

Polity Class 23

7th October, 2023 at 1:00 PM

INTRODUCTION (01:07 PM)

- **A Brief Review Of The previous Class.**

CONCERNS ASSOCIATED WITH PIL (01:09 PM)

- **It has led to judicial overreach resulting in a violation of separation of power.**
- **PIL can not be a substitute for poor governance and in such circumstances, citizens must exert pressure on the government rather than asking for interference from the court.**
- **It is alleged that PIL has turned into Private Interest Litigation or Publicity Interest Litigation where the aim of certain individuals while filing such petitions is to achieve certain ulterior motives.**
- **It has resulted in an increased workload on the judiciary further leading to higher pendency in the courts.**
- **Way Ahead:**
- **There is no doubt that PIL has played an important role in deepening access to the judicial system for the Citizens.**
- **But it is equally important its misuse.**
- **Therefore dubious and frivolous PILs should be rejected by the courts with exemplary cost.**
- **The court should observe restraint from entering into the domain of other organs on the pretext of PILs.**
- **The court may give extra attention towards the scrutiny of the PIL at an early stage to reduce the chances of bogus PIL wasting the precious time of the courts.**
- **Question: Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Constitution. In this context justify the filing of a large number of PILs praying for issuing guidelines to the executive authority.**

JUSTIFICATION FOR FILING PILs (01:31 PM)

- **Absence of grievance redressal mechanism within executive and legislature,**
- **Failure of the executive and the legislature to satisfy the aspirations of the citizens.**
- **The citizens do not perceive the executive and the legislature positively whereas the judiciary is perceived in a different light.**
- **The judges have often been over-enthusiastic in providing directions to the executive due to populist reasons.**
- **Judicial Activism: It refers to such actions of the judiciary where they overstep their traditional role and enter into the domain of the legislature and the executive.**

- The justification provided by the court for such action is the inability of the executive and legislature.
- But at the same time we must be aware that overenthusiasm shown by the judiciary can lead to the violation of the separation of powers and allow the court to enter into a domain which is not part of its experience.
- Such unrestricted enthusiasm shown by the courts may be labelled as Judicial Overreach

PROVISIONS UNDER ART 33 AND 34 (01:44 PM)

- **Art 33:**
- It allows the parliament to make laws to restrict the application of FRs concerning members of certain organisations.
- These organisations include the Armed Forces, Forces for maintaining law and order, RAWs, and organisations involved in maintaining the telecommunication systems of the above organisations.
- These provisions have been included to ensure that the security and defence of the country do not get compromised in the name of FRs.
- As a result parliament has made several laws including the Army Act, of 1950 The Air Force Act of 1950 etc.
- **Art 34:**
- It allows the parliament to make laws and provide legal immunity to any person in the service of union or state or any other person connected with the maintenance of
- Or restoration of law and order in an area where martial law is in force.
- It does not provide the definition of the term martial law.
- But in a general sense it means the suspension of civilian administration and its replacement with the rule of armed forces.

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP) (02:02 PM)

- **Art 36:** Definition of state, same as that of art 12.
- **Art 37:** Dpsps are not legally enforceable.
- Fundamental in the governance of the country.
- The state shall follow these principles in the governance of the country.
- **Significance or Importance of DPSPs**
- They help in ensuring the accountability of the state to the citizens.
- They help in ensuring continuity in the functioning of the government in India.
- They create conditions for social and economic democracy without which political democracy is meaningless.

- The court has stated that while deciding the constitutionality of the law they must take into consideration whether that law gives effect to DPSP or not.
- They can play a crucial role in the interpretation of ambiguous provisions of the Constitution.

PROVISIONS OF DPSPs (02:21 PM)

- **Art 38:**
- It is a socialist principle that reflects the welfare character of the Indian state.
- A/C to it Indian state shall try to create a society where justice prevails.
- Additionally the state shall try to minimise the inequalities between Indians living in different parts of India or engaged in different vocations.
- Some of the examples of schemes and policies made in this regard include the hill area development programme the aspirational district programme, Special Category status for hill states, Progressive taxation rates etc.

