



Exploring the Evolution of Public Interest Litigation in Pakistan: From Origins to Present-day Challenges through Critical Legal Theory

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Abstract: Public Interest Litigation (PIL) stands as a legal remedy initiated in a court of law to address matters influencing public or communal rights and liabilities. PIL ensures fair and impartial access to justice for all citizens, facilitating the protection and enforcement of fundamental human rights. The origins of public interest litigation in Pakistan can be traced back to the late 1980s, prompted by widespread infringements on fundamental rights by public authorities, compelling the courts to take an active role under Articles 8-28, 184(3), 199, and 187(1) of the Constitution of 1973 of the Islamic Republic of Pakistan. This intervention was intended to protect the ordinary citizens of Pakistan from inefficient, corrupt, inept, and ineffective public officials but the existing backlogs of cases within the legal system presents a substantial challenge in ensuring PIL matters. This impedes timely justice delivery and hampers the effectiveness of PIL in addressing urgent societal concerns. Therefore, this study is designed to examine the historical trajectory, current status, and potential evolution of PIL within the legal framework of Pakistan in addressing public concerns. It scrutinizes past experiences that have influenced the course of PIL in the country, emphasizing pivotal cases and legal developments. The findings of this study show both the significance and challenges of Public Interest Litigation within Pakistan's legal landscape. In the past legal framework, the empowerment of ordinary citizens to hold public authorities accountable was impeded by potential political and administrative interference in PIL cases. Despite its significance, the present status also underscores concerns regarding judicial backlogs, delays, and resource limitations, which adversely impact the expeditious resolution of PIL cases. Therefore, addressing these issues is crucial for further enhancement and the improved effectiveness of PIL.

Keywords: Public Interest Litigation¹, Jurisprudential Landscape², Judicial intervention³,

1. Introduction

In the 20th century, the concept of Public Interest Litigation (PIL) used as a consequential instrument within the legal frameworks of numerous nations with aims to equitable redress of substantial societal grievances (Abbas, 2021) Historically, the genesis of PIL is inextricably linked with the civil rights movements, environmental advocacies, and socio-economic upheavals. Moreover, the fundamental principle underlying PIL is to address and resolve public grievances, particularly those experienced by marginalized groups or individuals with restricted access to legal resources (Ahmad, 2013). Thus, the PIL pertains to matters of broader public significance serves as a

legal mechanism by which individuals may directly petition the judiciary to enforce or defend public interest or fundamental rights, particularly in instances where governmental entities have neglected their obligations. In many countries, PIL is a cornerstone, providing a judicial forum for social issues and public grievances. For instance, United States of America, the United Kingdom, and the Republic of India has distinctive viewpoints with regard to PIL. From an American vantage point, it is duly acknowledged that PIL has significantly contributed to the progression of fundamental rights and freedoms, particularly within the context of the civil rights movement (Heise, 2004). Similarly, from the British standpoint, it is worth noting that the legal system of Great Britain has historically been recognized for its adherence to traditional values, required a considerable amount of time to fully embrace the notion of PIL (Ali & Aziz-ur-Rehman, 2021). The development of British PIL has been significantly shaped by the jurisprudence pertaining to human rights within the European legal framework. In the United Kingdom, PIL has played a crucial role in addressing matters pertaining to the environment, safeguarding public rights, and upholding the principle of transparency in administrative determinations (Samuels, 2018).

The implementation of PIL, several significant legal precedents have been established in relation to the preservation of the environment, the safeguarding of prisoners' rights, and the protection of socio-economic rights across the world (Bhuwania, 2017). The entity above serves as a mechanism for facilitating the connection between legal principles and the general public, with the primary objective of guaranteeing equitable dispensation of justice to individuals belonging to underprivileged groups (Gupta, 2022). However, in Pakistan, access to justice has always been a problem with an extensive legal traditions and influences (Shafqat et al., 2022). Historically, Pakistan's legal framework was established under the 1956 constitution, and it underwent significant transformations with the introduction of the 1973 Constitution, effectively supplanting the earlier interim Constitution of 1962. This period was characterized by the implementation of a presidential system of governance and the imposition of restrictions on provincial autonomy, among other attributes. The promulgation of the 1973 Constitution marked a noteworthy transition towards a parliamentary system and an augmented recognition of local rights, mirroring the evolving legal and socio-political landscape. Article 184(3) of the 1973 Constitution vested the Supreme Court with jurisdiction over cases involving violations of fundamental public interest rights. Nonetheless, the full potential inherent in this constitutional provision remains underutilized. In the aftermath of widespread breaches of fundamental rights, particularly at the hands of public authorities, the judiciary commenced acknowledging its duty to afford redress to the marginalized (Hussain et al., 2022).

Moreover, Article 184(3) of Pakistan's constitution relates to the Supreme Court's original jurisdiction, specifically in cases concerning matters of public concern. This article bestows upon the Supreme Court of Pakistan the exceptional power to take jurisdiction over any question of public importance with reference to the enforcement of any fundamental right (Ali & Rehman, 2019). The Chief Justice of Pakistan has consistently exercised the authority to initiate suo-motu proceedings, as provided by Article 184(3) of the Constitution. Although, the current jurisprudence of Article 184(3) has allowed suo-motu cases to operate free from procedural limitations. The excessive exercise of this article has drawn criticism from opponents in political and bureaucratic circles. Recently, the Pakistan Bar Councils and Bar Associations have strongly objected to the indiscriminate application of Article 184(3) of the Constitution, particularly in relation to political matters (Hussain et al., 2022). Although, legal bodies have also expressed concerns over its misuse, especially in the context of political issues that should ideally be resolved through parliamentary processes or dialogue. The judicious application of this article has not encountered opposition; however, its excessive utilization in various cases poses political, legal, and constitutional challenges (Akhtar et al., 2022; FAISAL & ASHRAD, 2023; Shakeel, 2023). This overuse not only hinders the dispensation of justice to the parties involved but also contravenes Article 10A, the right to a fair trial, incorporated into the Fundamental Rights Chapter through the 18th Amendment of 2010. Notably, a recent Bill, the SC (Practice and Procedure) Bill 2023, passed by a Joint Sitting of both houses, aimed to regulate suo-motu powers through a committee of three senior judges of the Supreme Court, introducing an avenue for appeal. However, an 8-member bench led by the Chief Justice issued an unprecedented injunction before the Bill received presidential assent (Saleem et al., 2023). This led to a varied response regarding the application of this article. While there are instances where the original jurisdiction was appropriately exercised, such as in the *Shehla Zia case (Shehla Zia v WAPDA, 1994)*, there have also been cases, such as the disqualification of members of parliament, and in some instances, Prime Ministers, which drew criticism for the application of this article (*Syed Yousaf Raza Gilani v Assistant Registrar, 2012*). However, the excessive use of this magic wand (so-called) created problems in the political and legal system of the country and earned a lot of disrespect (Abbas, 2021). Therefore, this study is

meticulously crafted to comprehensively analyze the implications of Article 184(3) in relation to the historical precedents, current status, and future prospects of PIL in Pakistan.

