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JUDICIAL REVIEW AND PUBLIC INTEREST LITIGATION IN INDIA

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JUDICIAL REVIEW

Meaning

Judicial review is the process by which a court, usually a higher court, examines the decisions made by a lower court, administrative agency, or government body, to determine whether they were made in accordance with the law and the constitution. In other words, it is the power of the courts to review and strike down any actions or decisions made by the other branches of government that are found to be unconstitutional or illegal.

The concept of judicial review is an important principle in many democracies, as it serves as a check on the powers of the government and ensures that its actions are in line with the fundamental principles of the legal system. In some countries, such as the United States, judicial review is explicitly granted to the courts through the constitution, while in others, it is derived from common law principles or statutory provisions.

History

The concept of judicial review has its roots in English common law, particularly in the principle of parliamentary supremacy, which held that the British Parliament was the supreme law-making authority in the country. However, the idea that the courts had the power to declare laws unconstitutional or illegal began to take shape in the United States.

The concept of judicial review was first articulated by Chief Justice John Marshall in the landmark case *Marbury v. Madison* in 1803. ¹In this case, Marshall asserted that the Constitution of the United States was the supreme law of the land and that the courts had the power to declare any law or action of the government that was inconsistent with the

¹ Diganth Raj Sehgal, *Judicial review - iPleaders*, (July 24, 2022), <https://blog.ipleaders.in/all-about-judicial-review/>.

Constitution null and void. This decision established the principle of judicial review in the United States and laid the foundation for the role of the courts in upholding the Constitution. Since then, the power of judicial review has become an important principle in many democracies around the world, including India, Canada, and Australia. The power of judicial review has been used to strike down laws and government actions that are found to be unconstitutional or in violation of fundamental rights. It has also served as a check on the powers of the government and ensured that its actions are in line with the fundamental principles of the legal system.

Overall, the concept of judicial review has a rich and complex history and continues to play a vital role in shaping the legal systems of many countries around the world.

Grounds for judicial review in India

Violation of Fundamental Rights: If any law or government action violates the fundamental rights guaranteed under Part III of the Constitution, it can be challenged before the courts for judicial review. Relevant Articles include Article 14 (right to equality), Article 19 (freedom of speech and expression, assembly, association, and movement), Article 21 (right to life and personal liberty), and Article 32 (right to constitutional remedies).

Violation of Basic Structure of the Constitution: The Supreme Court has held that certain provisions of the Constitution are so fundamental that they cannot be amended or abrogated, as they form the basic structure of the Constitution. If any law or government action violates the basic structure of the Constitution, it can be struck down by the courts. Relevant cases include *Kesavananda Bharati v. State of Kerala* (1973) and *Indira Nehru Gandhi v. Raj Narain* (1975).

Illegality: If any law or government action is illegal, that is, it violates any provision of the Constitution or any other law, it can be challenged before the courts. Relevant Articles include Article 265 (taxation cannot be imposed except by authority of law), Article 300A (right to property), and Article 311 (protection of civil servants from arbitrary dismissal or removal).

Procedural Impropriety: If any law or government action is taken without following the proper legal procedures or in a manner that is arbitrary, capricious, or discriminatory, it can be challenged before the courts. Relevant Articles include Article 14 (equality before the law), Article 21 (right to a fair hearing), and Article 311 (protection of civil servants from arbitrary

dismissal or removal).

Excess of Jurisdiction: If any law or government action goes beyond the jurisdiction or authority conferred by law, it can be challenged before the courts. Relevant Articles include Article 226 (power of High Courts to issue writs for enforcement of fundamental rights), Article 227 (power of High Courts to exercise superintendence over subordinate courts), and Article 32 (power of the Supreme Court to issue writs for enforcement of fundamental rights). These are some of the main grounds for judicial review in India, and several other factors may also be considered by the courts in determining whether a law or government action is justifiable.

Types of Judicial review

Review of legislative actions- this type of judicial review is concerned with keeping in check the legislative authority to make laws. Every law passed by the legislation without fail should align with the constitutional provisions, if not, gives rise to the power of the judiciary to intervene and correct the unconstitutional law so passed. *I.C Golaknath & Ors vs State of Punjab (1967)*, in this case, three constitutional amendments were challenged, first, fourth, and seventeenth. The Supreme Court held that Parliament did not have the power to amend the fundamental rights provisions of the Constitution, as they were part of the basic structure of the Constitution. In the *Kesavananda Bharti* case, this position was modified, as the court said Parliament could amend the Constitution, but only within the limits of the basic structure of the Constitution.

Review of Administrative actions- Here, the judicial review is extended to the administrative authority, where the actions of the government are controlled judicially. E.g.- if the government has passed a notification on the subject matter upon which it doesn't have jurisdiction, or it exceeded the jurisdiction, in that case, judicial review will strike down the law.

