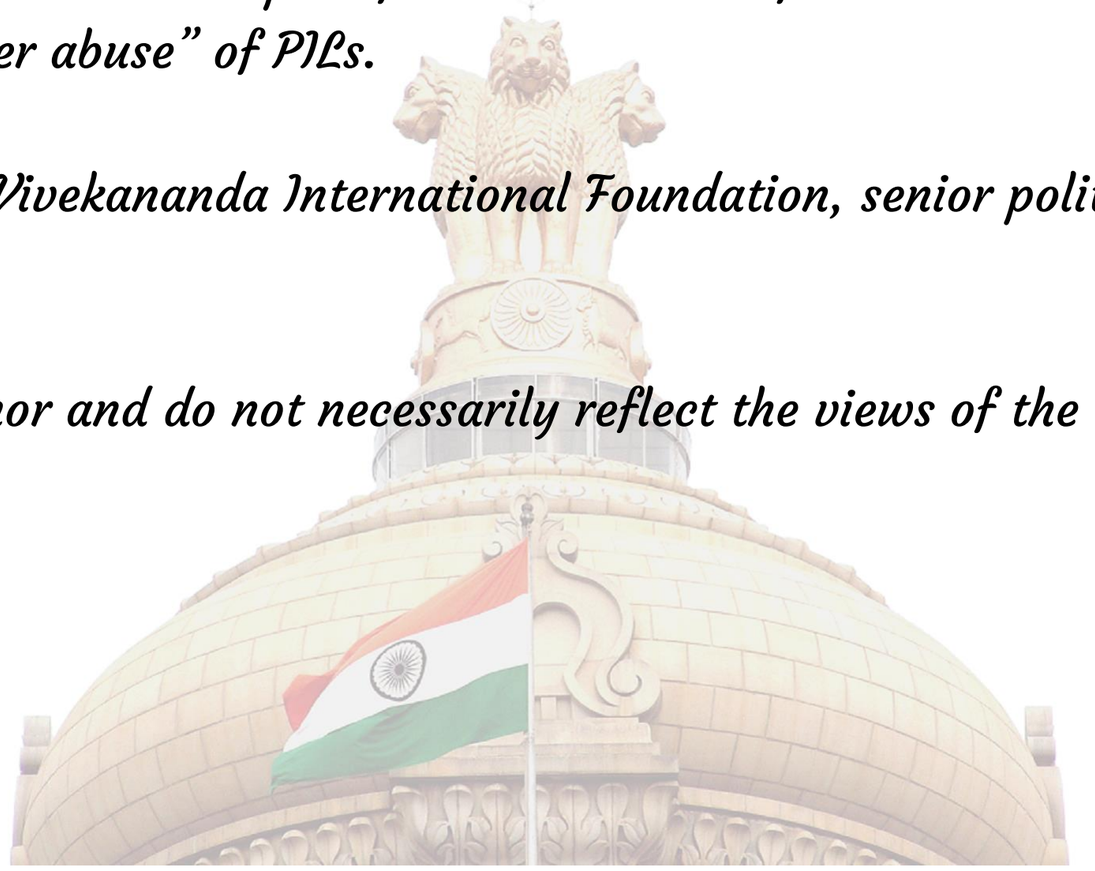
(Views expressed are of the author and do not necessarily reflect the views of the VIF)



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