2. Methods

The research for this study is primarily analytical, argumentative, and conceptual. It focuses on legal doctrines and regulations, using both argumentative and analytical approaches. A theoretical analysis of legal doctrines is employed, assessing the effects of current regulations and considering various levels of action. Contemporary methodological perspectives in legal science are utilized, along with an analysis of concepts, examination of present and potential case law scenarios, synthesis of opposing opinions, formulation of broad-to-narrow-impact arguments, explication of divergent views, and construction of premises relevant to the legal framework and ethical constraints applicable to various professions. The paper includes an analysis of jurisprudential solutions from national courts and their effects on legal practice. Research findings are presented using the comparative method, offering a thorough understanding of the ethical and legal dilemmas concerning PIL and public concerns. Additionally, the study addresses research limitations and suggests potential avenues for further analysis in future research.

3. Public Interest Litigation-Jurisprudential Landscape in Pakistan

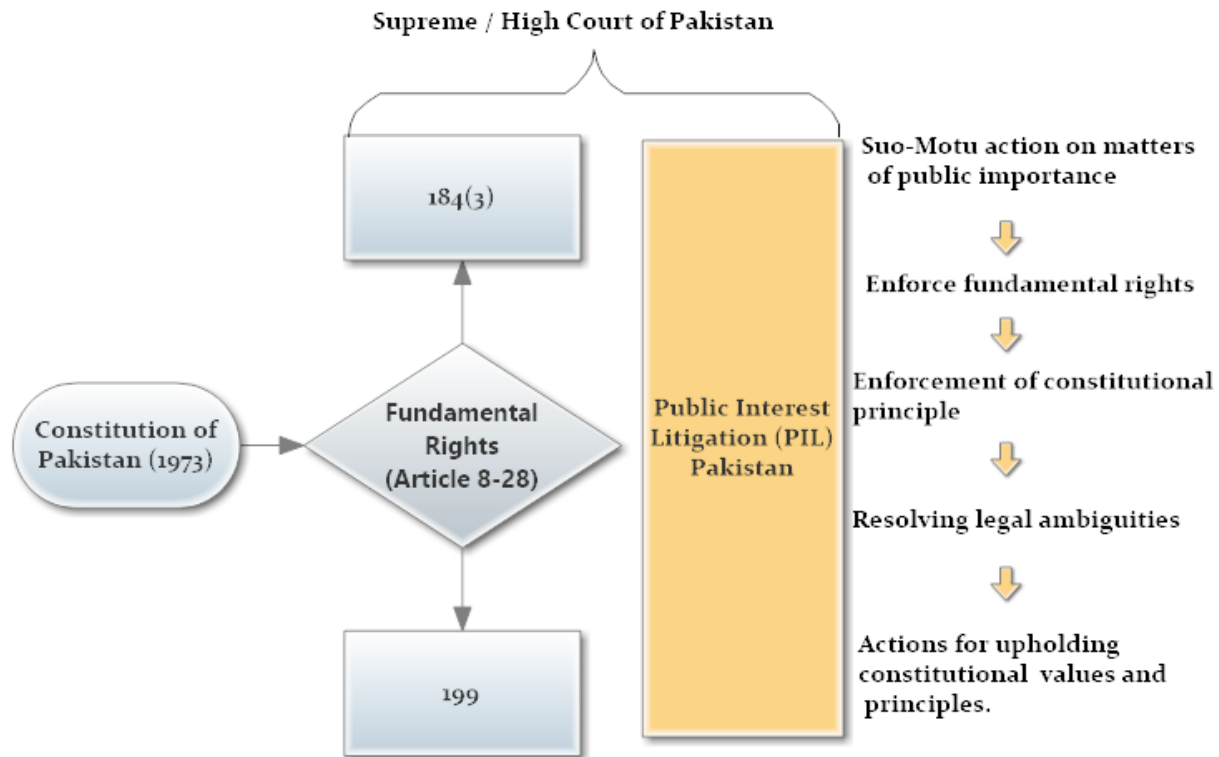
The Islamic Republic of Pakistan's 1973 Constitution served as the foundation for PIL's establishment in that country. First and foremost, the Supreme Court has a broad constitutional mandate under Article 184(3) to intervene in public interest cases involving the implementation of any of the constitutionally granted Fundamental Rights. Comparable authority is also given to the High Courts by Article 199. These articles serve as the cornerstone of PIL, enabling the resolution of complaints in situations where the impacted people or groups may not have easy access to legal recourse (Constitution of Pakistan, 1973).

Over the time, the Supreme Court of Pakistan play an active role, particularly, to address a range of challenges adopted an expansive interpretation of constitutional provisions. Courts are now taking Suo moto notice of serious cases due to judicial activism. Although they have generated discussion and are not reliant on a formal complaint, these notices highlight the judiciary's dedication to protecting the public interest. This strategy has been used to address issues ranging from the preservation of the environment to the defence of human rights (Jatoi et al., 2022). Although, PIL is outlined in the Constitution, the structural support required for its implementation is provided by a number of laws and policy initiatives. For instance, the establishment of organizations like the Pakistan Environmental Protection Agency (EPA) and the National Commission for Human Rights (NCHR) offers channels for the handling of PIL-related issues. These groups not only help PIL cases get started, but they also provide the knowledge and resources that are essential in these kinds of situations (Nadeem et al., 2023). The enforcement of court orders is one of the significant issues PIL in Pakistan faces. At times, the process by which these orders are enforced can be onerous and ineffectual, which causes delays and prevents the rights or reforms that the PIL sought to achieve from really being realized. The judge also has the difficult task of separating meritless litigation from situations with genuine public interest. The latter can damage PIL's reputation as an instrument for justice in addition to wasting necessary court time (Abeyratne, 2021).

There has been a trend in recent Supreme Court rulings to improve PIL's procedural components. The Court has emphasized the value of natural justice concepts and the necessity of involving all parties, including the government, to guarantee that the executive branch's perspective is taken into account. This strategy seeks to preserve a delicate balance between respect for the executive branch's authority and judicial involvement in the public interest (Saleem et al., 2023). The rules must be understood in the context of public interest litigation under Article 184(3) of the Pakistani Constitution, 1973. The Supreme Court is authorised to hear issues pertaining to the enforcement of fundamental rights that are of public concern under Article 184(3). Unlike other provisions that restrict judicial review, this one has been crucial in broadening the reach of judicial action in issues of public interest.