Review of Judicial decisions of the lower court- if a lower court commits an error in its judgment regarding the interpretation of law or any other error within the scope of grounds to judicial review.

Articles of judicial review

Article 13: This article declares that any law that is inconsistent with or in derogation of the fundamental rights guaranteed under Part III of the Constitution shall be void.

Article 32: This article gives the Supreme Court of India the power to issue writs for the enforcement of fundamental rights guaranteed under Part III of the Constitution.

Article 226: This article gives the High Courts of India the power to issue writs for the enforcement of fundamental rights and any other purpose.

Article 131: This article gives the Supreme Court the exclusive jurisdiction to hear disputes between the Government of India and one or more States, or between two or more States, on any matter.

Article 136: This article gives the Supreme Court the power to grant special leave to appeal against any judgment, decree, determination, sentence, or order passed by any court or tribunal in India.

These articles empower the judiciary in India to strike down any law, order, or action of the government that is found to be inconsistent with the provisions of the Constitution, including fundamental rights.

Limitations on exercise of power under judicial review

Jurisdictional Limitations: The courts can only exercise judicial review in cases where they have the jurisdiction to do so. For example, the High Court can only exercise judicial review over actions taken within the territory of the state in which it is located, while the Supreme Court can exercise judicial review over actions taken anywhere in the country.

Political Question Doctrine: The courts cannot adjudicate on issues that are purely political in nature and fall within the exclusive domain of the executive or legislative branches of government. This means that the courts cannot interfere in matters of policy or political discretion unless there is a violation of a constitutional provision.

Locus Standi: The courts can only exercise judicial review in cases where the petitioner has the legal standing to do so. This means that the petitioner must have a direct and personal interest in the matter and cannot bring a case on behalf of someone else.

The doctrine of Separation of Powers: The courts must respect the separation of powers between the three branches of government and cannot interfere in the functioning of the other branches unless there is a clear violation of the Constitution.

Doctrine of Judicial Restraint: The courts must exercise restraint in their use of the power of

judicial review and should only intervene in cases where it is necessary to do so. This means that the courts must give due deference to the decisions of the other branches of government and should only step in when there is a clear violation of the Constitution.

These limitations are essential to maintaining the balance of power between the branches of government and ensuring that the judiciary does not overstep its role in the constitutional framework.

PUBLIC INTEREST LITIGATION (PIL)

Meaning

Public Interest Litigation (PIL) is a legal mechanism in India that allows any citizen or group of citizens to approach the courts to seek redressal of a grievance that affects the public interest. PIL is a means of providing access to justice to those who may not have the resources or standing to approach the courts directly. PIL has been used to address a wide range of issues, such as environmental degradation, corruption, human rights violations, and discrimination. PIL has played a significant role in shaping Indian jurisprudence and has been instrumental in bringing about social and legal reforms.

History

Public Interest Litigation (PIL) is a relatively recent development in Indian jurisprudence, which was first introduced in the 1980s as a means of providing access to justice to the marginalized and underprivileged sections of society.

The roots of PIL can be traced back to a landmark case in 1976, in which the Supreme Court of India recognized the right to a clean and healthy environment as a fundamental right under the Constitution. This case, which was brought by a group of lawyers and activists, marked the beginning of a new era in Indian legal history, where the courts began to play a more active role in addressing public grievances and enforcing fundamental rights.

The concept of PIL was first introduced by Justice V.R. Krishna Iyer, a former judge of the Supreme Court, in the early 1980s. Justice Iyer believed that the traditional form of litigation, which required a petitioner to have a direct personal interest in the case, was inadequate in addressing the needs of the marginalized and disadvantaged sections of society. He argued that the courts should be more proactive in addressing social and economic issues and should be

accessible to the common people.

The first PIL case was filed in 1981 by two lawyers, Mr. Kapila Hingorani and Mr. Rajindar Sachar, seeking the release of undertrial prisoners who had been detained for long periods without trial. The case was taken up by the Supreme Court, which issued a landmark judgment ordering the release of all undertrial prisoners who had been in jail for more than two years.

Over the years, PIL has become an important tool for social and legal reform in India and has been used to address a wide range of issues, such as environmental degradation, corruption, human rights violations, and discrimination. PIL has been instrumental in bringing about significant changes in the legal system and has empowered the marginalized and disadvantaged sections of society to seek justice and redressal grievances.

Who can file PIL and where it can be filed?

In India, any person, including an individual, a group of individuals, a non-governmental organization (NGO), or a social action group, can file a Public Interest Litigation (PIL) if they believe that there is a violation of the fundamental rights or a matter of public interest that needs to be addressed by the courts.

