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With this thought, we hereby present to you

**LEX BONA FIDE: LAW JOURNAL**

# **ABUSE OF PIL AND JUDICIAL OVERREACH**

- Kosha Doshi

(2<sup>nd</sup> Year, Symbiosis Law School, Pune)

## **INTRODUCTION**

The Legislative, the Executive and the Judiciary- it is the holy trinity charged with the duty of running this country. The three bodies were instilled to work hand-in-hand to manage the country's government smoothly. To achieve this goal, different sets of powers and responsibilities were assigned to each organ to ensure its harmonious coexistence, while limiting interference and overlapping its functioning. The Legislature and the Executive shall be responsible, respectively, for the formulation and enforcement of laws in the land. The staff operating in these two departments are often relatively similar. Therefore, although such two wings are tightly connected and there is a degree of interdependence on each other, the third section, i.e., the judiciary is an integral part of the structure.

The Judiciary's highest power is its authority to check whether the other two organs are working as per the Constitution or not. Yet no other agency will keep the Judiciary directly accountable. The purpose behind this is not to grant this institution a dominant role over the other two, but rather to provide a system of checks and balances. That was undertaken to guarantee the courts' freedom and no intervention with their practice, so they could fulfil the purpose of being right and reasonable without fear of discrimination.

The lower courts are accountable to the higher courts for their work, and the higher courts have the power to limit any transgression of power by the lower court judges. Therefore, it can be said that the High Court Judges and the Supreme Court have enormous powers. However, due to the lack of a proper accountability mechanism, it becomes the duty of the judges themselves to monitor their work and ensure adherence to the institutions' ethics to maintain a proper balance with the other government organs and not interfere with their functioning.

## **DEVELOPMENT OF PIL REGIME**

Several primary advances have arisen recently in the field of law. Indian courtship has emerged as one of the world's most successful judiciaries. The implementation of Public Interest Litigation or PIL is one of the most critical efforts of the legal luminaries in making our judiciary more inclusive. The PIL regime began with the aim of loosening the locus standi principle to increase the judicial scope. Locus standi ensures that for relief to be obtained, only

an aggrieved individual may seek trial. Yet a PIL makes it possible for a citizen to lodge a lawsuit even though he does not have the locus standi for doing so. It should be a matter of public interest the only condition being. It was created to target those people who would not be able to pursue redress in the courts. Judicial advocacy supporters claimed a lack of funding would not rob others of their right to justice. With these thoughts in mind, Justice P.N. Bhagwati took up the 1979 case of Hussainara Khatoon v. State of Bihar [1], which was the country's first PIL action to be resolved.

Set against the backdrop of a recent time of emergency (1975-77), the need for judicial intervention became increasingly relevant. This meant that the courts no longer restricted their powers to the mere abuse of law. There has been a change from the former passive approach to a more constructive one, whereby, in addition to ruling an Executive's specific action or a statute enacted by the Legislature as unconstitutional, the courts have also taken remedial action by imposing directives.[2] Such reforms were initially introduced to check the excessive abuse of authority that was seen mainly during the emergency era, refusing citizens their basic freedoms, and becoming despotic by the executive and the legislative.

After its inception in the late 1970s, the PIL, and judicial advocacy in general, in its 40 years of history have served its purpose tremendously. It has promoted many landmark reforms in the country's legal environment, such as defining the absolute liability standard [3], creating a basic definition of sexual harassment in the workplace [4], accepting transgender as a third gender [5], and decriminalizing homosexuality [6], among others.

## **ABUSE OF PIL**

Although PILs was originally celebrated as a 'silent movement,' a modern mode of jurisprudence in the Indian judiciary and the beginning of an age of social justice, it has created some of its problems over time much like any other law.[7] Which began as an effort to mobilize the judiciary to meet the overwhelming masses of the people and to resolve matters of public interest, has become a weapon for others to pursue their private agenda. During the past, there have been many instances in which the courts have correctly pointed out the existence of an ulterior motive, such as political enmity, propaganda or even personal vendetta, that has contributed to the violence.