Article 184(3) acts as a counterbalance to Article 6 of the Constitution, which deals with "High Treason," and other sections like Articles 29 to 40, 41, 48, 66, 69, 99, 175, 175-A, 203-G, 203-H, 209, 211, and 212-B (8) that define the boundaries of judicial review in different areas. The Supreme Court is given a special role in assuring the defence and enforcement of fundamental rights, frequently in situations that go beyond conventional judicial bounds. The Supreme Court has taken an active role in resolving complaints as a result public interest litigation has developed in Pakistan through traditional legal processes. The Court has broadened the definition of fundamental

rights via its interpretations and decisions, playing an important role in determining public policy and governance.



For instance, the Supreme Court exercised jurisdiction in matters previously classified as administrative or

Figure 1: Public Interest Litigation (PIL) Pakistan
 Source: Author escalation based on the survey of literature

legislative, exemplified by the seminal case of "Shehla Zia v. WAPDA," thereby establishing a landmark precedent for the application of Article 184(3). Analogously, the Supreme Court has invoked Article 184(3) to adjudicate a spectrum of diverse issues, frequently extending its purview into domains ordinarily shielded from judicial scrutiny (*Shehla Zia v WAPDA*, 1994). These matters span a range of concerns, encompassing environmental damage to the rights of minorities. Despite the explicit constraints on judicial review enshrined in the Pakistani Constitution across various domains, Article 184(3) underscores the active and dynamic role played by the Court in safeguarding the public interest and fundamental rights. This unique provision fortifies the constitutional framework by authorizing judicial intervention in areas deemed vital to upholding Pakistan's principles of justice, equity, and good governance (Schall, 2008). Moreover, the Constitution of Pakistan, 1973, notably delineates the legal framework pertaining to public interest litigation through the prescription of limits on judicial review and intervention, as articulated in Article 184(3). This provision circumscribes instances wherein the judiciary's authority to contest specific judgments and actions of other governmental bodies is expressly constrained by constitutional mandates.

4. The Origin and Ongoing Challenges of Public Interest Litigation in Pakistan

The origin of Public Interest Litigation (PIL) in Pakistan can be traced back to the middle to late 1980s. Notable legal figures during this period, such as former Attorney General Ali Ahmad Fazeel, Chief Justice Muhammad Haleem, and Chief Justice Nasim Hasan Shah, played crucial roles in shaping the concept of PIL ("Annual Dinner of the High Court Bar Association, Rawalpindi," PLD 1987 Journal 26, 1987). They recognized the need to empower the judiciary to address issues affecting the broader public interest, particularly in the context of the reinstatement of the Constitution of Pakistan. During this period, there was a heightened focus on addressing societal concerns and safeguarding fundamental rights through judicial intervention. Moreover, Public Interest

Litigation, as a legal mechanism, emerged to enable individuals or groups to seek legal remedies on behalf of the public or a community facing an issue that impacts the broader public interest. However, the reinstatement of the constitution in this era sparked a significant judicial discourse. This focus shifted towards the effective enforcement of fundamental rights protected by the constitution, aimed to empower citizens and promote social justice by allowing the judiciary to address systemic issues and protect constitutional rights. Over time, Public Interest Litigation has evolved into a potent legal tool enabling citizens and organizations to seek judicial redress for issues affecting the broader public interest in Pakistan. Notable cases stand as exemplars of the progression of Public Interest Litigation in the country, illustrating its role in addressing matters of public concern. The following instances serve to underscore this evolution.

1. **Human Rights Case (Asma Jilani's Case, 1972):** Although predating the widespread adoption of the term "Public Interest Litigation," this case laid the foundation for judicial activism in Pakistan. The Supreme Court, in this case, asserted its authority to review constitutional amendments and declared that no organ of the State could claim to be above the Constitution.
2. **Ardeshir Cowasjee v. Federation of Pakistan (1989):** This case is considered a landmark in the development of PIL in Pakistan. Ardeshir Cowasjee, a journalist and social activist, filed a petition addressing various public issues, including environmental concerns and illegal construction. The court, led by Chief Justice Nasim Hasan Shah, actively engaged in addressing the public interest aspects of the case (*Ardeshir Cowasjee v. Federation of Pakistan*, 1989).
3. **Shehla Zia v. WAPDA (1994):** This case involved a challenge to the construction of the Ghazi-Barotha Dam. The court, in its judgment, emphasized the importance of public participation in decision-making processes concerning environmental issues, setting a precedent for environmental PIL in Pakistan (*Shehla Zia v WAPDA*, 1994).
4. **Benazir Bhutto v. President of Pakistan (1988):** This case involved the disqualification of Benazir Bhutto from holding public office. The court, under Chief Justice Muhammad Haleem, engaged in a judicial review of the President's decision, emphasizing the importance of upholding the rule of law and constitutional principles (*Benazir Bhutto v President of Pakistan*, 1988).
5. **Human Rights Case (1993):** This case addressed issues related to bonded labor and the violation of human rights. The court, recognizing the grave implications of the matter, took suo-motu notice and issued directives to address the plight of bonded laborers (*Human Rights Case*, 1993).
6. **Dr. Mobashir Hassan v. Federation of Pakistan (1999):** This case challenged the dismissal of the government by the then-President. The Supreme Court, under Chief Justice Saeeuduzzaman Siddiqui, declared the action unconstitutional and reaffirmed the importance of upholding the rule of law and the supremacy of the constitution (*Dr. Mobashir Hassan v. Federation of Pakistan*, 1999).

However, these cases reflect the evolution of Public Interest Litigation in Pakistan, showcasing the judiciary's willingness to intervene in matters of public concern and protect constitutional rights. In the present day, Public Interest Litigation in Pakistan faces ongoing challenges. The legal landscape has evolved, and the judiciary continues to grapple with issues related to access to justice, procedural hurdles, and the interpretation and application of laws in the context of public interest (Ali & Aziz-ur-Rehman, 2020). The evolving societal dynamics and the complex nature of modern challenges pose continuous hurdles for PIL practitioners (Ali & Rehman, 2019). Challenges include navigating legal complexities (Alam, 2016), ensuring representation for marginalized groups (Abbas, 2021), and addressing issues related to the enforcement of court orders (Akhtar et al., 2022). Additionally, the effectiveness of PIL is often contingent on the responsiveness of governmental authorities and the capacity of the legal system to implement judicial decisions (Saleem et al., 2023). Moreover, in the present day, Public Interest Litigation faces several challenges in Pakistan. Some of these challenges are as following:

Access to Justice: Despite the evolution of PIL, there are still barriers to access justice, particularly for marginalized or underprivileged communities. Limited awareness, financial constraints, and procedural complexities can hinder the ability of individuals to bring PIL cases (Auerbach, 1985)

Judicial Backlog: The Pakistani judiciary grapples with a backlog of cases. This backlog can impede the timely resolution of PIL matters, affecting the expeditious delivery of justice in cases involving public interest (Abeyratne, 2021).