ART 39 (02:56 PM)

- Article 39 includes several provisions in the Directive Principles of State Policy (DPSP):
- 39(a) It is based on socialist principles and provides directions to ensure adequate means of livelihood for men and women
- Example: MGNREGA, PMGKVY, Mudra Scheme etc.
- b) and c) The state must prevent the concentration of economic resources and ensure their equal distribution to serve the common good.
- For example: Land reform measures, Nationalisation of Industries and banks, Abolition of privy purse etc.
- d) Equal pay for equal work, for both men and women.
- Example: Payment of Wages Act, Wage code 2022.
- e) The state should ensure that citizens are not forced into occupations unsuited to their age and strength.
- Example: Factories Act 1948, Child labour (Regulation and Prohibition) Act, 1986.
- f) The state should provide an opportunity to children so that they can develop in a healthy manner and protect them from any kind of exploitation.
- Example: Juvenile Justice Act, POCSO Act, Integrated Child Protection Scheme Etc.
- **Art 39(A): Inserted by 42nd CAA**
- The state shall secure the operation of a legal system that works on the principle of equal opportunity where everyone can access to justice system.
- The article that guarantees equal justice and free legal aid for all citizens.

- In pursuance of goals under Art 39(A), parliament enacted NALSA Act, 1987.
- 3 tier mechanism: NALSA, SALSA, DLSA.
- Functions: Creating awareness, and providing free legal aid to a person like women, SCs & STs, children, natural disaster victims, trafficking victims, and ethnic violence.
- It also mentions that the state shall provide suitable legislation for people who do not have access to legal aid.
- It ensures that all citizens in India have equal opportunities and adequate means of subsistence.
- Art 40: It is a Gandhian principle that casts a responsibility on the state to organise village Panchayat in such a manner that they can function as institutions of self-governance.
- Village panchayats have been a common feature of Indian society for time immemorial.
- But always lack structure and formal outlook.
- This provision tries to fill that gap.
- Some of the examples are the 73rd CAA which provides a framework to ensure the effective functioning of Panchayat in India.
- Gram Swaraj Abhiyan, PESA, Act 1996, ePanchayat Scheme etc.
- Art 41: A/C to state shall take welfare programmes, especially for those who are not in a position to take care of themselves.
- For example The National policy for the disabled, Reservation for PWD in Govt. jobs, National Old age Pension scheme, etc.
- Art 42: The state shall make provisions for decent working conditions and maternity relief.
- Parliament enacted the Maternity Benefits Act, of 1961 which lists the measures to be taken by employers for the welfare of their pregnant employees.
- Setting up of vast network of ASHA workers who are supposed to provide antenatal and Prenatal care to pregnant women.
- Art 43: The state should protect the rights of all kinds of workers either through law or through other measures.
- For example The Wage Code 2022, The Employee Consentation Act, the setting up of provident funds, the Factories Act etc.
- Additionally the state must try to promote cottages to promote the rural economy and to protect India's traditional Industries and occupations.
- Several entities have been set up by the state and the central govt. to promote cottage Industries. For example: KVIC

- **Article 43(a)**
- **It is a socialist principle that was added by the 42nd CAA. to improve the participation of workers in the management of Industries.**
- **It is often termed as the principle of profit sharing.**
- **A/C to which Industrial workers should get a larger share in the profits of the Industry.**
- **Example: Trade Union Act, 1926**
- **Industrial Disputes Act, 1947.**
- **Employee Compensation Act 1923.**
- **Art 43 B: It was added by 97 CAA and aims to encourage the economic activity of cooperatives and in turn contribute to the progress of rural India.**
- **A/C to it the state should promote voluntary formation, Autonomous functioning, professional management and democratic control of cooperative societies.**
- **Some of the steps taken in this regard include:**
- **Setting up a separate ministry of the cooperative.**
- **National cooperative development corporation.(Provide Aid assistance to cooperatives)**
- **Art 44: Article 44 of the Indian constitution states that the state shall endeavour to secure for its citizens a uniform civil code throughout the territory of India.**
- **Uniform Civil Code (UCC): It is a concept according to which all Indian citizens shall be governed by the same uniform set of laws irrespective of the faith of the person.**

(TOPIC FOR THE NEXT CLASS: CONTINUATION OF DPSPs, UCC)