In the case of Arun Kumar Agrawal v. Union of India [8], based on mala fide appointment the petitioner filed a PIL demanding the dismissal of the then chairman of the Securities Exchange Board of India. He based his argument on the fact that such an appointment to a globally relevant institution such as the SEBI may have significant implications for the country's economy and therefore comes under the purview of PIL. The Hon'ble Supreme Court, however, noted the appeal was not a bona fide one. The court ruled that it needed to pass the petitioner's

fine test for a petition to be maintainable as a PIL. In this case, however, it was observed that the petition was not filed to protect the downtrodden 's rights; rather, it possessed the vested interests of the influential and powerful business houses and was therefore dismissed on the grounds of personal propaganda motivation.

Likewise, in the case of Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan & Others,<sup>[9]</sup> the Supreme Court appealed against an order in the form of a PIL issued by the Rajasthan High Court of Judicature. The question involved possession and control of contested land. In this case, the Court observed the nuisance caused by the misuse of PILs and held that since the matter had already been decided by the High Court using the mechanism created under a particular statute, filing an appeal in the form of a PIL only leads to the Court's valuable time being wasted which might have been better used in deciding other genuine petitions.

Holicow Pictures Pvt was a landmark case discussing the problems associated with PIL abuse. Ltd. v. Prem Chandra Mishra <sup>[10]</sup>, in which the Court laid out a three-step method for assessing the validity of a complaint as a PIL. Those include – (a) the applicant 's credentials; (b) the prima facie authenticity or value of the information received by him; and (c) the evidence is not ambiguous and uncertain. Here, the Court described the PIL as an unscrupulous device which can have serious consequences when misused. The Court has argued that a PIL would not under any circumstances be a "private interest fight."

Such events, along with many others, tend to demonstrate the reverse side of this program, clearly showing the changes it has experienced in the past several years and how it has been misused by the same people it was designed to defend. Such misuse of PILs not only leads to inconvenience in the process of imparting justice but also endangers the institutional sanctity of the judiciary.

It is not only the general citizen, however, that uses PILs for its purposes, but also the judiciary itself misuses its authority to resolve cases that do not come under its competence. The Judiciary was subjected to intense public criticism as a result. There have been recent debates about the Judiciary transgressing its boundaries, with the credibility of PILs compromised.

## **THE BOUNDARY BETWEEN JUDICIAL ACTIVISM & JUDICIAL OVERREACH**

Judicial advocacy is a concept traditionally associated with the PIL system. The word applies to the custom followed by judges in which as much as a postal letter is appropriate to trigger prerogative writs, without considering any technicalities into consideration. Although this makes justice readily available, it has been found that the higher authorities abuse this authority several times, to make decisions primarily informed by their own opinions on a specific public issue. Any action made with a political prejudice, irrespective of the public's well-being, will

potentially have negative consequences and this is when judicial interference takes the form of judicial overreaching.

Judicial overreach may be characterized as the judiciary that comes under the authority of the Legislature and the Executive, respectively, in the area of policy or law-making and enforcement. In modern years, under the form of judicial review, the courts have provided numerous decisions that, instead of restricting themselves to fixing the acts of the other two branches, offer instructions for them to perform their obligations in some manner. This behaviour of the Judiciary can result in being a double-edged sword, i.e. it can result in a more accountable mechanism of law-making if this power is used judiciously. Yet if done unscrupulously, it may lead to the deterioration of the judiciary's status as the protector of our Constitution.