Political Interference: Public Interest Litigation cases often involve matters of public policy and governance. Political interference or influence can pose challenges to the impartiality and independence of the judiciary in

dealing with PIL cases (Cheema, 2021).

Resource Constraints: The effective pursuit of PIL cases may require substantial resources, including legal expertise, time, and financial means. Resource constraints can limit the ability of public interest litigators to take on and sustain legal battles against powerful entities or government bodies (Ahmad & Wu, 2022).

Lack of Implementation: Even when favorable judgments are obtained, there may be challenges in the implementation of court orders. Enforcement mechanisms and follow-up actions are crucial for the success of PIL, and obstacles in this regard can undermine the impact of judicial decisions (Jatoi et al., 2022).

5. Judicial intervention in the matters of public concern

This section explains prior judicial interventions in public issues, encompassing environmental concerns, human rights violations, public health matters, corruption, and other affairs impacting the general public welfare in Pakistan. We critically evaluate the courts' reviews of petitions and their pronouncements of directives or judgments, specifically designed to rectify the concerns raised in the public interest.

Phase 1: 1988–1993

PIL had a gradual and modest beginning, with the exception of the distinction made between the two seminal cases *Benazir Bhutto v. Federation of Pakistan* and *Darshan Masih v. State*, (*Darshan Masih v The State 1990, PLD 513 (SC)*, (*Petition:1 of 1988*), 1990) which concerned the freedom of association of a prominent political figure and the life and liberty of indentured labourers, respectively. The few reported PIL cases during the initial five years lacked political motivation. In the *Darshan Masih* case, (*Darshan Masih v The State 1990, PLD 512 (SC)*, (*Petition:1 of 1988*), 1990) which was characterized by abject poverty and an instantaneous loss of dignity and liberty, they were also not especially pro-poverty. Phase One cases systematically addressed a wide range of topics, including environmental concerns, the rights of pensioners in the civil services, the appointment of civil judges, and recruitment policies in state-owned enterprises and universities, respectively. However, notwithstanding the lack of concentration and the inconsistencies, the initial literature and commentary on the subject indicate that the general reception of PIL was tinged with enthusiasm and optimism.

Phase 2: 1993–1997

Phase Two changed PIL. PIL's jurisprudential development and innovation peak in this phase. PIL also became political during this time. The Supreme Court ruled on several mega-political matters, citing them as fundamental rights problems of public interest. In 1993 and 1996, two cases challenged the constitutionality of the president's decision to dissolve the governments of Nawaz Sharif and Benazir Bhutto, respectively, under Article 58(2)(b) (*Nawaz Sharif Case –PLD 1993 SC 473*, 2018). The Supreme Court claimed jurisdiction over political concerns under Article 184(3), citing its role as a defender of the Constitution and democratic way of life. Besides deciding the fate of two prime ministers in three years, the court was able to redefine the appointment process for constitutional court judges through PILs. After Nawaz Sharif's second government repealed Article 58(2)(b), judicial nominations became a court issue. With the repeal of Article 58(2)(b), the judiciary lost direct control over democratic politics. Sharif, however, wanted a majoritarian government independent of the president and Supreme Court (Siddiqi, 2020).

Institutional control over judicial appointments became an institutional conflict because this was the chief justice's only viable leverage for protecting his position. In *Al-Jehad Trust v. Federation of Pakistan (Judges' Case)*, the Supreme Court gave the chief justice the power to overrule presidential nominees for judicial appointments in a deadlock. After the Federation failed to appoint five justices named by then Chief Justice Sajjad Ali Shah, the court again invoked its PIL jurisdiction and ordered the president to finalize the appointments. Despite institutional competition between the government and the Supreme Court, internal opposition against the chief judge emerged. While transferring dissident judges from the Islamabad headquarters to provincial Supreme Court registries to marginalize them, the chief justice also filed contempt proceedings against Prime Minister Sharif and other Parliamentarians for their harsh and open criticism of the judiciary. An irate mob of Sharif's party workers disrupted the contempt hearings by threatening to harm judicial staff and arrest the chief justice. Following the Supreme Court's storming, the justices halted the contempt hearings and sought shelter in their chambers. Finally, PIL resolved Supreme Court divisions over the chief justice's eligibility. Chief Justice Sajjad Ali Shah was compelled to retire since his appointment violated seniority (Waseem, 2022).

The mid-1990s Supreme Court's original jurisdiction was dominated by judicial review of presidential dissolution of government and judicial nominations. In the former, the court justified its involvement based on freedom of association, but in the latter, it used a generic, unenumerated, and allegedly universal concept of access to justice.

This phase saw notable breakthroughs in PIL jurisprudence, such as the judicial intervention in *Shehla Zia v. WAPDA*,^s (*Shehla Zia v WAPDA*, 1994) which included a grid station installation that could pose environmental and health risks. *Shehla Zia* was significant for its expansion of the right to life to include dignity and well-being rather than the court's indulgence of environmental issues and activists, which the PIL already covered. Later, litigants and the Supreme Court would abuse the *Shehla Zia* precedent to the hilt.

Maryam (2012) Political PIL and Class Action PIL, which include a specific group of aggrieved individuals, were important for future judicial activism. But the more typical PIL cases—involving government employee entitlements and the right to unionize, student malpractice in universities, recruitment policies in relation to government and public authorities, unlawful detention and illegal sentencing, and prisoner rights—persisted to dominate the first wave of judicial activism. Thus, within a decade of its judge-led development, PIL had become a mix of political, environmental, and criminal law claims involving human rights and middle-class concerns, usually government employees. Most of the initial romanticism with social justice for the poor and defenceless seems to have faded. This is analogous to the early emergence of SAL in India, where researchers like Baxi saw the movement as an establishment revolution by the mid-1980s.