A PIL can be filed in the High Court or the Supreme Court of India. The choice of the court depends on the nature and scope of the issue. If the issue affects a specific state, the PIL can be filed in the High Court of that state. However, if the issue has national or wider implications, the PIL can be filed in the Supreme Court of India.

It is important to note that filing a PIL requires careful consideration and preparation and should only be done in cases where the issue affects the public interest and requires urgent attention. Additionally, the petitioner must have a genuine concern and must not have any personal interest or gain in the matter.

Rules developed by courts regarding PIL

Locus Standi: The rule of locus standi has been relaxed, anyone, not only aggrieved can file PIL. However, the petitioner must have sufficient interest in the case or be personally affected by the issue raised in the PIL. The courts have held that merely academic interest or public-spiritedness is not enough.

Public Interest: The PIL must be filed in the larger public interest and not for personal gain or

publicity. The courts have held that a PIL cannot be filed for settling personal scores or for publicity.

No Personal Vendetta: The PIL should not be used as a tool for settling personal scores or for vindictive purposes. The courts have held that a PIL filed with malafide intentions can result in contempt of court.

Legal Assistance: The petitioner must have adequate legal assistance and the PIL should be drafted with care and precision. The courts have held that poorly drafted or frivolous PILs can waste the time and resources of the courts.

Evidence: The PIL must be supported by adequate evidence and facts. The courts have held that mere allegations or general statements are not enough to establish a case.

Res Judicata: The principle of res judicata applies to PILs as well. This means that once a matter has been decided by a court, it cannot be reopened through a subsequent PIL on the same issue.

These rules and guidelines have been developed by the courts to ensure that PILs are used for their intended purpose and are not misused or abused.

Issues and cases decided through PIL

Environmental issues: PILs have been used to address environmental degradation and pollution, such as the Vardhaman Kaushik vs. Union of India case that resulted in a ban on the use of plastic bags in Delhi.

Human rights violations: PILs have been used to highlight and address human rights violations, such as the Bandhua Mukti Morcha vs. Union of India case that resulted in the abolition of bonded labor.

Corruption and governance issues: PILs have been used to address issues of corruption and governance, such as the Vineet Narain vs. Union of India case that resulted in the setting up of the Central Bureau of Investigation (CBI) as an independent investigative agency.

Education and healthcare: PILs have been used to address issues related to education and

healthcare, such as the Unni Krishnan vs. State of Andhra Pradesh case that resulted in the right to education being declared as a fundamental right.

Women's rights: PILs have been used to address issues related to women's rights, such as the Vishaka vs. State of Rajasthan case that resulted in guidelines being laid down for preventing sexual harassment of women in the workplace.

These are just a few examples, and PILs have been used to address many other issues as well. The success of PILs in India has encouraged the use of this form of litigation in other countries as well.

Abuse of PIL

While Public Interest Litigation (PIL) has been an effective tool for promoting social justice and holding the government accountable, it is not without its drawbacks. PILs can be abused or misused in the following ways:

Frivolous PILs: PILs can be filed on frivolous or vexatious grounds by people seeking publicity or personal gain. Such PILs can waste the time and resources of the court and undermine the credibility of the PIL system.

Lack of verification: PILs can be filed without proper verification of the facts and due diligence. Such PILs can result in the court passing orders based on incomplete or incorrect information.

Publicity stunts: PILs can be filed as publicity stunts, by celebrities or other public figures, to gain media attention or to enhance their public image.

Political motives: PILs can be filed for political motives, by political parties or interest groups, to score political points or to further their agenda.

Delay in proceedings: PILs can sometimes lead to delays in the proceedings of the court, as the court may take time to consider the complex issues involved in the PIL and may order investigations or reports to be submitted.

It is important to note that the abuse or misuse of PILs is not a reflection on the PIL system itself but rather on the individuals who file frivolous or baseless PILs. It is the responsibility of the court to ensure that PILs are filed in the larger public interest and are not abused or misused for personal gain or publicity.

CONCLUSION

Judicial review and Public Interest Litigation (PIL) are important tools in the Indian legal system for ensuring accountability and promoting social justice. Judicial review allows the courts to review the actions of the executive and legislative branches of the government to ensure that they are in line with the Constitution, while PILs allow citizens to bring issues of public interest to the attention of the courts.

Over the years, both judicial review and PILs have evolved through various court rulings and legislative changes and have played a crucial role in shaping Indian democracy. However, there are also concerns about the abuse and misuse of PILs, and the limitations of the court's power in exercising judicial review.

Overall, while there may be some limitations and challenges associated with these legal tools, they continue to be an essential part of the Indian legal system, providing a means for citizens to hold the government accountable and promote social justice.