There is a very thin distinction between judicial advocacy and overreaching by the courts, which sometimes gets blurred away and often falls unnoticed by the public. If the Judiciary's activities are closely observed it can be deduced that the courts frequently practice selective judicial activism. This essentially means that judges often pick up PILs for a judicial appeal that they might determine, leaving out those that may be of much greater public interest.<sup>[11]</sup> It indicates a lack of clarity on the part of the Supreme Court <sup>[12]</sup>, which did not hesitate to comment on certain policy issues, while on the other, it made the same policy issues a cover to circumvent the ruling on cases.<sup>[13]</sup> To mention a few reasons, it offered rulings on workplace sexual harassment <sup>[14]</sup> and custodial torture<sup>[15]</sup>, but the same Court did not participate when it came to other cases.



### **SEPARATION OF POWERS**

Despite the degree that courts use PILs and judicial advocacy despite defending people's constitutional rights, the judiciary's grip over the other two bodies continues to be enhanced. The Executive and the Legislature must become more accountable and act in a way that meets people's needs while at the same time not breaching any constitutional principles. Yet when the courts exercise selective judicial intervention, the ill-intended behind their decisions is revealed. The executive and the legislature will feel more assaulted than accountable in these circumstances. And when mistrust develops between the organs that were created to work in harmony together, it will lead to complete loss of balance.

This also contradicts the doctrine of 'separation of powers' which is accepted as one of the fundamental principles of the constitution. As stated in *Golak Nath v. State of Punjab* 's landmark case <sup>[16]</sup>, the Constitution has established three major instruments of power, namely the Legislature, the Executive and the Judiciary. This often quite demarcates their authority, and they are supposed to work within their defined limits. Even in the case of conflicts, the

Constitution also duly mentions the mode of resolution and the conditions for supersession. Nevertheless, violating the Judiciary's boundaries in the pretext of judicial intervention is manifestly unconstitutional.

Ultimately, to finish with Justice Markandey Katju 's terms, "Judicial authorities must exercise self-restraint and resist the urge to behave as a super-legislature. It'll only boost its esteem and reputation by exercising discipline. It acknowledges the equality between the other two branches and the judiciary, it also encourages equality by limiting inter-branch intervention by the judiciary. The touchstone of an autonomous judiciary has been its exclusion from the political and administrative phase. In this way, judicial restraint complements the identical, overarching principles of judicial independence and the separation of powers." [17]

## **REFERENCES**

- [1] Hussainara Khatoun v. the State of Bihar, 1979 AIR 1360.
- [2] R Shunmugasundaram, *Judicial activism and overreach in India*, 72, Amicus Curiae, 22, 23-24 (2007).
- [3] M.C Mehta v. Union of India, 1987 SCR (1) 819.
- [4] Vishaka & Ors. v. State of Rajasthan & Ors., AIR 1997 SC 3011.
- [5] National Legal Ser. Authority v. Union of India & Ors., AIR 2014 SC 1863.
- [6] Naz Foundation v. Government of NCT of Delhi & Ors., (2009) DLT 27.
- [7] Rajeev Dhavan, *Law as Struggle: Public Interest in India*, 36 (3), Journal of the Indian Law Institute, 302, 303 (1994)
- [8] Arun Kumar Agrawal v. Union of India, (2014) 2 SCC 609.
- [9] Jaipur Shaha Hindu Vikas Samiti v. State of Rajasthan & Others, (2014) 5 SCC 530.
- [10] Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra, AIR 2008 SC 913.
- [11] [Himangshu Nath](#), *PIL Strategy in Advancing the Rights of Have-Nots' in India: Issues and Challenges*, 5(2), Journal of Juridical and Social Science, 1, 8-10 (2015).
- [12] *supra* note 4.
- [13] D. K. Basu v. State of West Bengal, (1997)1 SCC 416.
- [14] Sarala Mudgal v. Union of India, (1995) 3 SCC 635.
- [15] Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751.
- [16] Golak Nath v. the State of Punjab. AIR 1967 SC 1643.
- [17] N. Priyadarshini v. The Secretary to Government, Education Department and Ors., 2005 (3) CTC 449.