Phase 3: 1998-2000

After Chief Justice Sajjad Ali Shah was expelled in late 1997, the Supreme Court retreated from PIL advocacy. The chief justice's status fiasco did not deter the court. The government's cautious approach to determining executive action's constitutionality stemmed from its coherence and broad support from the judiciary. No suo motu cases were reported during Phase Three, and most government action challenges were dismissed. The court consolidated its jurisdiction while avoiding confrontation with the administration and its political objectives through a series of rulings. When the government attempted to reduce the Supreme Court's jurisdiction by creating new parallel courts or expanding its scope, the court ruled in favour of preserving its jurisdiction. These decisions included the landmark *Liaquat Hussain v. Federation of Pakistan* (*Liaquat Hussain v. Fed'n of Pak. PLD (SC) 504*, 1999) ruling that outlawed military trials for civilian civil charges. Using Article 58(2)(b) jurisprudence and PIL, the Supreme Court granted *Liaquat Hussain's* petition in its original jurisdiction, citing *Mehram Ali v. Federation of Pakistan*, references a precedent from the previous year decided on appeal. In *Jamat-i-Islami v. Federation of Pakistan*, the court again used PIL to declare the reintroduction of anti-terrorism legislation that had been declared extra vires in *Mehram Ali* unconstitutional. Even under General Musharraf's military rule, the Supreme Court would combine judicial retreat with self-preservation (*Mehram Ali v. Fed'n of Pak., 50 PLD (SC) 1445, 1477*, 1998).

Phase 4: 2000–2005

Nawaz Sharif and his COAS, General Pervez Musharraf, fell out over the Kargil War in Kashmir in mid-1999. The conflict humiliated Sharif's government, which was negotiating a peace deal with India. Sharif tried to replace Musharraf aboard a commercial flight from Sri Lanka to Pakistan in October 1999. Sharif diverted the jet to isolate Musharraf till the new COAS was appointed physically. The military overthrew Sharif's administration in a nonviolent coup by taking control of civil aviation. Musharraf declared a state of emergency and disbanded the Senate and elected assemblies, giving the Armed Forces power. One of his first duties was to prepare the judiciary to legitimize his coup, indemnify his extra-constitutional actions, and neutralize Sharif. He forced constitutional court judges to swear a new oath, preventing them from challenging the emergency's constitutionality. Musharraf issued a new order days before the judiciary hearing constitutional objections to the coup to remove recalcitrant judges from office. A total of 13 appellate judges were removed, including six from the Supreme Court, including the chief justice, and seven from the high courts. Musharraf maintained authority over the judiciary while allowing business as usual, unlike *Zia* (Chaudry, 2009).

In Phase Four, the Supreme Court became more passive than in Phase Three. This does not mean the judiciary stopped intervening in politics. Although the court adjudicated politically charged topics through PIL, the proportion of unlawful verdicts was at its lowest ever. The cleansed Supreme Court legitimized Musharraf's dictatorship with PIL. The court unanimously recognized the military takeover in *Zafar Ali Shah v. General Pervez Musharraf* references in May 2000, using the notion of State necessity from the pre-PIL *Begum Nusrat Bhutto* precedent. The court upheld its tradition of resolving extra-constitutional situations in a way that benefits both the military dictator and the judiciary. After this judgment, PIL absorbed the pre-PIL judicial duty of de facto regime legitimation (Yamada, 2020).

A holistic reading of *Zafar Ali Shah* shows the Supreme Court's strong contempt for civilian politics and parties. It also implies that the court's apparent respect for democracy and constitutional norms was shallow. The Sharif

government's attacks on judicial independence prompted the court to rant. Despite Musharraf's purge, the government accused Nawaz Sharif of defaming the judiciary in parliament, taping judges' phones, and demonstrating contempt for judgments and court storms. The court viewed Musharraf's takeover as a constitutional departure for a transitional period to restore democracy and judicial independence. The court also bemoaned the departure of Article 58(2)(b), signalling to Musharraf its support for Zia's Eighth Amendment and the necessity for institutional control over and regulation of the democratic process (*Zafar Ali Shah, PLD (SC) 869, 1219, 2000*).

The Supreme Court based its revised oath on the concept that Superior Court Judges' primary duty is to protect the State's judicial organ. The court noted that preserved judicial independence is crucial for protecting the state fabric and ensuring human rights/fundamental rights. Other examples of judicial self-preservation include the PIL verdict in *Khan Asfandiyar Wali v. Federation of Pakistan*, references popularly known as the NAB Ordinance judgment, which boldly struck down provisions of the 1999 National Accountability Bureau Ordinance. The NAB Ordinance established special accountability courts for political corruption offenses, which was crucial for the Musharraf government's focus on accountability. Khan Asfandiyar Wali's involvement in the de facto government's power consolidation highlights the constitutional courts' disdain for Musharraf's authority and jurisdiction (*Khan Asfandiyar Wali v. Fed'n of Pak., 53 PLD (SC) 607, 2001*).

The court's withdrawal from PIL activism in Phase Four was due to its dual role of legitimizing the system and preserving its interests, including self-aggrandizement. In some cases, the court legitimized Musharraf's political and constitutional manipulations. However, its ability to defend its turf and selectively and opportunistically apply its jurisprudence, as well as its institutional ability to exploit political issues to boost its judicial status and authority, are equally crucial in understanding this half-decade. The court supported Musharraf's actions but solidified its role as a democratization arbitrator. In addition to supporting Musharraf's legislative agenda, the court promoted democracy by encouraging changes in political culture (Musharraf, 2006).

The court has the final say on which political matters require immediate judicial settlement and which can be left open-ended for future interventions. Two cases demonstrate the Supreme Court's selective use of jurisprudence to balance de facto ruler accommodation with judicial self-preservation. The court strategically avoided political issues in *Watan Party v. Chief Executive/President of Pakistan* and *Pakistan Lawyers Forum v. Federation of Pakistan* (*Watan Party, 55 PLD (SC) at 80, 2003*), which challenged Musharraf's unilateral amendments to the 1973 Constitution and the Seventeenth Amendment's reintroduction of Article 58(2)(b). The Supreme Court's consistent condescension, pontification, and paternalism toward political parties, its unabashedly partisan comments in favour of Article 58(2)(b), and its pronouncement that the parliamentary form of government was dead show its anti-democratic stance. The Supreme Court's strategic dissent was limited to institutional survival and rarely extended to protecting democracy from military adventurism (*Pak. Lawyers Forum, 57 PLD (SC) at 767, 2005*).

Using PIL to legitimize the government had at least two effects on its future. First, and most visibly, the Supreme Court progressively slipped into another legitimacy crisis, partially of its own creating. As PIL expanded, its jurisprudence could now support both democratic and anti-democratic political ambitions. The court may now apply one or more of its various jurisprudence streams as PIL precedents. Whereas democracy legitimation, as in *Benazir Bhutto*, and dissolutions or judicial appointments, as in the *Judges' Case*, could be applied in specific situations, regime legitimation eliminated these distinctions. The court expressly references and nostalgically remembers Article 58(2)(b) in *Zafar Ali Shah*. This showed Musharraf the court's support for presidential powers of dissolution and its need for institutional supremacy over and policing the democratic process, a tradition rooted in the *Begum Nusrat Bhutto* judgment (Mahmud, 1994). During the third wave of PIL activity, the court often mixed up its jurisprudence to attain the desired result. Political PIL adjudicated more problems in Phases Three and Four than in Typical PIL. The largest petitioners were politicians and political parties, replacing people, civil society organizations, and government employees. Although the Supreme Court has a history of judicial conservatism against democratic processes, civilian politicians and political parties have invested in and strengthened it to find political solutions in the absence of other democratic avenues and consensus (Mahmud, 1993).

Phase 5: 2005–2007

Musharraf had legitimately established his de facto position in Pakistan by April 2005, solidifying his coup and guaranteeing his opponents stayed in exile. After ten years of PIL, however, the Supreme Court faced a crisis of legitimacy since it appeared that the military had appropriated the case to support the new government. In an attempt to regain credibility and revitalize public trust in its ability to administer justice, the court established new objectives pertaining to foreign investment, economic policy, and the "war on terror." The court may have

interpreted its authority more creatively and imaginatively, but by reviving the PIL when Musharraf was still the COAS and president, it was taking a chance (*MUSHARRAF, supra note 219, at 175.*, 2006). In order to clear the backlog of PIL cases and human rights cases, the court established a special Human Rights Cell, whose main goal is to monitor any instances of power abuse, misuse, or arbitrary or dishonest decisions made by the authorities. PIL lawsuits fall into one of four categories in Phase Five: legislative override, policy reform, environmental and land use regulation, and human rights. These PIL case categories established a precedent for future cases involving misuse of public office and laid the groundwork for the court to employ its extensive investigation and corrective powers. A micro-analysis of around fifteen significant suo motu petitions filed during the second half of 2005 and the first half of 2007 within the Supreme Court's original jurisdiction reveals that these petitions consistently addressed negative press coverage (Waseem, 2006).

Pakistan's Supreme Court has played a major role in the political landscape of the nation, especially during Musharraf's administration. *Wattan Party v. Federation of Pakistan*, (Wattan Party, 55 PLD (SC) at 80, 2003) 2006 PIL case involving the privatization of Pakistan's largest state-owned steel factory, is only one of the many instances in which the court has been involved. Musharraf's liberalization efforts suffered a serious setback as a result of this decision, which also raised questions about corruption in development policy. Over the years, the court's investigative approach has changed, involving the summoning of significant individuals for information and accountability, the formation of judicial commissions for the purpose of coordinating with stakeholders, the mobilization of police action, arrests, and trials, as well as the initiation of contempt proceedings against those who disobey the court's orders. Senior police, intelligence officers, and other public officials have also been known to get harsh criticism from the court, especially when it comes to Missing Persons Cases. At first, the Musharraf administration decided to put up with the court's abuses, but in early 2007, it took action to neuter the court in order to stop it from voting against Musharraf's re-election as COAS president (*Pak. Lawyers Forum*, 57 PLD (SC) at 767, 2005). The more common type of litigation was Class Action PILs, in which government action was restrained, and small corruption in development projects was exposed through the court's regular petitions and suo motu involvement (AMNESTY INT'L, 2008).

Phase 6: 2007

The Supreme Court of Pakistan (PIL) faced constitutional concerns about the dismissal of Chief Justice Chaudhry for the second time in Pakistani history following a Presidential Reference accusing him of misbehaviour and abuse of power. The contestation involved the Musharraf government, lawyers, the media, civil society, and political parties that supported the chief justice. The Supreme Court withdrew jurisdiction of the Presidential Reference from the Supreme Judicial Council (SJC) in *Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan v. The President of Pakistan*, using its PIL powers (M. Ahmed, personal communication, 2007). The Chief Justice felt that the attorney's movement had increased both his and the Supreme Court's normative influence. The court's mounting challenges to the executive in the following months, as well as the broad judicial consensus that accompanied this zeal, led to the court's demeanour changing to one of confrontation and menace. The political climate reached a fever pitch, leading to Musharraf declaring a second emergency in November 2007 (Munir, 2007). Every case that the Supreme Court decided during Phase Six was extremely political and easily fit into the category of Political PIL.

Phase 7: 2007–2009

The main purpose of Musharraf's second emergency was to purge the constitutional courts to reaffirm his presidency retrospectively. Musharraf abruptly ousted most judges and installed Abdul Hameed Dogar as chief justice. Again, under PIL jurisdiction, Chief Justice Dogar's court accepted multiple petitions challenging Musharraf's emergency. *Tika Iqbal Muhammad Khan v. General Pervez Musharraf* is the joint petition (DAWN, 2007). After ten days of debate, the court concluded on a crucial political issue, one of the fastest. The court ruled for the third time that the de facto ruler's acts were necessary for the state and people's welfare, preventing chaos and anarchy. The *Tika Iqbal* judgment differs from the previous two in that the Chaudhry court's unconstrained political meddling was the court's main concern. The court disapproved of the former chief justice's excessive use and abuse of Article 184(3)'s original authority (*Tika Iqbal Muhammad Khan*, 60 PLD (SC) 178, 2008). The court reviewed precedents to clarify that Article 184(3) of the Constitution cannot be used for individual grievances but that the former Chief Justice of Pakistan did not follow judicial precepts. The court also criticized Chaudhry for assuming hegemonic powers over the judiciary (Chaudry, 2009). Paradoxically, the court signalled a break with PIL advocacy through PIL. Ten PILs were filed in Phase Seven.

Phase 8: 2009–2013

In March 2009, Iftikhar Chaudhry became Pakistan's Supreme Court Chief Justice again. After General Pervez Musharraf's ouster and Asif Ali Zardari's 2008 election, this reinstatement occurred. The attorneys' movement bolstered the Supreme Court's opposition to the Pakistan People's Party (PPP) coalition government, which was weak. His reinstatement followed a successful "Long March" protest by lawyers and opposition politicians. This period saw the Supreme Court intensify its Public Interest Litigation (PIL) activism, focusing on judicial and executive authorities. The court disputed executive nominations, influenced constitutional modifications, and claimed governance authority (Traub, 2008). The court also intervened in criminal cases, particularly those involving law enforcement's treatment of murder, rape, and kidnapping. In "Memogate," a Pakistani diplomat allegedly delivered a note to the U.S. military on behalf of President Zardari. This politically sensitive case called into doubt the court's jurisdiction (Traub, 2008). The Supreme Court's PIL activism in this phase covered judicial and executive powers, governance, corruption, election control, citizen rights, environmental rights, and criminal law. The court's proactive approach, including several suo motu cases, changed Pakistan's governance and legal landscape during this time, affecting the judiciary's power balance with other arms of government (Cheema, 2021).

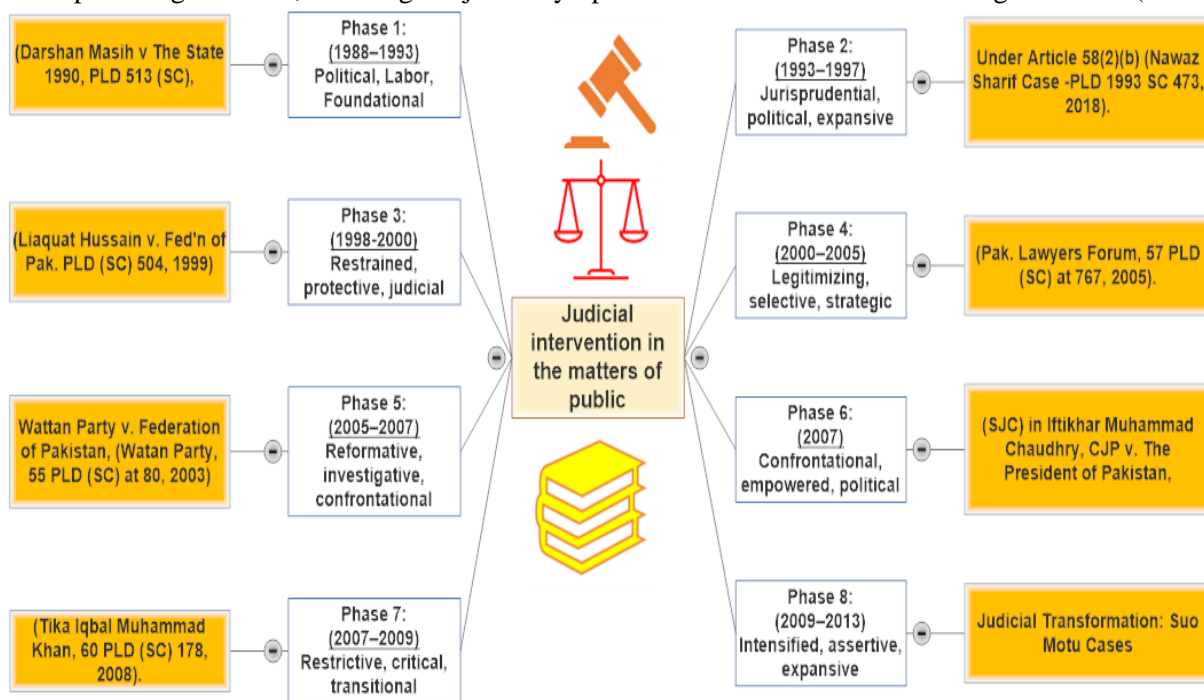


Figure 2: Judicial Intervention and Phased on PIL Pakistan
 Source: Author constructed based on survey of previous documents

6. The critiques and limitation of Public Interest Litigation-Pakistan

Public Interest Litigation in Pakistan has encountered several critiques and constraints. Among these criticisms is the contention that it burdens the court with inquiries that pertain more to the legislative or executive branches of the state (Abbas, 2021). Furthermore, apprehensions have been raised regarding the court's restricted powers, primarily constrained to the enforcement of fundamental rights and issues deemed of public significance (Ullah, 2018). Consequently, Public Interest Litigation (PIL) in Pakistan has prompted the relaxation of procedural rules, raising several questions and reservations regarding the justiciability, feasibility, and legitimacy of judicial review pertaining to socio-economic rights, including the right to education, health, housing, food, water, social security, among others. In the most recent study (Khalilullah, 2023), it is argued that the superior judiciary has evolved into and operates as a more independent and assertive actor. Through changes in the judiciary's structure and culture, the superior judiciary has become a key, non-elected power holder, akin to the military. It oscillates between confronting, constraining, and collaborating with elected and non-elected centers of power, aiming to leave its imprint on politics and policymaking. Simultaneously, political and military elites seek to co-opt or control judges

to align the judiciary's burgeoning authority and ambition with their own interests and ambitions. This dynamic interplay shapes the contours of Pakistan's politics (Waseem, 2022).

However, the judiciary's interventions concurrently heighten expectations and fuel political discontent, establishing a nuanced dynamic of power and vulnerability arising from an increasingly assertive judiciary. Moreover, scholars critiquing that number of high court and supreme judges are predominantly selected from a legal profession where the prevailing legal culture has progressively rejected procedural restraint in favor of confrontation with executive leadership, whether elected or military (Saeed, 2020). For instance, during the democratic decade of the 1990s, characterized by weakly institutionalized political parties and normative inter-institutional conflict, the judiciary's growing prominence in managing political disputes contributed to a perception among judges and lawyers. This perception underscored the limited legitimacy of the state's political leadership and emphasized the judiciary's potential to influence national politics and policies. This amalgamation of factors—new jurisdictional discretion, executive detachment from the judiciary, the judicialization of politics, and a shifting legal culture—propelled the judiciary toward a more ambitious and confrontational stance. Therefore, as the judiciary increasingly impacts and intervenes in political processes beyond public interest litigation and judicial appointments, chief justices of high courts and the Supreme Court gained authority over case acceptance, bench selection, and the determination of which judges hear specific cases (Haksgaard, 2020). This centralized structure allows a pliable chief justice, influenced by the military or a political party, to significantly shape the jurisprudence of a particular court. Consequently, the role and authority of chief justices have come under particular scrutiny and criticism.

On the contrary, the judiciary's close relation with bar associations complicates the attempts of military and political elites to co-opt and control the judiciary. As judges undergo training and socialization within the legal profession, they primarily seek to build their reputations with the legal community, where the bar serves as a key audience. The politically engaged bar has effectively mobilized around both political and professional issues. The Lawyers' Movement in 2007 is a prominent example, showcasing the bar's proclivity for collective action, which can act as a counterbalance against endeavors by political and military leaders to influence the judiciary (Wiebelhaus-Brahm, 2022). Recognizing this dynamic, political parties and the military increasingly dedicate efforts to exert pressure on and persuade bar leaders, indirectly influencing judicial decisions. The close, albeit often adversarial, ties between the bar and the bench, along with shared legal culture, have each played a role in steering the judiciary toward a progressively confrontational direction. For example, in 2017, military leadership, several senior judges of the Supreme Court, and the political party Pakistan Tehreek-e-Insaf (PTI) reached a consensus. They agreed that various political entities needed to align on a common platform with institutional stakeholders, identifying the root cause of Pakistan's problems as a corrupt political class personified by the leaders of mainstream political parties (the PML-N and the PPP). The proposed solution involved rescuing state institutions from their control and influence, by any necessary means (Siddiqi, 2020). During 2017-18, the Supreme Court's anti-corruption jurisprudence concentrated on the PPP and PML-N, often hearing petitions brought against them by PTI members. This focus resulted in the disqualification of leaders from these parties, including Sharif. The populist PTI, led by Khan, capitalized on these disqualifications, aligning itself with the court's interventions and leveraging them to validate claims of corruption against mainstream political parties. Khan's popular appeal, the Supreme Court's anti-corruption stance, and the military's efforts to engineer the election in favor of the PTI contributed to the party's victory in 2018. With elected, military, and judicial leadership aligning around key political questions, this new political arrangement became known as the "same-page regime." Consequently, the judiciary's involvement in politics poses challenges in authentically ensuring that legal proceedings advance broader societal objectives, influencing decisions and judgments that impact tangible improvements in the circumstances of marginalized communities.

The public interest litigation has the following limitations

- Article 184(3) neither prescribes a specific procedural mechanism for petitioning the Supreme Court nor delineates any distinct criteria for an individual to gain access to the Court. However, it is discernible from the inherent authority vested in the Article that the Court's jurisdiction to provide relief is constrained to the enforcement of Fundamental Rights and is additionally circumscribed by the stipulation that actions brought before the Court must involve a question of public importance (Pawaiya & Jain, 2018). On the other hand, the Constitutional provisions endowing the High Courts with the authority of judicial review under Article 199 expressly delineate the subjects wherein only an 'aggrieved person' may seek redress, distinguishing them from matters wherein any person is entitled to apply. Additionally, it mandates, as a

prerequisite to invoking the High Court's extraordinary jurisdiction, the exhaustion of an available and adequate remedy (Oakes, 1977). Furthermore, Article 199(2) stipulates an exception, acknowledging that the power of judicial review may be curtailed during the declaration of diverse forms of Constitutional emergencies (Muralidhar, 2018).

- Public Interest Litigation empowers individuals or groups to vindicate public rights through legal avenues, yet it is susceptible to misuse and abuse for personal or political purposes. Individuals with political motivations exploit PIL as a means to harass political adversaries. Thereby, transforming the intended instrument of justice into a tool for political influence or personal gain (Pawaiya & Jain, 2018).
- Adjudicating non-public welfare cases consumes significant time and resources, causing delays in genuine cases and placing strain on the judicial system. Consequently, Public Interest Litigations have the potential to divert crucial judicial resources away from pressing matters. Instead of addressing frivolous PILs, courts and legal personnel could have allocated their time and efforts to more substantial public interest issues (Oakes, 1977). Courts exercise meticulous scrutiny of PILs to mitigate potential ulterior motives, assessing factors such as the petitioner's background, the case's merit, and its impact on public interest. The imposition of legal penalties for frivolous lawsuits serves as a deterrent against the abuse of PILs (Auerbach, 1985).
- Public Interest Litigation frequently entails procedural relaxations, introducing challenges and limitations to the exercise of jurisdiction (Friedman, 2004). A notable illustration is found in the case of *Ardeshir Cowajee v. Multiline Associates*, where the court deliberated on the constraints associated with procedural relaxation in PIL (Abbas, 2021).

7. Conclusion and Way Forward

The fundamental rights are constitutionally guaranteed and protected in the Islamic Republic of Pakistan. The Supreme Court of Pakistan is constitutionally obligated and empowered to enforce these rights. However, proper protection of fundamental rights in the country has been hindered due to socio-economic, legal-political, and constitutional issues. Recognizing the need for a new approach beyond traditional adjudication, the Court has actively pursued a strategy of "Public Interest Litigation" (PIL), first introduced in the landmark case of *Benazir Bhutto v. Federation of Pakistan*, PLD 1988 SC 416. The constitutional basis for PIL in Pakistan is implicit in the constitutional mandates of Articles 8-28, 184(3), 199, and 187(1) of the Constitution of 1973. However, the public interest litigation has played a pivotal role in empowering the judiciary to address matters of public concerns. Consequently, it has led to significant legal decisions that have bolstered safeguarding constitutional and statutory rights, promoted social justice, and fostered improved governance. The judiciary has assumed a proactive role in safeguarding public rights, thereby fostering the development of judicial activism. This study was designed to investigate the evolution of Public Interest Litigation and trace its origin, as well as examine present-day challenges in Pakistan. We found that, in the present day, PIL in Pakistan faces ongoing challenges related to access to justice, procedural hurdles, and the interpretation and application of laws in the context of public interest. These challenges present continuous obstacles for PIL practitioners and introduce legal complexities for marginalized groups. Additionally, the effectiveness of PIL is often contingent on the responsiveness of governmental authorities and the capacity of the legal system to implement judicial decisions. Hence, addressing these challenges and issues is crucial for ensuring that PIL remains a tool for justice and social change. Based on the findings in the context of public interest, the following policy recommendations are proposed:

- Implement measures to improve access to justice for all citizens, ensuring that PIL procedures are accessible and affordable.
- Establish legal aid programs to support marginalized groups and individuals who may face barriers in pursuing PIL cases.
- Review and streamline PIL procedures to reduce unnecessary delays and bureaucratic obstacles.
- Integrate education on PIL into legal curricula to equip future legal professionals with the knowledge and skills necessary for effective engagement in public interest cases.
- Conduct public awareness campaigns to educate citizens about their rights and the avenues available through PIL for addressing public interest issues.

- Establish mechanisms for meaningful engagement with marginalized communities to identify and address their specific legal challenges.
- Promote inclusivity in legal processes by actively seeking input from diverse societal groups in the development and implementation of PIL policies.
- Strengthen mechanisms for holding governmental authorities accountable for addressing public interest concerns raised through PIL.

Implementing these recommendations can contribute to overcoming the identified challenges, fostering a more effective and responsive Public Interest Litigation framework in Pakistan.

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